



Southern Ute Indian Tribe/State of Colorado Environmental Commission's

Reservation Air Code

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ARTICLE I. GENERAL PROVISIONS

1-101. Declaration of Policy.

The Southern Ute Indian Tribe/State of Colorado Environmental Commission finds and declares that it is the policy of this Commission, in accordance with the charge given this Commission by the Tribe and State in the *Intergovernmental Agreement Between the Southern Ute Indian Tribe and the State of Colorado Concerning Air Quality Control on the Southern Ute Indian Reservation*, (1) to protect and improve the air quality on the Reservation, for the benefit of the health and welfare of the residents of the Reservation and the Reservation environment, in a manner that reflects the particular interests of the Tribe and other entities operating on the Reservation, yet remains compatible with State air quality goals; (2) to take into account, in the establishment of the Reservation Air Program, the specific environmental, economic, geographic and cultural needs of the Reservation; and (3) to establish a single comprehensive air quality program applicable to all lands within the exterior boundaries of the Southern Ute Indian Reservation.

1-102. Authority.

This Air Quality Code is adopted pursuant to the authority vested in the Southern Ute Indian Tribe/State of Colorado Environmental Commission by (1) the Intergovernmental Agreement Between the Southern Ute Indian Tribe and the State of Colorado Concerning Air Quality Control on the Southern Ute Indian Reservation dated December 13, 1999, (2) tribal law (Resolution of the Council of the Southern Ute Indian Tribe # 00-09), (3) State law (C.R.S. § 24-62-101), and (4) as recognized in federal law (Act of October 18, 2004, Pub. L. No. 108-336, 118 Stat.1354).

1-103. Definitions.

- (1) “**Acid rain source**” means an affected unit as defined in regulations promulgated under title IV of the Clean Air Act, namely, a unit that is subject to acid rain emission reduction requirements under title IV of the Clean Air Act.
- (2) “**Actual emissions**” means for purposes of calculating emissions fees pursuant to § 2-119 of this code, the amount of emissions, including fugitive emissions from a source that is calculated by using:
 - (a) The actual rate of emissions in Tons Per Year (TPY) of any fee pollutant emitted from a title V 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 approved by the Administrator; and
 - (b) The unit’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; and

- (c) Shall not include emissions of any one fee pollutant in excess of four thousand (4,000) TPY, or any emissions that come from insignificant activities not required in a permit application pursuant to § 2-106(4) of this code.

(3) **“Administrative permit revision”** means a permit revision that:

- (a) Corrects typographical errors;
- (b) Requires more frequent monitoring or reporting by the permittee;
- (c) Indicates a change in ownership or operational control of a source, provided that:
 - (i) 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, and the Tribe has determined that no other change in the permit is necessary;
 - (ii) The new owners have submitted the application information required in § 2-106(4) of this code;
 - (iii) No grounds exist for permit reopening, revocation and reissuance, or termination, pursuant to § 2-112 of this code; and
- (d) Incorporates into the permit the requirements from preconstruction review permits issued pursuant to an EPA approved pre-construction permitting program, provided that the issuance of such preconstruction review permit(s) complies with the procedural and compliance requirements of this code; or
- (e) Any other type of change which has been determined by the Tribe and the Administrator to be similar to those in this definition.

Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Act.

(4) **“Administrator”** means the Administrator of the United States Environmental Protection Agency (EPA) or his or her designee.

(5) **“Affected program”** means all tribal, state, and local air pollution control programs:

- (a) Whose air quality may be affected and that are contiguous to the Reservation, or

- (b) That are within 50 miles of the permitted source.
- (6) **“Affected source”** shall have the meaning given to it in the regulations promulgated under title IV of the Act.
- (7) **“Air pollutant”** means any air pollution agent or combination of such agents including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant to the extent the Administrator of EPA has identified such precursor or precursors for the particular purpose for which the term “air pollutant” is used.
- (8) **“Air pollution”** means the presence in the ambient air of one or more air pollutants or combinations thereof in sufficient quantities, which either alone or in connection with other substances, by reason of their concentration and duration, is or tends to be injurious to human, plant or animal life, causes damage to property, unreasonably interferes with the comfortable enjoyment of life or property of a substantial part of a community, obscures visibility, or in any way degrades the quality of the ambient air.
- (9) **“Air pollution control equipment”** means any device, equipment, process or combination thereof, the operation of which would limit, capture, reduce, confine, or otherwise control regulated air pollutants, or convert for the purposes of control, any regulated air pollutant to another form, another chemical, or another physical state. This includes, but is not limited to, sulfur recovery units, baghouses, precipitators, scrubbers, cyclones, water sprays, catalytic converters, flares, thermal oxidizers and steam or water injection.
- (10) **“Alternative operating scenario (AOS)”** means a scenario authorized in a part 70 permit that involves a change at the part 70 source for a particular emissions unit, and that either results in the unit being subject to one or more applicable requirements which differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.
- (11) **“Applicable requirement”** means all of the following as they apply to emissions units at a Part 70 source (including requirements that have been promulgated by EPA through rulemaking at the time of permit issuance but that have future compliance dates):
- (a) All requirements of this code as they apply to emissions units at a source located within the Reservation boundaries. These include requirements that have been promulgated or approved by the Commission through

rulemaking at the time of permit issuance but that have future compliance dates;

- (b) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52;
- (c) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including Parts C or D, of the Act;
- (d) Any standard or other requirement under Section 111 of the Act, including Section 111(d);
- (e) Any standard or other requirement under Section 112 of the Act, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;
- (f) Any standard or other requirement of the acid rain program under title IV of the Act or the regulations promulgated thereunder;
- (g) Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the Act;
- (h) Any standard or other requirement under Section 126(a)(1) and (c) of the Act;
- (i) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;
- (j) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;
- (k) Any standard or other requirement for tank vessels under Section 183(f) of the Act;
- (l) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a title V permit; and
- (m) Any national ambient air quality standard or increment or visibility requirement under Part C of title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act.

- (12) **“Approved replicable methodology (ARM)”** means part 70 permit terms that:
- (a) Specify a protocol which is consistent with and implements an applicable requirement, or requirement of this code, such that the protocol is based on sound scientific and/or mathematical principles and provides reproducible results using the same inputs; and
 - (b) Require the results of that protocol to be recorded and used for assuring compliance with such applicable requirement, any other applicable requirement implicated by implementation of the ARM, or requirement of this code, including where an ARM is used for determining applicability of a specific requirement to a particular change.
- (13) **“Clean Air Act”** or **“Act”** means 42 U.S.C. § 7401 *et seq.*, as amended.
- (14) **“Code of Federal Regulations”** or **“CFR”** means a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government.
- (15) **“Commission”** means the Southern Ute Indian Tribe/State of Colorado Environmental Commission.
- (16) **“Commence Operation”** means, for a new source, when it conducts the activity that it was designed and permitted for (e.g., producing cement or generating electricity).
- (17) **“Commission’s Procedural Rules”** means the Procedural Rules of the Southern Ute Indian Tribe/State of Colorado Environmental Commission.
- (18) **“Compliance plan”** means either a statement that the source will comply with all applicable requirements or, where applicable, a schedule and description of the method or methods for compliance and certification by the owner or operator that the source is in compliance with all applicable requirements.
- (19) **“Consumer Price Index”** means for any calendar year, the average of the Consumer Price Index for all-urban consumers, or such revision of the Consumer Price Index for all-urban consumers, or such revisions of the Consumer Price Index that is most consistent with the Consumer Price Index for the most recent calendar year, as published by the U.S. Department of Labor as of the close of 12-month period ending on August 31 of each calendar year.
- (20) **“Designated representative”** shall have the meaning given to it in Section 402(26) of the Act and the regulations promulgated thereunder.
- (21) **“Deviation”** means any situation in which an emissions unit fails to meet a permit term or condition. A deviation is not always a violation. A deviation can be

determined by observation or through review of data obtained from any testing, monitoring, or recordkeeping established in accordance with § 2-110(5) and (6) of this code. For a situation lasting more than 24 hours which constitutes a deviation, each 24 hour period is considered a separate deviation. Included in the meaning of deviation are any of the following:

- (a) A situation where emissions exceed an emission limitation or standard;
 - (b) A situation where process or emissions control device parameter values indicate that an emission limitation or standard has not been met;
 - (c) A situation in which observations or data collected demonstrates noncompliance with an emission limitation or standard or any work practice or operating condition required by the permit;
 - (d) A situation in which an exceedance or an excursion, as defined in 40 CFR Part 64 occurs.
- (22) **“Draft Permit”** means a version of an operating permit that the Tribe offers for public participation under § 2-109 of this code and affected program review under § 2-108 of this code.
- (23) **“Emergency”** means for purposes of 40 CFR § 70.6(g), 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, and that causes the source 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.
- (24) **“Emission limitation” and “emission standard”** means a requirement established by the Commission or the Administrator which limits the quantity, rate, concentration, or the visible observations of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emissions reduction, and any design, equipment, work practice or operational standard promulgated under this code or the Clean Air Act.
- (25) **“Emissions allowable under the permit”** means:
- (a) Any federally enforceable permit term or condition that establishes an emission limitation (including a work practice standard) determined at issuance or renewal to be required by an applicable requirement; or

- (b) Any federally enforceable emissions cap that a source has assumed to avoid an applicable requirement to which it otherwise would be subject.
- (26) **“Emissions unit”** means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Clean Air Act, 42 U.S.C § 7412(b). This term is not meant to alter or affect the definition of the term “unit” for purposes of title IV of the Act.
- (27) **“Environmental Protection Agency” or “EPA” or “USEPA”** means the United States Environmental Protection Agency.
- (28) **“Excess emissions”** means emissions of an air pollutant in excess of any applicable emission standard.
- (29) **“Federally enforceable”** means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60-61, 40 CFR Part 63, requirements within an approved Southern Ute Tribal Implementation Plan, and any permit requirements established pursuant to 40 CFR § 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including 40 CFR §§ 50.165 and 51.166.
- (30) **“Fee Pollutant”** means any regulated air pollutant as defined in this section except:
- (a) Carbon monoxide;
- (b) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard established by or promulgated under title VI of the Clean Air Act;
- (c) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under § 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r); or
- (d) Emissions from insignificant activities and insignificant emissions not required to be listed or calculated in a permit application pursuant to § 2-106(4) of this code.
- (31) **“Final permit”** means the version of an operating permit issued by the Tribe that has met all requirements of this code.
- (32) **“Fugitive emissions”** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

- (33) **“General permit”** means a Part 70 permit that meets the requirements of §70.6(d).
- (34) **“Hazardous air pollutant”** means a federally listed hazardous air pollutant pursuant to Section 112 of the Clean Air Act.
- (35) **“IGA or Intergovernmental Agreement”** means the Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado Concerning Air Quality Control on the Southern Ute Indian Reservation, entered into by the Tribe and State on December 13, 1999.
- (36) **“Insignificant activities”** means any of the following types of activities:
- (a) Mobile sources;
 - (b) Air conditioning units used for human comfort that are not subject to applicable requirements under title IV of the Act and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;
 - (c) Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;
 - (d) Heating units used for human 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; and
 - (h) Internal combustion engines used for landscaping purposes.
- (37) **“Insignificant emissions”** means, for regulated air pollutants other than hazardous air pollutants, a potential to emit for any single emissions unit not exceeding 2 tons per year and, for hazardous air pollutants, a potential to emit for any single emissions unit not exceeding 1,000 pounds per year or the de minimis level established under § 112(g) of the Clean Air Act, whichever is less.
- (38) **“Major source”** means any stationary source or any group of stationary sources that is located on one or more contiguous or adjacent properties, and is under control of the same person (or persons under common control) belonging to a single, major industrial grouping, and that is described in paragraphs (a)-(c) of this definition. For the purpose of this definition, a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of

the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

- (a) A major source under § 112(a)(1) of the Clean Air Act, 42 U.S.C. § 7412(a)(1), which is defined as:
 - (i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 TPY or more of any one hazardous air pollutant, 25 TPY or more of any combination of hazardous air pollutants which have been listed pursuant to § 112(b) of the Clean Air Act, 42 U.S.C. § 7412(b), or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, hazardous emissions from any oil or gas exploration or production well (with its associated equipment) and hazardous emissions from any pipeline compressor or pump station shall not be aggregated with hazardous emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources;
 - (ii) For radionuclides, “major source” shall have the meaning specified by the Administrator by rule.

- (b) A major stationary source of air pollutants as defined in § 302 of the Clean Air Act, 42 U.S.C. § 7602, that directly emits, or has the potential to emit, 100 TPY or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of 302(j) of the Clean Air Act, unless the source belongs to one of the following categories of stationary sources:
 - (i) Coal cleaning plants (with thermal dryers);
 - (ii) Kraft pulp mills;
 - (iii) Portland cement plants;
 - (iv) Primary zinc smelters;
 - (v) Iron and steel mills;
 - (vi) Primary aluminum ore reduction plants;

- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units (MMBtu) per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil fuel-fired steam electric plants of more than 250 MMBtu per hour heat input;
- (xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or 112 of the Act.

- (c) A major stationary source as defined in Part D of title I of the Clean Air Act, including:
 - (i) For ozone nonattainment areas, sources with the potential to emit 100 TPY or more of volatile organic compounds or nitrogen oxides in areas classified as “marginal” or “moderate,” 50 TPY or more in areas classified as “serious,” 25 TPY or more in areas classified as “severe,” and 10 TPY or more in areas classified as “extreme”; provided that the references in this subsection to 100, 50, 25, and 10 TPY of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under §§ 182(f)(1) or (2) of the Clean Air Act, 42 U.S.C. §§ 7511a(f)(1)-(2), that requirements under § 182(f) of the Clean Air Act do not apply;
 - (ii) For ozone transport regions established pursuant to § 184 of the Clean Air Act, 42 U.S.C. § 7511c, sources with the potential to emit 50 TPY or more of volatile organic compounds;
 - (iii) For carbon monoxide nonattainment areas that are classified as “serious,” and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 TPY or more of carbon monoxide; and
 - (iv) For particulate matter (PM-10) nonattainment areas classified as “serious,” sources with the potential to emit 70 TPY or more of PM-10.

- (39) **“Maintenance”** means work that is done regularly to keep a machine, building, or piece of air pollution control equipment, process equipment, or process in good condition and working order for continued operation.

- (40) **“Minor permit revision”** means a permit revision that:
 - (a) Does not violate any applicable requirement;
 - (b) Does not involve significant permit revisions to existing monitoring, reporting, or recordkeeping requirements in the permit;
 - (c) Does not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

- (d) Does not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject, including any federally enforceable emissions cap assumed to avoid classification as a modification under title I of the Clean Air Act and any alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the Clean Air Act, and 42 U.S.C. § 7412(i)(5);
 - (e) Is not a title I modification; and
 - (f) Is not required to be processed as a significant permit revision pursuant to § 2-111(4) of this code;
 - (g) Notwithstanding the criteria listed in paragraphs (a)-(f), a minor permit revision may include permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches to the extent that such minor permit revision procedures are provided in the implementation plans or in applicable requirements promulgated by the Administrator.
- (41) **“National ambient air quality standard” or “NAAQS”** means the ambient air pollutant concentration limits established by the Administrator pursuant to § 109 (42 U.S.C. § 7409) of the Clean Air Act.
 - (42) **“Operating permit” and “permit”** (unless the context suggests otherwise) means any permit or group of permits covering a source that is issued, renewed, modified, or revised pursuant to this code, or any permit issued, renewed, amended, revised to a Part 70 source pursuant to 40 CFR Part 70 .
 - (43) **“Owner or Operator”** means any person who owns, leases, operates, controls, or supervises a stationary source.
 - (44) **“Part 70 program”** means a program approved by the Administrator under 40 CFR Part 70.
 - (45) **“Part 70 source”** means all sources subject to 40 CFR Part 70.
 - (46) **“Permit program costs”** means all reasonable direct and indirect costs related to developing and implementing the operating permit program established under this code, including, but not limited to, costs of the following activities:
 - (a) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

- (b) Reviewing and acting on any application for a permit issuance, revision, or renewal, including the development of applicable requirements as part of the processing of such applications;
 - (c) General administrative costs of running the operating permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;
 - (d) Implementing and enforcing the terms of any operating permit, including adequate resources to determine which sources are subject to the program, but not including any court costs or other costs associated with a court enforcement action;
 - (e) Emissions and ambient monitoring;
 - (f) Modeling, analyses, or demonstrations; and
 - (g) Preparing inventories and tracking emissions.
- (47) **“Permit revision”** means a revision to an operating permit that constitutes a significant permit revision, a minor permit revision, or an administrative permit revision, as defined in this code.
- (48) **“Permittee”** means the owner, operator, or responsible official at a permitted source, as identified in any permit application or revision.
- (49) **“Person”** means any person, public or private corporation, company, partnership, firm, association or society of persons, trust, estate, the United States, or a state and any political subdivision, program, or agency thereof, the Tribe and any department, division, program, enterprise, company, or political subdivision thereof, and any other recognized legal entity.
- (50) **“Portable source”** (excluding non-road engines) means any stationary source that is capable of being transported and operated in more than one location. Examples include, but are not limited to, asphalt batch plants and aggregate crushers that commonly and by usual practice are moved from one site to another. A portable source must meet all the permitting requirements for stationary sources. A source will not be considered portable if it remains on one site for more than two years.
- (51) **“Potential to emit”** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, 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 is federally enforceable. This term does not

alter or affect the use of this term for any other purposes under the Act, or the term “capacity factor” as used in title IV of the Act or the regulations promulgated thereunder.

- (52) **“Proposed permit”** means the version of an operating permit that the Tribe proposes to issue and forwards to the Administrator for review in compliance with § 2-108 of this code.
- (53) **“Public Law No. 108-336” or “ P.L. 108-336”** means the Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2004 (i.e., Act of October 18, 2004, Pub. L. No. 108-336, 118 Stat.1354), in which Congress provided for the implementation and enforcement of air quality control programs under the Clean Air Act and other air quality programs developed in accordance with the IGA.
- (54) **“Regulated air pollutant”** means the following:
- (a) Nitrogen oxides or any volatile organic compounds;
 - (b) Any pollutant for which a national ambient air quality standard has been promulgated;
 - (c) Any pollutant that is subject to any standard promulgated under § 111 of the Clean Air Act, 42 U.S.C. § 7411;
 - (d) Any pollutant subject to any standard promulgated or any other requirements established under § 112 of the Clean Air Act, 42 U.S.C. § 7412, including but not limited to the following:
 - (i) Any pollutant for which the requirements of § 112(g)(2) of the Clean Air Act have been met, but only with respect to the individual source subject to a § 112(g)(2) requirement;
 - (ii) Any pollutant subject to requirements under § 112(j) of the Clean Air Act, provided that if the Administrator fails to promulgate a standard by the date established pursuant to § 112(e) of the Clean Air Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to § 112(e) of the Clean Air Act; and
 - (iii) Any regulated substance subject to requirements under § 112(r) of the Clean Air Act.
 - (e) Any Class I or II substance subject to any standard promulgated under or established by title VI of the Clean Air Act.

- (55) **“Renewal”** means the process by which an operating permit is reissued at the end of its term.
- (56) **“Reservation”** means the Southern Ute Indian Reservation.
- (57) **“Responsible official”** means one of the following:
- (a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to an operating permit and either:
 - (i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), or
 - (ii) The delegation of authority to such representative is approved in advance by the Tribe.
 - (b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.
 - (c) For a Federal, Tribal, State, Municipal, or other Public Agency: a principal executive officer or ranking elected official. For the purposes of this code, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the U.S. Environmental Protection Agency).
 - (d) For an acid rain source: the designated representative (as defined in § 402(26) of the Clean Air Act, 42 U.S.C. § 7651a(26)), and in so far as actions, standards, requirements, or prohibitions under title IV of the Clean Air Act or the regulations promulgated thereunder are concerned, and for any other purposes under 40 CFR Parts 70 and 71.
- (58) **“Schedule of compliance”** means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation or emission prohibition.
- (59) **“Section 502(b)(10) changes”** means changes that contravene an express permit term but that are authorized under § 502(b)(10) of the Clean Air Act,

42 U.S.C. § 7661a(b)(10). Such changes do not include changes that would violate applicable requirements or contravene operating permit terms and conditions that are: monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

- (60) **“Shutdown”** means the cessation of operation of any air pollution control equipment, process equipment, or process, for any purpose.
- (61) **“Significant permit revision”** means:
- (a) Any revision to an operating permit that does not meet the definitions for an administrative permit revision or a minor permit revision;
 - (b) Any revision that would result in any significant change to existing monitoring permit terms or conditions and any relaxation to existing recordkeeping, or permit reporting terms or conditions;
 - (c) Any revision for which action on the application would, in the judgment of the Tribe, require decisions to be made on significant or complex issues;
 - (d) Any revision that would be required if the existing operating permit specifically prohibits the proposed change; and
 - (e) Changes in ownership that do not meet the criteria for Section (d) of the definition of an administrative permit revision.
- (62) **“Similar sources”** means sources that are generally similar in terms of operations, processes, and emissions, subject to the same or substantially similar requirements, and not subject to case-by-case standards or requirements.
- (63) **“Startup”** means the setting into operation of any air pollution control equipment, process equipment, or process, for any purpose.
- (64) **“Stationary Source”** or **“Source”** means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in § 216 of the Clean Air Act.
- (65) **“Subject to regulation”** means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of chapter I of Code of Federal Regulations Title 40 (i.e., 40 C.F.R. Part 70), that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has

taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

- (a) *Greenhouse gases (GHGs)*, the air pollutant defined in 40 C.F.R. § 86.1818–12(a) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO₂ equivalent emissions.
 - (b) The term *tpy CO₂ equivalent emissions (CO₂ e)* shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of part 98 of chapter I of Code of Federal Regulations Title 40 (i.e., 40 C.F.R. 98 (Table A-1)) —Global Warming Potentials, and summing the resultant value for each to compute a tpy CO₂e.
- (66) **“Temporary source”** (excluding non-road engines) means any source that is situated in one location for less than one year, after which it will be dismantled and removed from the site. Any temporary source located at one location for longer than one year will be deemed a stationary source and must meet the requirements for stationary source permitting in this code.
- (67) **“Tribe”** means the Southern Ute Indian Tribe, which is the permitting authority.
- (68) **“Unit”** means a fossil fuel-fired combustion device, for purposes of title IV of the Act.
- (69) **“Volatile Organic Compounds”** means the same as that term is defined by the Administrator at 40 CFR Part 51.

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.

1-107. 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.

1-108. 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.

ARTICLE II. AIR QUALITY CONTROL PROGRAMS

PART 1. TITLE V OPERATING PERMIT PROGRAM

2-101. Program Overview.

The purpose of this part is to establish an air quality permitting program consistent with the requirements of title V of the Clean Air Act (42 U.S.C. 7661-7661f *et seq.*), its implementing regulations at 40 CFR Part 70, and regulations applicable to treatment of Indian Tribes in the same manner as States for purposes of tribal administration of Clean Air Act programs (40 CFR Part 49).

2-102. Effective Date.

This title V Operating Permit Program shall become effective upon the date of the approval by the Administrator of the Tribe's application for treatment as a state and Part 70 program approval.

2-103. Permit Program Definitions.

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.

2-104. Applicability.

- (1) **Permit Required.** Except as provided in subsection 2 below, the following facilities are required to obtain an operating permit under this section:
 - (a) Any major source;

- (b) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Clean Air Act, except all sources and source categories that would be required to obtain a permit solely because they are subject to Part 60, subpart AAA - Standards of Performance for New Residential Wood Heaters; and all sources and source categories that would be required to obtain a permit solely because they are subject to Part 61, subpart M – National Emission Standards for Hazardous Air Pollutants for asbestos, § 61.145, Standard for Demolition and Renovation;
- (c) Facilities with a source subject to 40 CFR Part 63 or any other standard or other requirement under Section 112 of the Federal Clean Air Act, except that a source is not required to obtain a permit solely because it is subject to rules or requirements under Section 112(r) of the Clean Air Act;
- (d) Any acid rain source; or
- (e) Facilities in a source category designated by EPA as subject to the requirements of 40 CFR Part 70.

(2) Exemptions.

- (a) The following sources are exempted from the requirement to obtain an operating permit:
 - (i) All sources listed in this code that are not major sources, acid rain sources, or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the Clean Air Act, may be exempted by the Tribe from the obligation to obtain a Part 70 permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for non-major sources and the appropriateness of any permanent exemptions in addition to those provided for in paragraph (1)(b) of this section.
 - (ii) In the case of non-major sources subject to a standard or other requirement under either Section 111 or Section 112 of the Clean Air Act after July 21, 1992 publication, the Administrator will determine whether to exempt any or all such applicable sources from the requirement to obtain a Part 70 permit at the time that the new standard is promulgated.
- (b) No Part 70 source may operate after the effective date of this code without a valid permit issued under this code unless:
 - (i) The Part 70 source is in compliance with an unexpired operating permit issued by the Administrator under 40 CFR Part 71; or

- (i) The Part 70 source has submitted a timely and complete application for permit issuance or renewal consistent with § 2-106 of this code; or
 - (ii) The Tribe fails to issue or disapprove a renewal permit before the end of the prior permit term, in which case, that permit shall not expire and all its terms and conditions shall remain in effect until the renewal permit has been issued or disapproved.
- (3) **Cease of Operations.** The ability to operate under this section shall cease if (1) the Tribe takes final action to deny the applicant a permit or (2) the applicant fails to submit by the deadline specified in writing by the Tribe any additional information identified as being needed to process the application.

2-105. Certification.

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

2-106. Permit Applications.

- (1) **Duty to Apply.** For each Part 70 source, the owner or operator shall submit to the Tribe a timely and complete written permit application in accordance with this code.
- (2) **Timely Application.** Consistent with 40 CFR 70.5(a)(1), a timely application for a source applying for an operating permit is:
 - (a) For Part 70 sources that commence operation after Part 70 program approval by USEPA Region VIII, one that is submitted within one year after the source commences operation as a Part 70 source;
 - (b) For renewal applications, one that is submitted at least 6 months but not more than 18 months before the date of permit expiration;
 - (c) For a source subject to the requirements of § 112(g) of the Clean Air Act or required to have a permit under the preconstruction review program under Part C or D of title I of the Act after Part 70 program approval by USEPA Region VIII, one that is submitted within one year of commencing operation. Where an existing part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation;

- (d) For a Part 70 source that is in operation on or before Part 70 program approval by USEPA Region VIII and does not have a Part 71 permit, one that is submitted within one year after such program approval in accordance with the schedule set forth in Tribe's Transition Plan;
- (e) For a source that has an existing Part 71 permit at the time of Part 70 program approval by USEPA Region VIII, within 4, 8, or 12 months as specifically designated per source in the Tribe's approved transition plan, notice of which transition plan will be provided by the Tribe to such sources.

(3) Complete Application.

- (a) To be determined complete, an application must provide all information required pursuant to this code, except that an application for permit revision need supply only such information as is related to the proposed change.
- (b) A source's ability to operate without a permit pursuant to this code shall be in effect from the date a timely application is submitted until final action is taken on the application, provided that the application is determined to be complete under this code and the applicant adequately submits any requested additional information by deadlines specified by the Tribe.
- (c) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under title I of the Act.

(4) Application Content. All applications shall be made on standard forms provided by the Tribe, and shall include the following information:

- (a) The date of the application;
- (b) The applicant's name and address (and, if different, plant name and address); the names and addresses of the owner(s), the responsible official(s), and the operator(s) of the source; any subsidiaries or parent companies; the company's state of incorporation or principal registration to do business; and the names and telephone numbers of the owners' agent(s) and the plant site manager/contact;
- (c) The exact location of the source identified by latitude and longitude, or by UTM coordinates, and legal description that includes Township – Section

– Range and is shown on a map, such as the 7.5 minute Topographic Quadrangle map published by the United States Geological Survey or the most detailed map available;

- (d) A description of the source's processes and products (by Standard Industrial Classification Code), including any associated with alternative scenarios identified by the applicant;
- (e) The following emissions-related information, including all calculations and computations on which such information is based:
 - (i) All emissions of regulated air pollutants for which the source is major and all emissions of regulated air pollutants, including fugitive emissions for the source and for each emissions unit;
 - (ii) A process flow sheet of all components of the facility that would be involved in routine operations and emissions;
 - (iii) Identification and description of all emissions points in sufficient detail to establish the basis for fees and applicability of requirements of this code;
 - (iv) Emissions rates in tons per year (TPY) and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. For emissions units subject to an annual emissions cap, TPY can be reported as part of the aggregate emissions associated with the cap, except where more specific information is needed, including where necessary to determine and/or assure compliance with an applicable requirement;
 - (v) Specific information such as that regarding fuels, fuel use, raw materials, or production rates, to the extent needed to determine or regulate emissions;
 - (vi) Identification and full description of all air pollution control equipment and compliance monitoring devices or activities;
 - (vii) The maximum and standard operating schedules of the source, and any work practice standards or limitations on source operation which affect emissions of regulated air pollutants;
 - (viii) An operational plan defining the measures to be taken to mitigate source emissions during startups, maintenance, shutdowns, and emergencies;

- (ix) Other relevant information as the Tribe may reasonably require or which are required by any applicable requirements;
 - (x) Additional information related to the emissions of air pollutants to verify which requirements are applicable to the source; and
 - (xi) For each reasonably anticipated alternative operating scenario identified by the applicant, all of the information required in paragraphs (i) through (x) above, as well as additional information determined to be necessary by the Tribe to define such alternative operating scenarios identified by the source pursuant to this code;
- (f) For insignificant activities which are exempted because of size or production rate, a list of insignificant activities at the source and any information necessary to determine applicable air pollution control requirements and, for insignificant emissions, a listing of such emissions in sufficient detail to identify the emission unit and indicate that the exemption applies. Similar emission units, including similar capacities or sizes, may be listed under a single description. No additional information is required at the time of application, but the Tribe may request additional information during application processing;
 - (g) The following information concerning applicable air pollution control requirements:
 - (i) Citation and description of all applicable requirements,
 - (ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement, and
 - (h) Explanation of any proposed exemptions from otherwise applicable requirements.
 - (i) Other specific information that may be necessary to implement and enforce other applicable requirements of this code or the Clean Air Act or to determine the applicability of such requirements, including information necessary to collect any fees owed under this code;
 - (j) Additional information as determined to be necessary by the Tribe to define proposed AOSs identified by the source pursuant to § 2-110(8)(b) of this code or to define permit terms and conditions implementing any AOS under § 2-110(8)(b) or implementing § 2-116 or § 2-110(8)(c) of this code. The permit application shall include documentation demonstrating that the source has obtained all authorization(s) required under the applicable requirements relevant to any proposed AOSs, or a certification

that the source has submitted all relevant materials to the appropriate permitting authority for obtaining such authorization(s);

- (k) Compliance certification by a responsible official consistent with this code including:
 - (i) A certification of the source's compliance status for each applicable requirement;
 - (ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
 - (iii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually; and
 - (iv) A statement indicating the source's compliance status with any applicable monitoring and compliance certification requirements of the Clean Air Act;

- (l) A compliance plan and schedule that contain:
 - (i) A description of the compliance status of the source with respect to all applicable requirements;
 - (ii) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements, and for requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements;
 - (iii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis;
 - (iv) A compliance schedule for sources that are not in compliance with all applicable requirements at the time of permit issuance, including a remedial measures schedule, with an enforceable sequence of actions with milestones, leading to compliance with such applicable requirements, provided that the compliance schedule shall be at least as stringent as that contained in any consent decree or administrative order to which the source is subject, and the obligations of any consent decree or administrative order shall not be in any way diminished by the compliance schedule, and that any such compliance schedule shall be

supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based; and

- (v) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.
 - (vi) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.
 - (vii) For applicable requirements that will become effective upon implementation of an AOS, a statement that the source will meet such requirements upon implementation of an AOS.
- (5) Duty to Supplement and Correct.** Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application or in a supplemental submittal shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide further information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

2-107. Action on Permit Applications

(1) Completeness Determinations.

- (a) The Tribe shall determine whether an application for a permit, significant revision, or renewal, or a submission of additional information in response to a notification of incompleteness, is complete under § 2-106 of this code within 60 days of receipt of the application. If the Tribe has requested additional information needed for a completeness determination, the deadline for making that determination shall be no later than 60 days after receipt of the information. The Tribe shall promptly notify the applicant of that determination by certified mail, provided that any incompleteness notice shall also state what additional information or points of clarification are necessary for the application to be determined complete.
- (b) Unless the Tribe requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application or requested information, the application shall be deemed complete.

(c) If, while processing an application, the Tribe determines that additional information is necessary to evaluate or take final action on that application, the Tribe may request such information in writing and set a reasonable deadline for a response.

(2) **Federal Review.** The Tribe shall submit a copy of the permit application, draft permit, statement of basis, and final permit to the Administrator for review.

(3) **Statement of Basis.** The Tribe shall prepare a statement of basis for every draft permit subject to this section. The statement of basis shall briefly describe the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions) or, in the case of notices of intent to deny or terminate, reasons supporting the initial decision. The statement of basis shall be sent to the applicant, Administrator, and to any other person who requests it.

(4) **Final Action.** The Tribe shall take final action on all permit applications for initial permits, permit revisions or renewals within 18 months after an application is determined or deemed to be complete, except that:

(a) For existing Part 70 sources at the time of Part 70 program approval by USEPA Region VIII, the Tribe shall take final action in accordance with the Tribe's transition plan for Part 70 permit issuance;

(b) For applications for permits authorizing early reductions and/or alternative emissions limitations consistent with § 112(i)(5) of the Clean Air Act, 42 U.S.C. § 7412(i)(5), the Tribe shall take final action on applications within 9 months of receipt of the complete application;

(c) For administrative permit revisions the Tribe shall take final action within 60 days upon receipt of the complete revision request including any supplemental information requested by the Tribe

(d) For minor permit revisions the Tribe shall take final action within 90 days upon receipt of the complete revision application.

(5) **Issuance.** A permit, permit revision, or permit renewal shall only be issued if all of the following conditions have been met:

(a) The Tribe has received a complete application;

(b) Except for administrative permit revisions, the Tribe has complied with the requirements for notifying and responding to affected programs under § 2-108 of this code;

(c) Except for administrative and minor permit revisions, the Tribe has complied with the requirements for public participation procedures under § 2-109 of this code;

- (d) The conditions of the permit provide for compliance with all applicable requirements including the requirements of this code; and
- (e) The Administrator has received a copy of the proposed permit and any notices required under this code, and has not objected to issuance of the permit within the time period allowed.

(6) Decision and Notification.

- (a) The Tribe shall grant or disapprove the permit, permit revision, or permit renewal, based on information contained in the Tribe's administrative record.
- (b) The administrative record for any final permit shall consist of:
 - (i) All comments received during any public comment period, including any extension or reopening;
 - (ii) The tape or transcript of any hearing(s) held;
 - (iii) Any written material submitted at such a hearing;
 - (iv) The response to comments and any new materials placed in the record;
 - (v) Other documents contained in the supporting file for the permit;
 - (vi) The final permit;
 - (vii) The application and any supporting data furnished by the applicant;
 - (viii) The draft permit or notice of intent to deny the application or to terminate the permit;
 - (ix) The statement of basis for the draft permit;
 - (x) All documents cited in the statement of basis;
 - (xi) Other documents contained in the supporting file for the draft permit.
- (c) The additional documents required under paragraph (b) of this section should be added to the record as soon as possible after their receipt or

publication by the Tribe. The record shall be complete on the date the final permit is issued.

- (d) Material readily available at the Tribe, or published materials which are generally available and which are included in the administrative record under the standards of § 2-109(6) of this code need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or in the response to comments.
- (e) If the Tribe disapproves a permit, permit revision, or permit renewal, the Tribe shall notify the applicant by certified mail of the action taken and the reasons therefor. If the Tribe grants a permit, permit revision, or permit renewal, the Tribe shall mail the permit, permit revision, or permit renewal, including all terms and conditions, to the applicant by certified mail.

(7) Renewal and Expiration.

- (a) Permits being renewed are subject to the same procedures, including those for public participation and affected program and EPA review, as those that apply to initial permit issuance.
- (b) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with § 2-104(2)(b) and § 2-106 of this code.
- (c) If the Tribe fails to act in a timely way on a permit renewal, EPA may invoke its authority under Section 505(e) of the Act to terminate or revoke and reissue the permit.

(8) Non-action. No permit, revision, or renewal shall be issued by failure of the Tribe to act on an application.

(9) Prioritization of Certain Applications. Where reasonably possible, the Tribe shall give priority to taking action on applications for construction or modification under title I, parts C and D of the Act.

2-108. Review by the Administrator and Affected Programs.

- (1) Applicability.** The Tribe shall not issue any final operating permit, revision, or renewal for any source until the Administrator has had an opportunity to review the proposed permit as required under this section. Permits for source categories waived by the Administrator from this requirement and any permit terms or conditions which are not required under the Clean Air Act or under any of its applicable requirements are not subject to Administrator review or approval.

(2) Transmittal.

- (a) Within 5 days after an application has been deemed complete, the Tribe shall transmit a copy of the complete permit application (including the compliance plan and all additional materials submitted by the applicant) directly to the Administrator. To the extent practicable, the preceding information shall be provided in a computer readable format compatible with the Administrator's national database management system. The Tribe shall also provide to the Administrator a copy of each draft permit, each statement of basis, each proposed permit, each final operating permit, and any other relevant information requested by the Administrator.
- (b) The Tribe shall provide notice of each draft permit under this section to every affected program on or before the time that the Tribe provides such notice to the public under § 2-109 of this code, except to the extent that minor permit revision procedures authorize different notice procedures.
- (c) The Tribe, as part of the submittal of a proposed permit to the Administrator (or as soon as possible after the submittal for minor permit revision procedures under § 2-111(3) of this code), shall notify the Administrator and any affected program in writing of any refusal by the Tribe to accept all recommendations for the proposed permit that the affected program submitted during the public or affected program review period. The notice shall include the Tribe's reasons for not accepting any such recommendation. The Tribe is not required to accept recommendations that are not based on federally enforceable applicable requirements or this code.
- (d) The Tribe shall keep for 5 years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether this program complies with the requirements of the Clean Air Act, 40 CFR Part 70, or related applicable requirements.

(3) Responses to Objections.

- (a) No permit for which an application must be transmitted to the Administrator under this section shall be issued by the Tribe if the Administrator determines that issuance of the proposed permit would not be in compliance with applicable requirements, including this code, and so objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.
- (b) Any EPA objection under paragraph (a) of this section shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the

objections. The Administrator will provide the permit applicant a copy of the objection.

- (c) Failure of the Tribe to do any of the following also shall constitute grounds for an objection:
 - (i) Comply with § 2-108(2)(a) or (b);
 - (ii) Submit any information necessary to review adequately the proposed permit; or
 - (iii) Process the permit under the procedures of § 2-109 of this code except for minor permit revisions (i.e., the procedures approved to meet 40 CFR Part 70.7(h)).
- (d) Unless the following requirements are waived by the Administrator pursuant to § 505(d) of the Clean Air Act, 42 U.S.C. § 7661d(d):
 - (i) The Tribe shall respond in writing to any objection by the Administrator to the issuance of a permit, pursuant to § 505(b) of the Clean Air Act, 42 U.S.C. § 7661d(b), and this code;
 - (ii) Upon receipt of an objection by the Administrator under § 505(b) of the Clean Air Act, 42 U.S.C. § 7661d(b), the Tribe may not issue the permit unless it is revised and issued in accordance with subsection (4) of this section; and
 - (iii) If the Tribe has issued a permit before receipt of an objection by the Administrator under § 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), the Tribe may issue a revised permit in accordance with subsection (4) of this section.

(4) Issuance or Denial.

- (a) The Tribe shall, within 90 days after the date of an objection under § 505(b) of the Clean Air Act, 42 U.S.C. § 7661d(b), submit to the Administrator a proposed permit revised to meet the objection. The Tribe may request a 90-day extension for this submittal, in accordance with § 505(e) of the Clean Air Act, 42 U.S.C. § 7661d(e).
- (b) If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to § 2-112 of this code, the Administrator will notify the Tribe and the permittee of such finding in writing.
- (c) If the Administrator notifies the Tribe that cause exists to terminate, modify, or revoke and reissue a permit, the Tribe forward to the

Administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate, within 90 days after receipt of such notification, the Administrator will issue or deny the permit in accordance with the requirements of the Federal program promulgated under title V of the Act.

- (d) If the Tribe fails to submit a proposed determination pursuant to paragraph (c) of this section or fails to resolve any objection pursuant to paragraph (a) of this section, the Administrator will terminate, modify, or revoke and reissue the permit after taking the following actions:
 - (i) Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in paragraphs (a) through (c) of this section.
 - (ii) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

2-109. Public Notice and Participation.

- (1) **Applicability.** Proceedings for all initial permit issuances, significant permit revisions, renewals, reopenings, revocations, and terminations, shall include public notice and provide an opportunity for public comment. The Tribe may hold a public hearing for draft permits, proposals to suspend, reopen, revoke, or terminate a permit, or for any reason the Tribe deems appropriate, and shall hold such a hearing in the event of significant public interest.
- (2) **Timing.** The Tribe shall provide 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.
- (3) **Scope and Content of Notice.** Public notice, whether for comment or hearing shall be given by publication in a newspaper of general circulation in the area where the source is located (e.g., the Southern Ute Tribal Drum, the Durango Herald, the Pine River Times, the Pagosa Sun, the Farmington Daily Times, or the Cortez Journal) or in a state publication designed to give general public notice, to persons on a mailing list developed by the Tribe, including those who request in writing to be on the list, and by other means if necessary to assure adequate notice to the affected public. The notice shall identify the affected facility; the name and address of the permittee; the name and address of the Tribe's Air Quality Program; the activity or activities involved in the permit action; the emissions change involved in any permit revision; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, and relevant supporting materials; a brief description of the comment procedures required by this part; and as appropriate the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been

scheduled). Additionally, the Tribe shall provide such notice and opportunity for participation by affected programs as is provided for in § 2-108 of this code.

- (4) **Hearings.** Public hearings shall be held on the Reservation. The time, date, and place of the hearing shall be determined by the Tribe. The Tribe shall appoint a hearing officer. A transcript of the hearing shall be made upon request at the expense of the person requesting the transcript. At the hearing, all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.
- (5) **Recordkeeping.** The Tribe shall keep a record of commenters involved and issues raised during the public participation process and any other information requested by the Administrator so that the Administrator may fulfill his or her obligation under § 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), to determine whether a citizen petition may be granted. Such records shall be available to the public upon request.
- (6) **Response to Comments.**
 - (a) At the time any final permit decision is issued, the Tribe shall issue a response to public comments.
 - (b) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision. If new points are raised or new material is supplied during the public comment period, the Tribe may document the response to those matters by adding new materials to the administrative record.
 - (c) The Tribe shall notify in writing any affected program of any refusal to accept recommendations for the permit that the affected program submitted during the public comment and affected program review periods.
- (7) **Public Petitions to the Administrator.**
 - (a) If the Administrator does not object in writing under § 2-108(3) of this code, any person may petition the Administrator within 60 days after expiration of the Administrator's 45-day review period to make such objection.
 - (b) Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment periods provided for above, unless the petitioner demonstrates that it was impracticable to raise such objections within such periods, or unless the grounds for such objection arose after such periods.

- (c) If the Administrator objects to a permit as a result of a petition filed under this subsection, the Tribe shall not issue the permit until the Administrator's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and before the Administrator's objection.
 - (d) Pending resolution of any public petition to the Administrator under this subsection, the relevant source will not be in violation of the requirement to submit a timely and complete application.
- (8) Administrative Review.** An applicant, any person who participated in the public comment process and is aggrieved by a final action or inaction of the Tribe under this code, and any other person who could obtain judicial review of that action under applicable law, may appeal to the Commission in accordance with this code and the Commission's Procedural Rules. Solely for the purpose of obtaining administrative review before the Commission for failure to take final action, final permit action shall include the failure of the Tribe to take final action on an application for a permit, permit renewal, or permit revision (including a minor permit revision) within the time specified in this code. The opportunity for administrative review described in this section shall be the exclusive means for obtaining review of the terms and conditions of permits. Petitions for administrative review must be filed no later than 60 days after the final permit action. Notwithstanding the preceding requirement, petitions for administrative review of final permit actions can be filed after the deadline designated by the Commission, only if they are based solely on grounds arising after the deadline for administrative review. Such petitions shall be filed no later than 60 days after the new grounds for review arise. If the final permit action being challenged is the Tribe's failure to take final action, a petition for administrative review may be filed any time before the Tribe denies the permit or issues the final permit.

2-110. Permit Content.

- (1) Standard Requirements.** Each operating permit shall include the following:
- (a) The date of issuance and the permit term, which shall be for a fixed term of 5 years in the case of affected sources and all other sources (notwithstanding this requirement, the Tribe shall issue permits for solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years);
 - (b) For major sources, all applicable requirements for all relevant emissions units in the major source and, for non-major sources subject to this code, all applicable requirements applicable to emissions units that cause the source to be subject to this code;

- (c) Fugitive emissions from a Part 70 source, which shall be included in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source;
- (d) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. Such requirements and limitations may include ARMs identified by the source in its part 70 permit application as approved by the Tribe, provided that no ARM shall contravene any terms needed to comply with any otherwise applicable requirement or requirement of this code or circumvent any applicable requirement that would apply as a result of implementing the ARM.
 - (i) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.
 - (ii) The permit shall state that, where an applicable requirement of the Clean Air Act is more stringent than an applicable requirement of regulations promulgated under title IV of the Clean Air Act, both provisions shall be incorporated into the permit and shall be enforceable by the Tribe and Administrator.
 - (iii) If an applicable implementation plan allows a determination of an alternative emission limit at a part 70 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the Tribe elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.
- (e) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the Act or the regulations promulgated thereunder.
 - (i) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

- (ii) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.
 - (iii) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the Act.
 - (f) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit;
 - (g) A provision specifying the conditions under which the permit will be reopened prior to expiration pursuant to § 2-112 of this code; and
 - (h) A provision to ensure that the permittee pays fees to the Tribe consistent with the annual fee schedule in § 2-119 of this code.
- (2) **Commission and Federal Requirements.** Permits shall be issued containing all applicable requirements, including requirements from both the Commission and from federal program regulations requirements. This situation may arise, for example, when a permittee is subject to more than one program under the Clean Air Act and the Commission has chosen to implement only some but not all of the programs to which the permittee is subject.
- (3) **Required Statements.** Each operating permit shall include provisions stating the following:
- (a) The permittee shall comply with all terms and conditions of the permit; noncompliance with federally enforceable or Commission-only permit conditions constitutes a violation of this code and the Clean Air Act, and any permit noncompliance constitutes grounds for enforcement action, permit termination, revocation and reissuance, or revision or for denial of a permit renewal application;
 - (b) It shall not be a defense for a 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;
 - (c) The permit may be modified, reopened and revised, revoked and reissued, or terminated for cause in accordance with § 2-112 of this code;
 - (d) The filing by the permittee of a request for a permit revision, reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay any permit condition;

- (e) The permit does not convey any property rights of any sort, or any exclusive privilege;
 - (f) All permit terms and conditions which are required under the Clean Air Act or under any of its applicable requirements, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Clean Air Act, except that the permit shall specifically designate as not being federally enforceable under the Clean Air Act any terms or conditions included in the permit that are not required under the Clean Air Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of §§ 2-108, 2-111, 2-112, other than those contained in this paragraph (f) of this section; and
 - (g) The issuance of a permit, or the filing or approval of a compliance plan, does not relieve any person from civil or criminal liability for failure to comply with the provisions of this code and the Clean Air Act, applicable regulations thereunder, and any other applicable law or regulation.
- (4) **Hazardous Air Pollutant Requirements.** Each operating permit for sources of hazardous air pollutants shall include the elements required under the Clean Air Act and its applicable regulations.
- (5) **Monitoring Requirements.** Each operating permit shall include the following requirements:
- (a) All monitoring requirements and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 CFR Part 64, and any other procedures and methods promulgated by the Administrator pursuant to § 114(a)(3) or 504(b) of the Clean Air Act or by the Commission. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided that the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;
 - (b) Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time periods that are representative of the source's compliance with its permit, as reported pursuant to § 2-110(7) of this code, provided that such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable

requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph; and

- (c) As necessary, requirements concerning the use, maintenance, and, when appropriate, installation of monitoring equipment or methods.

(6) Recordkeeping Requirements.

- (a) The permit shall require recordkeeping sufficient to assure and verify compliance with the terms and conditions of the permit, including incorporation of all applicable recordkeeping requirements, and shall require, where applicable, recordkeeping of:
 - (i) The date, place as defined in the permit, and time of sampling or measurements;
 - (ii) The date(s) analyses were performed;
 - (iii) The company or entity that performed the analyses;
 - (iv) The analytical techniques or methods used;
 - (v) The results of such analyses; and
 - (vi) The operating conditions existing at the time of sampling or measurement.
- (b) Records of all monitoring data and support information shall be retained for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application and shall be kept at the location specified in the permit or elsewhere, if agreed upon in writing by the Tribe. Support information includes all calibration and maintenance records and all back-up recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(7) Reporting Requirements. The permit shall require reporting sufficient to assure and verify compliance with the terms and conditions of the permit and all applicable requirements, including incorporation of all applicable reporting requirements and:

- (a) Submittal of reports of any required monitoring at least every 6 months, which reports shall be certified by a responsible official consistent with § 2-105 of this code and shall clearly identify all instances of deviations from permit requirements, including emergencies;

- (b) Prompt reporting of all deviations from permit requirements (including emergencies), including the date, time, duration, and probable cause of such deviations, the quantity and pollutant type of excess emissions resulting from the deviation, and any preventative, mitigation, or corrective actions or measures taken. Where the underlying applicable requirement contains a definition of “prompt” or otherwise specifies a time frame for reporting deviations, that definition or time frame shall govern. Where the underlying applicable requirement fails to address the time frame for reporting deviations, reports of deviations shall be submitted based on the following schedule:
 - (i) For emissions of a hazardous air pollutant or a toxic air pollutant (as identified in an applicable regulation) that continue for more than an hour in excess of permit requirements, the report must be made by telephone, verbal, or facsimile communication by the close of business the next working day, upon discovery of the occurrence, and in writing within 10 working days from the occurrence;
 - (ii) For emissions of any regulated air pollutant, excluding those listed in § 2-110(7)(b)(i) of this code, that continue for more than 2 hours in excess of permit requirements, the report must be made by telephone, verbal, or facsimile communication by the close of business the next working day, upon discovery of the occurrence, and in writing within 10 working days from the occurrence;
 - (iii) Or all other deviations from permit requirements, the report shall be contained in the report submitted in accordance with the time frame given in § 2-110(7)(a) of this code.
- (c) A permit may contain a more stringent reporting requirement than required by § 2-110(7)(b) of this code.
- (d) For purposes of this section, the term “deviation” shall have the meaning prescribed in § 1-103(21) of this code.
- (e) When requested by the Tribe in writing and within the period specified by the Tribe, the permittee shall furnish to the Tribe copies of records required by the permit to be maintained, and any information that the Tribe may deem necessary to determine whether cause exists for reopening and revising, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Tribe copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality.

- (8) Operational Flexibility Requirements.** Each operating permit shall include the following:
- (a) A provision stating that no permit revision shall be required for changes that are provided for in the permit under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes;
 - (b) Terms and conditions for reasonably anticipated AOSs identified by the source in its application as approved by the Tribe. Such terms and conditions:
 - (i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the AOS under which it is operating;
 - (ii) May extend the permit shield described in paragraph (10) of this section to all terms and conditions under each such AOS; and
 - (iii) Must ensure that the terms and conditions of each AOS meet all applicable requirements and the requirements of this code. The Tribe shall not approve a proposed AOS into the part 70 permit until the source has obtained all authorizations required under any applicable requirement relevant to that AOS.
 - (c) Terms and conditions identified in the application and approved by the Tribe for the trading of emissions increases and decreases within the permitted facility, provided that such trading shall be authorized solely for the purpose of complying with a federally enforceable emissions cap established in the permit independent of otherwise applicable requirements, and provided further that such terms and conditions shall:
 - (i) Be issued only to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval;
 - (ii) Require compliance with all applicable requirements and include all terms and conditions required under this section to determine compliance, provided that the applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable, and the Tribe shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades; and

- (iii) Require for each such proposed change that the permittee provide written notification to the Tribe and the Administrator at least 7 days in advance thereof, which notice the permittee and Tribe shall attach to their copies of the relevant permit. Such notice shall specify when the proposed change will occur; shall describe the proposed change, including the resulting emissions changes and the pollutants emitted subject to the emissions trade, and how the change will comply with the terms and conditions of the permit; and shall specify the provisions of this code with which the source will comply in making the change.
 - (d) Provisions prohibiting sources from making, without a permit revision, changes that are not addressed or prohibited by the part 70 permit, if such changes are subject to any requirements under title IV of the Act or are modifications under any provision of title I of the Act.
- (9) Compliance Requirements.** Each operating permit shall include the following requirements:
 - (a) Consistent with §§ 2-110(5), (6), and (7), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms of the permit. Any document (including reports) required by a Part 70 permit shall contain a certification by a responsible official that meets the requirements of § 2-105 of this code;
 - (b) Upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized representatives of the Tribe or other authorized representative to perform the following:
 - (i) Enter the permittee's premises where a source is located or an emissions related activity is conducted, or where records must be kept under the conditions of the permit;
 - (ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
 - (iii) Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
 - (iv) Sample or monitor, at reasonable times, any substances or parameters for the purpose of assuring compliance with the permit or applicable requirements as authorized by the Clean Air Act;

- (c) Annual submittal of compliance certifications to the Tribe and the Administrator, which shall certify the source's compliance status with all permit terms and conditions and all applicable requirements relevant to the source, including those related to emission limitations, standards, or work practices, and shall include:
 - (i) The identification of each term or condition of the permit that is the basis of the certification;
 - (ii) The compliance status of the source;
 - (iii) Whether compliance was continuous or intermittent;
 - (iv) The method(s) used for determining the compliance status of the source, currently and during the reporting period identified in the permit. Such methods shall include, at a minimum, the methods required under § 2-110(5) through § 2-110(7) of this code;
 - (v) An identification of each deviation, which shall be taken into account in the compliance certification, and an identification as possible exceptions to compliance of any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and
 - (vi) Such other information as the Tribe may require to determine the compliance status of the source, and such additional requirements as may be specified pursuant to §§ 114 and/or 504(b) of the Clean Air Act, 42 U.S.C. §§ 7414, 7661c(b);
- (d) Consistent with § 2-106(4)(l) of this code, for sources to which that provision applies:
 - (i) A compliance schedule; and
 - (ii) A requirement that such sources submit progress reports at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Tribe, which progress reports shall contain:
 - (A) Dates for achieving the activities, milestones, or compliance required in the compliance schedule, and dates when such activities, milestones, or compliance were achieved; and

- (B) An explanation of why any dates in the compliance schedule were not or will not be met, and any preventive or corrective measures adopted; and
- (e) by the Tribe.
- (f) Such additional compliance requirements as the Tribe may specify.

(10) Permit Shield.

- (a) Except as provided in this code, the Tribe may expressly include in an operating permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:
 - (i) Such applicable requirements are included and specifically identified in the permit; or
 - (ii) The Tribe, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.
- (b) An operating permit that does not expressly state that a permit shield exists for a specific provision shall be presumed not to provide such a shield for that provision.
- (c) Nothing in this section or in any operating permit shall alter or affect the following:
 - (i) The provisions of § 303 of the Clean Air Act, 42 U.S.C. § 7603 concerning emergency powers, including the authority of the Administrator under those sections;
 - (ii) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
 - (iii) The applicable requirements of the acid rain program, consistent with Section 408(a) of the Act; or
 - (iv) The ability of the Administrator to obtain information from a source pursuant to § 114 of the Clean Air Act, 42 U.S.C. § 7414.
- (d) The permit shield shall not extend to § 2-110(8) changes, off-permit, and 502(b)(10) changes under § 2-116 of this code, or minor permit revisions

under § 2-111(3) of this code, or permit terms or conditions for which notice has been given to reopen or revoke all or part under § 2-112 of this code.

2-111. Permit Revisions.

The permittee must apply for any changes made to the permit that do not fall under § 2-116 of this code.

(1) **Hazardous Air Pollutant Sources.** Any permit revision concerning the hazardous air pollutant portion of a permit shall be governed by this code and § 112 of the Clean Air Act, 42 U.S.C. § 7412.

(2) Administrative Permit Revisions.

(a) The Tribe may incorporate administrative permit revisions as defined in § 1-103(3) of this code without providing notice to the public or affected programs, provided that the Tribe designates any such permit revision as having been made pursuant to this subsection. The Tribe shall submit a copy of the revised permit to the Administrator.

(b) The Tribe shall take no more than 60 days from receipt of a request for an administrative permit revision to take final action on such request.

(c) The permittee may implement an administrative permit revision immediately upon submittal of the request for the administrative revision.

(d) The Tribe may, upon taking final action granting a request for an administrative permit revision allow coverage by the permit shield in § 2-110(10) for administrative permit revisions made pursuant to RAC 1-103(3)(d) which meet the relevant requirements for significant permit revisions.

(3) Minor Permit Revisions.

(a) **Application:** A permittee may apply to the Tribe for a minor permit revision as defined in § 1-103(40) of this code in compliance with § 2-106(4) of this code, provided that such application shall include:

(i) A request for a minor permit revision;

(ii) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

- (iii) If changes are requested to the permit language, the permittee's suggested draft permit changes;
 - (iv) Certification by a responsible official, consistent with § 2-105 of this code, that the proposed revision meets the criteria for use of minor permit revision procedures and a request that such procedures be used;
 - (v) Completed forms for the Tribe to use to notify the Administrator and affected programs as required under § 2-108 of this code; and
 - (vi) If the requested permit revision would affect existing compliance plans or schedules, related progress reports, or certification of compliance requirements, and an outline of such effects.
- (b) **Limitation:** A permittee shall not submit multiple minor permit revision applications that may conceal a larger revision that would not constitute a minor permit revision. The Tribe may require that multiple related minor permit revision applications be submitted as a single significant permit revision application. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Act.
- (c) **Completeness:** The Tribe shall, within 30 days after receipt of an application for a minor permit revision, review such application for completeness. The Tribe shall notify the applicant of that determination by certified mail, provided that any incompleteness notice shall also state what additional information or points of clarification are necessary for the application to be determined complete. Unless the Tribe determines that such an application is not complete, requests additional information, or otherwise notifies the applicant of incompleteness within that time period, the application shall be deemed complete.
- (d) **EPA and Affected Program Review:** Within 5 working days after receipt of notification by the Tribe that a minor permit revision application has been determined complete, the Tribe shall send any notice required under § 2-108(2) of this code to the Administrator and affected programs. Within 5 days after completion of the preceding review process, the Tribe shall send to the Administrator any notice required under § 2-108(3)(b) of this code.
- (e) **Permittee's Ability to Make Change:** The permittee may make the change proposed in its minor permit revision application immediately after it files such application, provided, however, for sources that have previously utilized this provision during the term of the permit and, on two or more occasions have failed to file a complete application, may thereafter make

the change only after the application is deemed complete. After the permittee makes the change and until the Tribe takes any of the actions specified in the following subsection, the permittee must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this period, the permittee need not comply with the existing permit terms and conditions it seeks to modify. If the permittee fails to comply with its proposed permit terms and conditions during this period, however, the existing permit terms and conditions it seeks to modify may be enforced against it.

- (f) Timetable: The Tribe may not issue a final minor permit revision until after the end of the Administrator's 45-day review period of the proposed permit revision, or until the Administrator has notified the Tribe that the Administrator will not object to issuance of the permit revision, whichever is first. Within 90 days after receipt of a complete minor permit revision application, or within 15 days after the end of the Administrator's 45-day review period, whichever is later, the Tribe shall:
 - (i) Issue the minor permit revision as proposed;
 - (ii) Disapprove the minor permit revision application;
 - (iii) Determine that the requested revision does not constitute a minor permit revision and should be reviewed as a proposed significant permit revision; or
 - (iv) Revise the draft permit revision and transmit to the Administrator the new proposed permit revision as required by § 2-108(2) of this code.

(4) Significant Permit Revisions.

- (a) Significant permit revisions as defined in § 1-103(61) of this code shall meet all requirements of this code for permit issuance and renewal, including those for applications, review by the Administrator and affected programs, and public participation.
- (b) The Tribe shall complete the review of the majority of significant permit revision applications within 9 months after such applications are determined to be complete. Significant permit revision applications shall be considered in the order in which they are determined to be complete, based on the order of receipt.

2-112. Permit Reopenings, Revocations and Reissuances, and Terminations.

(1) Action by the Tribe.

- (a) Reopening and Revocation and Reissuance Standards: The Tribe shall reopen and revise all permits issued under this code for any of the reasons listed in paragraphs (i) through (iv) of this subsection. Alternatively, the Tribe may revoke and reissue permits for the reasons listed in paragraphs (iii) and (iv) of this subsection:
- (i) Additional requirements under the Clean Air Act become applicable to a major source with a remaining permit term of 3 or more years, provided that the Tribe shall revise such permits to incorporate such additional requirements no later than 18 months after promulgation of such requirements, and no such reopening is required if the effective date of the requirement is later than the permit expiration date unless the original permit or any of its terms or conditions have been extended past the permit expiration date pursuant to § 2-104(2)(b)(iii) of this code;
 - (ii) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit;
 - (iii) The Tribe or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit; or
 - (iv) The Tribe or the Administrator determines that the permit must be revised or revoked and reissued to assure compliance with applicable requirements.
- (b) Reopening and Revocation and Reissuance Limitations: Proceedings to reopen and revise, or revoke and reissue, a permit shall comply with the procedural requirements for initial permit issuance, and shall affect only those parts of the permit for which cause to reopen and revise, or revoke and reissue, exists. Units for which permit conditions have been revoked shall not be operated until permit reissuance. Reopenings shall be made as expeditiously as practicable.
- (c) Termination: A permit, or an authorization to operate under a general permit, may be terminated when:
- (i) The permittee fails to meet the requirements of an approved compliance plan;
 - (ii) The permittee has been in significant or repetitious noncompliance with the operating permit terms or conditions;

- (iii) The applicant or permittee has exhibited a history of willful disregard for environmental laws of any tribal or state authority, or of the United States;
 - (iv) The applicant or 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;
 - (v) The permittee falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the permit;
 - (vi) The permittee fails to pay fees required under § 2-118 and § 2-119, of this code; or
 - (vii) The Administrator has found that cause exists to terminate the permit.
- (d) Notification: In addition to providing notice of intent to terminate a permit, the Tribe shall provide a notice of intent to a permittee to reopen or revoke and reissue a permit. Notice shall be provided by certified mail at least 30 days before the date on which the permit is to be reopened, revoked, or 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 or request a hearing on the proposed permit action.
- (2) Action by the Administrator: Within 90 days, or longer if the Administrator extends this period, after receipt of written notification that the Administrator has found that cause exists to terminate, modify, or revoke and reissue a permit, the Tribe shall forward to the Administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. Within 90 days from receipt of an objection by the Administrator to a proposed determination, the Tribe shall address and act upon such objection.
- (3) Revocation and Termination: Revocation or termination of a permit by the Tribe terminates the permittee's right to operate.
- (4) Voluntary Discontinuation: Upon request by the permittee, the Tribe shall permanently discontinue an operating permit. Permit discontinuance terminates the permittee's right to operate as a Part 70 source under the permit. The Tribe shall confirm the permit discontinuance by certified letter to the permittee.

- (5) Preconstruction Limitation: Nothing in this section shall be construed to alter any applicable preconstruction requirements under § 165 of the Clean Air Act, 42 U.S.C. § 7475.

2-113. Permit Transfers.

A permit shall not be transferable, by operation of law or otherwise, from one location to another or from one source to another, except that a permit may be transferred from one location to another in the case of a portable source that has notified the Tribe in advance of the transfer, pursuant to this code. A permit for a source may be transferred from one person to another if the Tribe finds that the transferee is capable of operating the source in compliance with the permit and the requirements of this code. This transfer must be accomplished through an administrative permit revision as defined in § 1-103(3) of this code.

2-114. General Permits.

(1) Issuance.

- (a) The Tribe may, after notice and opportunity for public participation and review by the Administrator and affected programs, issue a general permit covering numerous similar sources.
- (b) Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit.

(2) Application.

- (a) The owner or operator of a Part 70 source that would qualify for a general permit must:
 - (i) Apply to the Tribe for coverage under the terms of the general permit; or
 - (ii) Apply for an operating permit consistent with § 2-106 of this code.
- (b) The Tribe may, in the general permit, provide for applications which deviate from the requirements of § 2-106 of this code, provided that such applications meet the requirements of title V of the Clean Air Act and include all information necessary to determine qualification for, and to assure compliance with, the general permit.

(3) Review and Operation.

- (a) The Tribe shall authorize qualifying sources that apply for coverage under a general permit to operate under the terms and conditions of such general permit.
- (b) The Tribe may grant a request for authorization to operate under a general permit without repeating the public participation procedures required under § 2-109 of this code.
- (c) Authorization to operate under a general permit shall not be granted for acid rain sources unless otherwise provided in regulations promulgated under title IV of the Clean Air Act.
- (d) Notwithstanding § 2-110(10) of this code, the permittee shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit.

2-115. Portable Source Permits.

- (1) Authorization.** The Tribe may issue permits for portable sources that authorize emissions from similar operations by the same source owner or operator at multiple locations and authorize such sources to relocate without undergoing a major permit revision.
- (2) Acid Rain Source.** No acid rain source shall be permitted as a portable source.
- (3) Limitations.** Permits issued pursuant to this section shall include conditions to assure that:
 - (a) The source is installed at all locations in a manner conforming with the permit;
 - (b) The source shall comply with all applicable requirements and all other provisions of this code at all authorized locations;
 - (c) The owner or operator shall notify the Tribe in writing at least 10 days in advance of each change in location, provided that such notice shall include a legal description of where the source is to be relocated and how long, to the best of the owner or operator's knowledge, it will be located there; and
 - (d) Emissions from the source shall not, at any location, result in or contribute to an exceedance of a national ambient air quality standard or increment or visibility requirement under Part C of title I of the Clean Air Act.

2-116. Facility Changes Allowed Without Permit Revisions.

In addition to changes authorized pursuant to § 2-110(8) of this code, any permittee may make the following facility changes without a permit revision:

(1) Section 502(b)(10) Changes.

- (a) The permittee may make Clean Air Act § 502(b)(10) changes without applying for a permit revision if those changes are not modifications under title I of the Clean Air Act and do not cause the facility to exceed emissions allowable under the permit (whether expressed as a rate of emissions or in terms of total emissions).
- (b) For each proposed § 502(b)(10) change, the permittee shall provide written notification to the Tribe and the Administrator at least 7 days in advance of the proposed change. Such notice shall state when the change will occur and shall describe the change, any resulting emissions change, and the inapplicability of any permit term or condition.
- (c) Upon receiving notice of a proposed § 502(b)(10) change pursuant to the preceding provision, the Tribe shall promptly determine whether the proposed change qualifies as a § 502(b)(10) change and whether the notice meets the requirements of the preceding paragraph, and shall promptly notify the permittee of this determination.
- (d) If the proposed change and the notice is sufficient, the permittee and Tribe shall attach each such notice to their copy of the relevant permit. If the change is determined not to qualify or the notice is not sufficient, the original terms of the permit remain fully enforceable.

(2) Off-Permit Changes.

- (a) Permittees are allowed to make, without a permit revision, changes that are not addressed or prohibited by the operating permit, if:
 - (i) Each such change meets all applicable requirements and shall not violate any existing permit term or condition;
 - (ii) Such changes are not subject to any requirements under title IV of the Clean Air Act and are not modifications under title I of the Clean Air Act;
 - (iii) Such changes are not subject to permit revision procedures under § 2-111 of this code; and

- (iv) The permittee provides contemporaneous written notice to the Tribe and the Administrator of each such change, except for changes that qualify as insignificant activities. Such notice shall state when the change occurred and shall describe the change, any resulting emissions change, pollutants emitted, and any applicable requirement that would apply as a result of the change.
- (b) The permittee shall keep a record describing changes made at the source that result in emissions of any regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

2-117. Emergency Situations.

- (1) **Definition.** An emergency, as defined in § 1-103(23) of this code, constitutes an affirmative defense to an action brought for noncompliance with relevant technology-based emission limitations if the permittee demonstrates through properly signed, 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 facility 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 § 2-110(7) of this code.
- (2) **Burden of Proof.** In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency bears the burden of proof.
- (3) **Other Applicable Requirements.** This provision is in addition to any emergency or upset provision contained in any applicable requirement.

2-118. Fee Requirement and Payment.

- (1) **Initial Fees.**
 - (a) Part 70 sources that begin operation after the Tribe's program has been approved shall complete and submit a fee calculation work sheet, provided by the Tribe, during the first year of operation. Part 71 sources transitioning to the Part 70 program shall continue to pay annual fees according to paragraph (2)(b)(i) of this section. Calculations of emissions

and the fees owed by a source shall be computed by the source on fee calculation work sheets provided by the Tribe. Fee payment of the full amount must accompany each initial fee calculation work sheet.

- (b) The fee calculation work sheet shall require the source to submit a report based on the emissions inventory for the preceding calendar year and to compute fees owed based on those emissions. For sources that have been issued Part 70 or Part 71 permits, 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 federally recognized procedures. If a source commenced operation during the preceding calendar year, the source shall estimate its emissions for the current calendar year. In such a case, fees for the source shall be based on the total emissions estimated.
 - (c) The initial fee calculation worksheet shall be certified by a responsible official consistent with § 2-105 of this code.
- (2) **Annual Fees.** An annual operating permit emission fee shall be paid to the Tribe by each owner or operator of a Part 70 source.
- (a) Such fee shall be assessed:
 - (i) For a major source, for all emissions units; and
 - (ii) For all other sources, for emissions units that cause the source to be subject to this code.
 - (b) The first annual fee to be paid shall be determined and paid as follows:
 - (i) For sources in operation before the effective date of this code, the first annual fee shall be based on the emissions inventory from the date of final Part 70 permit issuance through December 31 of the same year. The fee shall be due on the date specified in the final Part 70 permit. Until the Tribe issues a final Part 70 permit to a source each source shall continue to pay annual emission fees to the EPA according to its Part 71 permit.
 - (i) For sources that begin operation after the effective date of this code, and for sources that become subject to a permit requirement pursuant to title V of the Clean Air Act through promulgation of the Administrator after the effective date of this code, the first annual fee shall be based on the applicable minimum fee or the per ton fee based on the emissions inventory for the first year of operation, whichever is greater. The first annual fee shall be due on

the anniversary date of the initial fee calculation work sheet at the time the initial permit application is submitted pursuant to § 2-118(1) of this code.

- (ii) If no emissions inventory is available, the first annual fee shall be based on estimated emissions using approved estimation methods.
 - (c) All annual emission fees other than the first shall be due to the Tribe each year on the date specified in the permit. The fee shall be based on the emissions inventory for the preceding operating year or the applicable minimum fee, whichever is greater. All annual fee calculation worksheets shall be certified by a responsible official consistent with § 2-105 of this code.
- (3) Other Fees.** The Tribe may establish a schedule of other fees necessary to ensure that fees cover program costs, as required, including but not limited to, for example, a registration fee.
- (4) Payment Form, Processing, and Use.**
- (a) Fee payments due under this section 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 and sent or delivered to the Tribe by the United States Postal Service, c/o Environmental Programs Division Part 70 Program, P.O. Box 737 MS#84, Ignacio, Colorado 81137; or by common carriers (such as UPS or FedEx) c/o Environmental Programs Division Part 70 Program, 398 Ouray Drive, Ignacio, Colorado 81137.
 - (b) Upon receipt of fee payments due under this section, such payments shall be used for the administration of the Title V Operating Permit Program.
 - (c) Fee payments collected under this section shall not be utilized for any purpose not authorized under the Clean Air Act.
- (5) Nonpayment.**
- (a) Failure to remit the full fee required by the due dates specified in this section constitutes a violation of this code and may subject the owner or operator to enforcement actions under this code, including, but not limited to, civil penalties for each day of noncompliance.
 - (b) The Tribe shall not issue a final permit or permit revision until all fees, interest and penalties assessed against a source under this section are paid.

- (c) An initial or renewal application shall not be found complete unless the source has paid all fees owed.

(6) Penalty and Interest Assessment.

- (a) The Tribe shall assess interest on payments which are received later than the date due. The interest rate shall be the sum of the federal short-term rate determined by the Secretary of the Treasury in accordance with Section 6621(a)(2) of the International Revenue Code of 1986, plus 3 percentage points.
- (b) The Tribe shall assess a penalty charge of 50 percent of the fee amount if the fee is not paid within 30 days of the payment due date.
- (c) If a source underpays the fee owed, except as provided in paragraph (6)(d) of this section, the Tribe shall assess a penalty charge of 50 percent on the amount by which the fee was underpaid. Interest shall also be assessed, computed under paragraph (6)(a) of this section, on the amount by which the fee was underpaid.
- (d) If a source bases its initial fee calculation on estimated emissions from the source's current or preceding calendar year and underpays its fee based on an underestimation of these emissions, the Tribe shall assess a penalty charge of 50 percent on certain of these underpayments, according to the following provisions:
 - (i) The penalty charge shall be assessed whenever a source's underpayment exceeds the underpayment penalty cutoff established in paragraph (6)(d)(iii) of this section. The penalty amount shall be 50 percent of the portion of the underpayment which is in excess of the underpayment penalty cutoff.
 - (ii) Where a source is subject to a penalty for underpayment pursuant to paragraph (6)(d)(i) of this section, interest as computed under paragraph (6)(a) of this section shall be assessed on that portion of the underpayment which is in excess of the underpayment penalty cutoff established in paragraph (6)(d)(iii) of this section.
 - (iii) The underpayment penalty cutoff for a source shall be the sum of the following:
 - (A) 50 percent of the portion of the initial fee amount which was calculated from estimated emissions of HAP listed pursuant to § 112(b) of the Clean Air Act, and

- (B) 20 percent of the portion of initial fee amount which was calculated from estimated emissions of the remainder of the fee pollutants.

2-119. Fee Schedule.

(1) Emission and Minimum Fees.

- (a) Initial Emission Fees: Unless otherwise set pursuant to this section, annual emission fees for all sources required to have operating permits under this code shall be \$50.00 per ton of emissions for all fee pollutants, including fugitive emissions, adjusted pursuant to paragraphs (c) and (d) of this section.
- (b) Initial Minimum Fees: The Tribe may set, pursuant to this section, minimum fees for all sources required to have an operating permit under this code.
- (c) Adjustments to Fees: The Tribe may alter or adjust the above emission and minimum fees in dollars per ton in the interest of program administration and/or to ensure that fees paid under this code are sufficient to cover permit program costs, as those costs or the number or types of permitted sources may change over time. All adjustments to fees must be approved by the Commission.
- (d) Indexing: The emission and minimum fees set under the preceding subsections shall be adjusted 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 year the Tribe's Title V Operating Permit Program was approved.

(2) Fee Calculation.

- (a) Subtotal annual fees shall be calculated by multiplying the applicable emission fee set pursuant to § 2-119(1) of this code times the total tons of actual emissions for each fee pollutant. In lieu of actual emissions, annual fees may be calculated based on the potential to emit for each fee pollutant. Emissions of any regulated air pollutant that already are included in the fee calculation under a category of regulated pollutant, such as a federally listed hazardous air pollutant that is already accounted for as a VOC or as PM10, shall be counted only once in determining the source's actual emissions.
- (b) The total annual fee due under this section shall be the greater of the applicable minimum fee or the sum of subtotal annual fees for all fee pollutants emitted from the source. The applicable minimum fee shall only

be established, upon approval of the Commission, if necessary for the program to remain self-sustaining.

(3) Fee Assessment Errors.

- (a) If the Tribe determines that a source has completed the fee calculation work sheet incorrectly, the Tribe shall bill the applicant for the corrected fee or credit overpayments to the source's account.
- (b) Each source notified by the Tribe of additional amounts due shall remit full payment within 30 days of receipt of an invoice from the Tribe.
- (c) An owner or operator of a Part 70 source who thinks that the assessed fee is in error shall provide a written explanation of the alleged error to the Tribe along with the assessed fee. The Tribe shall, within 90 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 Part 70 source.

- (4) Fee Demonstration.** The Tribe shall provide a demonstration to the Administrator that the fee schedule established pursuant to this section, in conjunction with any application fees established by the Tribe pursuant to this section, will result in the collection and retention of fees in an amount sufficient to cover permit program costs. Such demonstration shall also contain an initial accounting (and periodic updates as required by the Administrator) of how required fee revenues are used solely to cover permit program costs.

2-120. Reduction in Permit Fees.

The Tribe may reduce any fee required under this code to take into account the financial resources of small business sources.

2-121. Enforcement Authority.

Pursuant to the enforcement authority enumerated in P.L. 108-336 and applicable provisions of the Clean Air Act, the Tribe has the following authority to prevent and address violations of this code by Part 70 sources:

- (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 an amount not to exceed \$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.
 - (d) In determining the amount of any civil penalty, the following factors shall be considered:
 - (i) The violator's compliance history;
 - (ii) Good-faith efforts on behalf of the violator to comply;
 - (iii) Payment by the violator of penalties previously assessed for the same violation;
 - (iv) Duration of the violation;
 - (v) Economic benefit of noncompliance to the violator;
 - (vi) Impact on, or threat to, the public health or welfare or the environment as a result of the violation;
 - (vii) Malfeasance; and
 - (viii) Whether legal and factual theories were advanced for purposes of delay.
 - (e) In addition to the factors set forth above, the following circumstances shall be considered as grounds for reducing or eliminating civil penalties:
 - (i) The voluntary and complete disclosure by the violator of such violation in a timely fashion after discovery of the noncompliance;
 - (ii) Full and prompt cooperation by the violator following disclosure of the violation including, when appropriate, entering into a legally

enforceable commitment to undertake compliance and remedial efforts;

- (iii) The existence and scope of a regularized and comprehensive environmental compliance program or an environmental audit program;
 - (iv) Substantial economic impact of a penalty on the violator;
 - (v) Nonfeasance; and
 - (vi) Other mitigating factors.
- (f) The imposition of civil penalties may be deferred or suspended where appropriate based on consideration of the factors set forth above.
- (3) Notwithstanding any other provision in this section, no action for civil enforcement of this program may be taken where a permit renewal has been issued for the source and the source conducts its operations in compliance with the permit terms.
- (4) **Criminal Enforcement.** In accordance with the IGA and federal law, EPA will exercise criminal enforcement jurisdiction over any persons on all lands within the Reservation boundaries for violations of the Reservation Air Program.
- (5) **Burden of Proof.** The burden of proof and degree of knowledge or intent required for establishing violations under this § 2-121 shall be no greater than the burden of proof or degree of knowledge or intent required under the Clean Air Act.

2-122. Compliance Tracking.

- (1) **Generally.** The Tribe shall compile and maintain for at least five years all information received pursuant to § 2-110(7) of this code as necessary and appropriate to determine ongoing compliance by Part 70 sources with this code and the Clean Air Act, and shall provide any such information or compilation thereof to the Administrator when so requested by the Administrator.
- (2) **Agreement.** The Tribe may enter into an agreement with the Administrator concerning provision of the compliance tracking information compiled pursuant to this section.

2-123. Enforcement Reporting.

- (1) **Requirement.** The Tribe shall record and submit to the Administrator at least annually beginning no later than one year after the effective date of this code

information regarding the Tribe's enforcement activities taken pursuant to this code including but not limited to the following:

- (a) The number of civil administrative and judicial enforcement actions either commenced or concluded;
 - (b) The penalties and damages obtained in those actions; and
 - (c) The number of administrative orders issued.
- (2) **Method.** The Tribe shall consult with the Administrator regarding the preferred method for recording information required to be recorded pursuant to this section.

2-124. 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 code shall be evaluated under 40 CFR § 2(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 Administrator.** The Tribe may require or permit an applicant or permittee to submit directly to the Commission or Administrator 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 under this code, except to the extent determined confidential pursuant to this section, and all operating permits, are public records and not entitled to protection under § 114(c) of the Clean Air Act, 42 U.S.C. § 7414(c). A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this code, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under this code, the applicant or permittee may submit such information separately.

- (5) **Sharing of Information.** Any information obtained or used in the administration of this program shall be available to EPA upon request without restriction and in a form specified by the administrator, including computer-readable files to the extent practicable.

2-125. Program Revision.

Pursuant to the Commission's Procedural Rules, the Commission shall review this code no less than once every five years to make any necessary changes.

PART 2. NEW SOURCE PERFORMANCE STANDARDS

3-101. Introduction to Incorporation of Standards of Performance for New Stationary Sources.

This Part incorporates as part of the Reservation Air Program certain standards of performance established by the United States Environmental Protection Agency pursuant to section 111 of the Clean Air Act (42 U.S.C. § 7411) to regulate criteria pollutant emissions from specific categories of new sources. The purpose of the incorporation is to enable the Southern Ute Indian Tribe and the Southern Ute Indian Tribe/State of Colorado Environmental Commission to exercise authority with respect to the incorporated regulations as published and found in 40 C.F.R. Part 60.

3-102. Incorporation of NSPS by reference.

The following EPA regulations on Standards of Performance for New Stationary Sources and designated appendices, published as of November 9, 2022 not including any later amendments, are adopted by the Commission and incorporated by reference into this Reservation Air Code. All new sources of air pollution shall comply with the standards, criteria, and requirements set forth in the incorporated regulations and appendices. For the purpose of this Part, the term “new sources” means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under federal law which will be applicable to such source. For the purpose of this Part, the word “Administrator” as used in the incorporated regulations means the Tribe, except for those aspects of the incorporated regulations which cannot be delegated to the Tribe, in which case, “Administrator” means both the Administrator of the Environmental Protection Agency or his authorized representative and the Tribe.

40 C.F.R. Part 60, Subpart A	General Provisions
40 C.F.R. Part 60, Subpart D	Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971
40 C.F.R. Part 60, Subpart Da	Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978
40 C.F.R. Part 60, Subpart Db	Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units
40 C.F.R. Part 60, Subpart Dc	Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units
40 C.F.R. Part 60, Subpart I	Standards of Performance for Hot Mix Asphalt Facilities

40 C.F.R. Part 60, Subpart K	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978
40 C.F.R. Part 60, Subpart Ka	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984
40 C.F.R. Part 60, Subpart Kb	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984
40 C.F.R. Part 60, Subpart GG	Standards of Performance for Stationary Gas Turbines
40 C.F.R. Part 60, Subpart VV	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006
40 C.F.R. Part 60, Subpart KKK	Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011
40 C.F.R. Part 60, Subpart LLL	Standards of Performance for SO ₂ Emissions from Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011
40 C.F.R. Part 60, Subpart OOO	Standards of Performance for Nonmetallic Mineral Processing Plants
40 C.F.R. Part 60, Subpart WWW	Standards of Performance for Municipal Solid Waste Landfills
40 C.F.R. Part 60, Subpart CCCC	Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced on or After June 1, 2001

- 40 C.F.R. Part 60, Subpart EEEE Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006
- 40 C.F.R. Part 60, Subpart IIII Standards of Performance for Stationary Compression Ignition Internal Combustion Engines
- 40 C.F.R. Part 60, Subpart JJJJ Standards of Performance for Stationary Spark Ignition Internal Combustion Engines
- 40 C.F.R. Part 60, Subpart KKKK Standards of Performance for Stationary Combustion Turbines
- 40 C.F.R. Part 60, Subpart OOOO Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced after August 23, 2011, and on or before September 18, 2015
- 40 C.F.R. Part 60, Subpart OOOOa Standards of Performance for Crude Oil and Natural gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015
- 40 CFR part 60, Appendix A - Test Methods
- 40 CFR part 60, Appendix B - Performance Specifications
- 40 CFR part 60, Appendix C - Determination of Emission Rate Change
- 40 CFR part 60, Appendix D - Required Emission Inventory Information
- 40 CFR part 60, Appendix F - Quality Assurance Procedures
- 40 CFR part 60, Appendix I - Removable Label and Owner's Manual

PART 3. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

4-101. Introduction to Incorporation of National Emission Standards for Hazardous Air Pollutants.

This Part incorporates as part of the Reservation Air Program certain National Emission Standards for Hazardous Air Pollutants (NESHAP) established by the United States Environmental Protection Agency pursuant to section 112 of the Clean Air Act (42 U.S.C. § 7412) which regulate hazardous air pollutant emissions of new and existing sources. The purpose of the incorporation is to enable the Southern Ute Indian Tribe and the Southern Ute Indian Tribe/State of Colorado Environmental Commission to exercise authority with respect to the incorporated standards. Included among the federal regulations incorporated herein are certain National Emission Standards for Hazardous Air Pollutants as published and found in 40 C.F.R. Part 61, and certain National Emission Standards for Hazardous Air Pollutants for Source Categories as published and found in 40 C.F.R. Part 63.

4-102. Incorporation of NESHAP by Reference.

The following United States Environmental Protection Agency regulations on National Emission Standards for Hazardous Air Pollutants, published as of November 9, 2022 not including any later amendments, are adopted by the Commission and incorporated by reference into this Reservation Air Code. All new and existing sources of air pollution shall comply with the standards, criteria, and requirements set forth in the incorporated regulations. For the purpose of this Part, the word “Administrator” as used in the incorporated regulations means both the Administrator of the Environmental Protection Agency or his authorized representative and the Tribe.

40 C.F.R. Part 61, Subpart A	General Provisions
40 C.F.R. Part 61, Subpart M	National Emission Standard for Asbestos
40 C.F.R. Part 61, Subpart V	National Emission Standard for Equipment Leaks (Fugitive Emission Sources)

- (1) Incorporation of Appendices.** The following appendices as revised and published as of November 9, 2022, not including any later amendments, are adopted by the Commission and incorporated by reference into this Reservation Air Code. Copies of the incorporated appendices can be obtained from the Southern Ute Indian Tribe, Air Quality Program, P.O. Box 737 MS#84, Ignacio, Colorado 81137.

40 C.F.R. Part 61, Appendix A - Compliance Status Information

40 C.F.R. Part 61, Appendix B - Test Methods

4-103. Incorporation of NESHAP for Source Categories by Reference.

The following United States Environmental Protection Agency regulations on National Emission Standards for Hazardous Air Pollutants for Source Categories, published as of November 9, 2022, not including any later amendments, are adopted and incorporated by reference into this Reservation Air Code. All new and existing sources of air pollution shall comply with the standards, criteria, and requirements set forth in the incorporated regulations. For the purpose of this Part, the word “Administrator” as used in the incorporated regulations means both the Administrator of the Environmental Protection Agency or his authorized representative and the Tribe.

40 C.F.R. Part 63, Subpart A	General Provisions
40 C.F.R. Part 63, Subpart B	Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)
40 C.F.R. Part 63, Subpart C	List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List
40 C.F.R. Part 63, Subpart N	National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
40 C.F.R. Part 63, Subpart Q	National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers
40 C.F.R. Part 63, Subpart HH	National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities
40 C.F.R. Part 63, Subpart OO	National Emission Standards for Tanks - Level 1
40 C.F.R. Part 63, Subpart HHH	National Emission Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities
40 C.F.R. Part 63, Subpart AAAA	National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills
40 C.F.R. Part 63, Subpart YYYY	National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines
40 C.F.R. Part 63, Subpart ZZZZ	National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

40 C.F.R. Part 63, Subpart DDDDD National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters

40 C.F.R. Part 63, Subpart GGGGG National Emission Standards for Hazardous Air Pollutants: Site Remediation

40 C.F.R. Part 63, Subpart CCCCC National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities

40 C.F.R. Part 63, Subpart JJJJJ National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources

- (1) **Incorporation of Appendices.** The following appendices, published as of November 9 , 2022, not including any later amendments, are adopted by the Commission and incorporated by reference into this Reservation Air Code. Copies of the incorporated appendices can be obtained from the Southern Ute Indian Tribe, Air Quality Program, P.O. Box 737 MS#84, Ignacio, Colorado 81137.

40 C.F.R. Part 63, Appendix A - Test Methods

40 C.F.R. Part 63, Appendix C - Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit

40 C.F.R. Part 63, Appendix D - Alternative Validation Procedure for EPA Waste and Wastewater Methods

History and Amendments

- Article I and Article II, Part I approved by Southern Ute Indian Tribe/State of Colorado Environmental Commission on November 12, 2008.
- Amended June 14, 2010.
- Amended August 8, 2011.
- Effective date of Article I and Article II, Part I: March 2, 2012 (77 Fed. Reg. 15267 (2012)), upon approval by EPA.
- Article I and Article II amended to add certain CAA Section 111 NSPS and CAA Section 112 NESHAP provisions as Article II, Part 2 and Part 3, respectfully; and to correct formatting, spacing, typographical errors and incorrect reference citations. The amendments were approved by EPA on September 3, 2013 and delegation for Tribe to implement and enforce NSPS and NESHAP was granted effective September 6, 2013 (78 Fed. Reg. 40635 (2013)). The amendments were adopted by Southern Ute Indian Tribe/State of Colorado Environmental Commission as non-controversial revisions on November 14, 2012 through a direct final rulemaking and became effective on January 28, 2013.
- Article 2, Part 1 amended to include CAA Section 113 civil penalty assessment criteria under the enforcement authority of RAC 2-121, reword specific regulatory language for clarification, and correct typographical errors and incorrect reference citations. The amendments were adopted by the Southern Ute Indian Tribe/State of Colorado Environmental Commission as non-controversial revisions on June 3, 2014 through a direct final rulemaking and became effective on August 23, 2014. The amendments were approved by EPA on July 16, 2014.
- Article 1 amended to include CAA Section 114 investigation and information request authority under RAC 1-105 and cease and desist authority for air pollution emergencies endangering public health or welfare on the Reservation under RAC 1-106. The amendments were adopted by the Southern Ute Indian Tribe/State of Colorado Environmental Commission as non-controversial revisions on October 19, 2015 through a direct final rule making and became effective December 26, 2015. The amendments were approved by EPA on January 28, 2016.
- Amended: January 17, 2022:

Article II, Part 2

- Removed language limiting the Tribe's 40 C.F.R. 60 enforcement primacy to only Tribally permitted sources.

- Incorporated 40 C.F.R. 60, Subpart OOOOa. Subpart OOOOa became effective on August 2, 2016.
- Article II, Part 3:
 - Removed language limiting the Tribe's 40 C.F.R. 63 enforcement primacy to only Tribally permitted sources.
 - Incorporated 40 C.F.R. 63, Subpart DDDDD, Subpart GGGGG, Subpart CCCCC, and Subpart JJJJJ.