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MODEL TRIBAL AIR QUALITY ORDINANCE

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MODEL TRIBAL AIR QUALITY ORDINANCE

COMMENTARY

Although tribes are treated as states for purposes of the Clean Air Act (see 42 U.S.C. §7601(d)), California tribes who are adopting or revising air quality codes and ordinances may want to be aware that the State of California has extensive air quality laws. The major State air quality laws can be found in the following California code sections:

1. Air Resources Code - Cal. Health and Safety Code (H&S) §39,000 et seq.;
2. Ambient Air Quality Standards - H&S Code §425;
3. Motor Vehicle Pollution Control - Cal. Vehicle Code §27150, et seq.; Cal. Business & Professions Code (B&P) §9888.1, et seq. and B&P Code §13403, et seq.;
4. Indoor Air Quality - H&S Code §425, et seq.;
5. Development of Hazardous or Solid Waste Management Facilities in Indian Country* - H&S Code §§41700-42708 [sections of California Air Resources Code with which tribes must comply in tribal/state waste cooperative agreements], H&S Code §25198.1, et seq. and Public Resources Code §44201, et seq.; and
6. Pesticides - Food and Agriculture Code §14021, et seq.

A complete list of California laws pertaining to air quality can be found on the California Air Resources Board's website at www.arb.ca.gov.

* The State of California has the authority to regulate air quality on tribal lands in California where a solid or hazardous waste facility is involved because tribes are treated as "municipalities," not states, under the Resource Conservation and Recovery Act (RCRA).

Section 1 - Short Title, Findings and Purpose

- 101 **Short Title:** This Ordinance shall be known as the **Tribal Air Quality Ordinance** of the [name of Tribe].

COMMENTARY

Other terms such as "Code," "Law," "Title" or "Act" could be substituted for "Ordinance." The name of the Tribe could also be inserted into the title.

- 102 **Findings:** The [name of Tribal governing body] hereby finds as follows:

- A. The increasing volume and variety of air contaminants being emitted on the [Reservation/Rancheria] and the often-inadequate existing methods of managing air contaminants are creating conditions that threaten the public health, safety and welfare of tribal members and residents of the [Reservation/Rancheria] by contributing to air pollution and to the general deterioration of the [Reservation/Rancheria] environment.

COMMENTARY

If Tribe has other reasons for enacting this Ordinance, they should be inserted here either in addition to or in place of the ones listed above.

- B. The people of [name of Tribe] have a primary interest in the protection and control of the air and other natural resources affected by the improper emission of air contaminants within the [name of Tribe's reservation or rancheria], and the quality of such air and other natural resources must be protected to insure the health, economic, aesthetic and cultural well-being of the [name] People.

COMMENTARY

The term *primary* in this context means that the Tribe has a fundamental interest in protecting the air and other natural resources on the Reservation or Rancheria, which is higher than the interest of state, county or federal governments.

The term *aesthetic* refers to the overall beauty of the Tribe's lands.

- C. Emission of air contaminants is particularly harmful to health and air quality of the [Reservation/Rancheria].
- D. Inadequate and environmentally unsound practices for the emission of air contaminants has created greater amounts of air pollution and other problems for public health and the environment on the [Reservation/Rancheria]. The traditional methods of air pollution regulation may not meet future requirements for eliminating environmental pollution and conserving natural resources.

COMMENTARY

This Section sets out the current state of air quality management that exists on the Reservation or Rancheria.

- E. Pursuant to federal law as determined by the U.S. Supreme Court in such cases as *Montana v. United States*, 450 U.S. 544 (1981) and reaffirmed in *Strate v. A-1 Contractors* 117 S.Ct. 1404 (1997), the [name of Tribe] possesses inherent sovereign authority to regulate on-Reservation air quality that affects fundamental Tribal interests and public health and safety, including when such activities are conducted by non-members of the Tribe on privately owned land within the Reservation.

COMMENTARY

The test set out in *Montana* and *Strate* is that tribes have civil jurisdiction over the actions of non-Indians and nonmember Indians on non-Indian land within the reservation only if:

- 1) the person or company has entered into a consensual agreement with the tribe or its members; or**
- 2) the conduct of the nonmember threatens or has some direct effect on the political integrity, economic security, health or welfare of the tribe.**

[Note: *Atkinson* case: what impact, if any, does the case have on this analysis.]

- F. Under the Clean Air Act (42 U.S.C. §§7401-7671), Indian tribes can be treated as states for purposes of the Act (42 U.S.C. §7601(d)), and the Administrator may establish elements of tribal implementation plans.

COMMENTARY

The federal regulations pertaining to Tribal Clean Air Act Authority to establish tribal programs and implementation plans can be found at 40 CFR Part 49.

- G. It is in the best interest of the [name of Tribe] and the residents of the [Reservation/Rancheria] to establish and maintain a comprehensive tribal air quality policy, the objectives of which will be to manage and control emissions of air contaminants into the air of the [Reservation/Rancheria] in order to protect the health, safety and welfare of tribal members; and to preserve the environment.
- H. [Such protection of Reservation resources is not adequately provided for under existing legislation, and such protection will be furthered by the passage, adoption and implementation of this Ordinance.] **[OPTIONAL PROVISION]**

COMMENTARY

This Section is a sample of the type of issues the Tribe may want to address. However, the Tribe should carefully consider the unique history and needs of the community when adopting the final language.

103 Purpose: The general purposes of this Ordinance are to:

- A. finance, implement, regulate and enforce environmental standards and criteria, orders and permit conditions, and exercise comprehensive Tribal regulatory authority over all air quality within the exterior boundaries of the [Reservation/Rancheria];
- B. protect fundamental Tribal cultural, ceremonial, religious, fishery, and economic stability of residential, agricultural, commercial, industrial, forest, wetlands, riparian and environmentally sensitive lands within the exterior boundaries of the [Reservation/Rancheria];
- C. prevent the deterioration of the environment, standard of living, quality of life, health, safety and welfare of all persons within the exterior boundaries of the [Reservation/Rancheria];
- D. provide and promote Tribal environmental protection and services within the [Reservation/Rancheria] and to regulate environmental activities under principles of Tribal sovereignty; and
- E. prevent air pollution on the [Reservation/Rancheria] by setting ambient air quality standards that are at least as stringent as federal standards under the federal Clean Air Act..

COMMENTARY

Add or delete provisions as applicable.

104 Authority and Scope:

Authority: This Tribal Air Quality Ordinance is hereby adopted by [name of Tribe's governing body] pursuant to [Article/Section of the Tribe's Constitution] authorizing the [name of Tribe's governing body] to undertake such actions.

Scope: The provisions of this Ordinance shall apply to all existing and proposed activities that have the potential to adversely affect air quality on the [Reservation/Rancheria] and to all activities which have the potential to affect cultural, ceremonial, religious, fishery, seasonal residential, public health, safety, welfare, land, air or water quality and other fundamental interests of the Tribe, including such activities conducted by non-members of

the Tribe or on privately owned lands. Activities to be regulated hereunder include but are not limited to:

- A. Emissions of air contaminants into the air;
- B. Industrial, commercial or other activities that may result in the emission of air contaminants;
- C. Automobile emissions; [OPTIONAL PROVISION]
- D. All other activities that involve the emission of air contaminants into the air within the exterior boundaries of the [Reservation/Rancheria].

COMMENTARY

<p>[Note: the <i>Atkinson</i> case may impact the ability of the Tribe to regulate the activities of non-members on fee land within the reservation. See also, <i>Yankton Sioux Tribe v. Southern Missouri Waste Management District</i>, 890 F.Supp. 878 (1995), aff'd, 99 F.3d 1439 (8th Cir. 1996), rev'd 118 S.Ct. 789 (the reversal was not on the RCRA part of the district court decision, but rather on the status of the original boundaries of the reservation) (holding that the Yankton Sioux Tribe lacked regulatory authority over a planned solid waste disposal site that a non-Indian organization intended to build on fee lands within the reservation where the fee land was located on a remote area of the reservation. The court held that, because the land was far from houses of tribal members, the Tribe could not meet the <i>Montana</i> test by showing that the project would have a significant impact on the health, safety or welfare of the Tribe.)</p>

105 Applicability: Because any violation of this Ordinance or any regulation adopted thereunder will demonstrably and seriously impact the environment, including land, water and air, natural resources, public health, safety, welfare, political integrity and economic security of the Tribe, this Ordinance, and any regulations adopted thereunder, shall apply to: (1) all persons within the exterior boundaries of the [Reservation/Rancheria], without exception, including but not limited to, all Tribal members, and all other persons on the [Reservation/Rancheria], including any Indians who are members of other Indian tribes, all non-Indians, and any other person as defined under the Ordinance; and (2) all places and lands located anywhere within the exterior boundaries of the [Reservation/Rancheria], including all trust and non-trust lands, and notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, or any real property interest of any kind, held by any person as defined under this Ordinance.

COMMENTARY

The purpose of this provision is to explicitly comply with the test for tribal civil jurisdiction over nonmembers set out in *Strate v. A-1 Contractors* (see Comment to §102(E) above). However, merely placing this language in the Ordinance does not guarantee that a court will allow a particular tribe to enforce the provisions of this Ordinance against non-members (see *Atkinson Trading Company, Inc. v. Shirley, Jr.* holding that the Navajo Nation may not impose a hotel occupancy tax on a hotel or its non-Indian guests that is located on non-Indian fee land, even though the Nation provides police, fire and medical services to the hotel.)

- 106 Consensual Relations Among Non-Members, The Tribe and Tribal Members:** Any person who is not a member of the Tribe who uses land anywhere within the exterior boundaries of the [Reservation/Rancheria], whether trust or non-trust land, enters into consensual relationships with the Tribe or its members, through commercial dealings, contracts, leases or other arrangements. Such person’s use of land that may result in the emission of air contaminants into the air of the [Reservation/Rancheria] will have a demonstrably serious impact upon the environment, natural resources, public health, safety, welfare, political integrity and economic security of the Tribe and its members, unless such use is in compliance with the provisions of this Ordinance, and any regulations promulgated hereunder.

COMMENTARY

The purpose of this provision is to explicitly comply with the test for tribal civil jurisdiction over nonmembers set out in *Strate v. A-1 Contractors* (see Comment to §102(E) above). However, merely placing this language in the Ordinance does not guarantee that a court will allow a particular tribe to enforce the provisions of this Ordinance against non-members (see *Atkinson Trading Company, Inc. v. Shirley, Jr.* holding that the Navajo Nation may not impose a hotel occupancy tax on a hotel or its non-Indian guests that is located on non-Indian fee land, even though the Nation provides police, fire and medical services to the hotel.)

“Promulgate” means to formally make public.

Section 2 - Definitions

For the purposes of this Ordinance, the following words and phrases shall have the following meanings:

“Air basin” means an area of the State of California designated by the State Air Resources Board.

COMMENTARY

The current air basins in the State of California are based on topographical pockets where air currents flow. The basins, which are more specifically described in Sections 60100, et seq. of the California Public Health Code are as follows:

- 1. North Coast Basin (all of Del Norte County; all of Humboldt County; all of Mendocino County; all of Trinity County; part of Sonoma County);**
- 2. San Francisco Bay Area Basin (part of Sonoma County; all of Napa County; part of Solano County; all of Contra Costa County; all of Alameda County; all of Santa Clara County; all of San Mateo County; all of San Francisco County; all of Marin County);**
- 3. North Central Coast Basin (all of Santa Cruz County; all of San Benito County; all of Monterey County);**
- 4. South Central Coast Basin (all of San Luis Obispo County; all of Santa Barbara County; all of Ventura County);**
- 5. South Coast Air Basin (all of Orange County; part of Riverside County; part of San Bernardino County; part of Los Angeles County);**
- 6. Northeast Plateau Basin (all of Modoc County; all of Lassen County; all of Siskiyou County);**
- 7. Sacramento Valley Basin (all of Tehama County; all of Glenn County; all of Butte County; all of Colusa County; all of Yolo County; all of Sutter County; all of Yuba County; all of Sacramento County; all of Shasta County; part of Solano County);**
- 8. San Joaquin Valley Basin (all of San Joaquin County; all of Stanislaus County; all of Merced County; all of Madera County; all of Fresno County; all of Kings County; all of Tulare County; part of Kern County);**
- 9. Great Basin Valleys Basin (all of Alpine County; all of Mono County; all of Inyo County);**
- 10. Mojave Desert Basin (part of Riverside County; part of San Bernardino County; part of Los Angeles County; part of Kern County);**
- 11. San Diego Air Basin (all of San Diego County);**
- 12. Mountain Counties Air Basin (all of Plumas County; all of Sierra County; all of Nevada County; all of Amador County; all of Calaveras County; all of Toulumne County; all of Mariposa County; part of El Dorado County; part of Placer County);**
- 13. Lake County Air Basin (all of Lake County);**
- 14. Lake Tahoe Air Basin (part of El Dorado County; part of Placer County); and**
- 15. Salton Sea Air Basin (all of Imperial County; part of Riverside County).**

“Air contaminant” means fumes, smoke, particulate matter, vapor, gas or any combination thereof, but it does not include water vapor or steam condensate.

“Air contamination source” means any source whatsoever, at, from or by reason of which there is emitted or discharged into the atmosphere any air contaminant.

“Ambient air” means the surrounding or outside air.

“Ambient air quality standards” means specified concentrations and durations of air pollutants established either by the Tribe, State of California or the federal government.

“Applicant” means any person who has filed an application with the [name of Tribal Agency] for approval for a variance under this Ordinance.

“Combustible or flammable solid waste” means any garbage, rubbish, trash, rags, paper, boxes, crates, ashes, carcass of a dead animal or any other combustible or flammable refuse matter which is in a solid form.

“Commission” means the Air Pollution Control Commission.

“Council or Tribal Council” means the [name of Tribe] Tribal Council [or insert other name of Tribal governing body].

“Emission” means the discharge or release into the atmosphere of one or more air contaminants.

“Emission control regulation” means and includes any standard promulgated by regulation which is applicable to all air contamination sources within a specified area and which prohibits or establishes limits for specific types of emissions in such areas, and also any regulation which by its terms is applicable to a specified type of facility, process or activity for the purpose of controlling the extent, degree or nature of contamination emitted from such type of facility, process or activity, and also any regulation adopted for the purpose of preventing or minimizing emission or any air contamination in potentially dangerous quantities.

“Enforcement program” means the rules, regulations and procedures adopted by [name of Tribal Agency] to enforce this Ordinance.

“Flue” means any duct or passage for air, gases or the like such as a stack or chimney.

“Historical uses” means all uses that have had historical significance for the [name of Tribe].

“Mitigation” means a measure taken to reduce adverse impacts on the environment.

“Nonvehicular sources” means all sources of air contaminants, including the loading of fuels into vehicles, except vehicular sources.

“Open outdoor fire” means any combustion of combustible material of any type outdoors in the open, not in any enclosure, where the products of the combustion are not directed through a flue.

“Person” means any individual, corporation, partnership, association, agency, municipality, commission or department, including the [name of Tribe] or other federally-recognized Tribal governments.

“Promulgate” means to formally make public.

“Reservation [or Rancheria]” means all land, air and water located within the exterior boundaries of the [name of Reservation or Rancheria].

“Solid waste dump” means any accumulation for the purpose of disposal of any solid waste.

“Title V” means Title V of the federal Clean Air Act (42 U.S.C. §7661, et seq.).

“Title V source” means only a stationary source required by federal law to be included in an operating permit program established pursuant to Title Vi of the Federal Clean Air Act (42 U.S.C. §§7661-7661(f)) and the federal regulations adopted pursuant to Title V.

“Tribal Court” means the [name of court].

“Variance” means an authorized written permission for a delay or exception in the application of a given law, ordinance or regulation.

“Variance Board” means the Variance Board created by this Ordinance.

“Vehicular sources” means those sources of air contaminants emitted from motor vehicles.

Section 3 - Tribal Environmental Protection Agency

COMMENTARY

This entire section should be carefully tailored to coincide with the Tribe's structure. The Tribe may have only one or two employees who administer the entire Tribal Environmental Program, in which case the Tribe will probably not want to create an Air Pollution Control Committee or the position of Air Quality Control Officer.

301 Designation as Lead Tribal Agency

The Tribal Environmental Protection Agency [or other department or agency] shall be the lead agency for implementing this Tribal Air Quality Ordinance.

The Tribal Environmental Protection Agency [or other Tribal agency] shall communicate with the EPA regarding the Tribe's air quality program; prepare the application for EPA approval of the Tribe's air quality program; and make reports to the EPA in a manner and containing such information as the Committee approves, excluding any confidential or privileged information.

302 Creation of Position of Tribal Air Quality Control Officer [OPTIONAL PROVISION]

There is hereby created in the [name of Tribal Agency] the position of Tribal Air Quality Control Officer [or other name]. The Tribal Air Quality Control Officer shall serve under the direction of the [name of Tribal Agency] and shall be appointed by [name of Tribal Agency], which appointment shall be confirmed by [name of Tribe's governing body]. The [Tribal Air Quality Control Officer] shall cooperate with the [Tribal Air Pollution Commission/name of Tribal agency], the U.S. EPA and other federal agencies or the State of California, as necessary to carry out the intent of this Ordinance and implement the Tribal Air Quality Plan.

303 Air Pollution Control Commission Created [OPTIONAL PROVISION]

- A. There is hereby created in the division of [name of Tribal Agency] the Air Pollution Control Commission, which shall consist of ____ members as follows:
 - 1. [_____] member(s) designated by the [name of Tribal Agency] appointed by the [name of head of Tribal governing body];
 - 2. [_____] residents of the [Reservation/Rancheria] who shall be appointed by the [name of head of Tribal governing body] with the consent of [name of Tribal governing body].

- B. Appointments to the Commission shall be made so as to include appropriate scientific, cultural, technical, agricultural and legal training within its own membership; although no specific number of its members shall be required to be so

trained, although a majority of members must be officially enrolled members of the Tribe.

- C. Terms for appointment shall be for [_____] years.

COMMENTARY

As noted above, smaller tribes may not have a need to create a separate Air Pollution Control Commission; however, if the Tribe does not create the Commission, the Air Pollution Control Ordinance should clearly state what agency, person or other entity is responsible for creating, implementing and enforcing the air pollution control program on the Reservation or Rancheria.

If the Tribe decides to create an Air Pollution Control Commission, the Tribe may want to add language that staggers the terms of appointment so the entire Commission is not replaced at one time. This helps create consistency and ensures that there will always be some people on the Commission who have prior experience.

- D. All members of the Commission shall have a vote. A majority of the Commission shall constitute a quorum, and the concurrence of a majority of the Commission in any matter within its powers and duties shall be required for any determination made by the Commission.

304 Powers and Duties of the Air Pollution Control Commission

COMMENTARY

If the Tribe chooses not to create an Air Pollution Control Commission, then the language in Section 303 should be deleted, and the name of the Tribal agency responsible for enforcing this Ordinance should be substituted for “Commission” in the rest of this Ordinance. The Tribe should not merely delete the sections referring to the powers and duties of the Commission because these powers and duties need to be outlined for whatever Tribal agency will carry out this Ordinance.

- A. The Commission shall develop and maintain a comprehensive program for prevention, control and abatement of air pollution throughout the entire [Reservation/Rancheria], including a program for control of emissions from all significant sources of air pollution, and shall promulgate ambient air quality goals for every portion of the [Reservation/Rancheria].

- B. The Commission shall adopt and modify such plans as may be necessary for the implementation of such programs. Ambient air quality standards and emission control regulations shall be adopted and promulgated in accordance with Sections 306 and 307 of this Ordinance.
- C. The Commission and the [name of Tribal Agency] shall hold a joint public hearing during the month of [_____] of each year in order to hear public comment on air pollution problems within the [Reservation/Rancheria], alleged sources of air pollution within the [Reservation/Rancheria] and the availability of practical remedies for such pollution.
- D. On or before [month] of each year, the Commission shall report to the [name of head of Tribal governing body] on the effectiveness of the provisions of this Article in carrying out the legislative intent, as declared above, and shall include in such report any recommendations it may have with respect to legislative changes that may be needed or desirable.
- E. The Commission shall receive all applications for hearings concerning violations and all applications for the granting of variances made pursuant to this Ordinance and may, in its discretion, either set such applications for hearing and determination by the Commission in accordance with the provisions of this Ordinance or transmit such applications to the [name of Tribal agency] for hearing and determination.

Section 305 Additional Authority of Commission

- A. The Commission shall have maximum flexibility in developing an effective air pollution control program and may promulgate such combination of regulations as may be necessary or desirable to carry out the legislative purpose set forth in this Ordinance. Such regulations may include, but shall not be limited to:
 - 1. Division of the [Reservation/Rancheria] into such control zones or areas as may be necessary or desirable for effective administration of the Air Pollution Control Plan;

COMMENTARY
The Tribe may want to refer to the Basins designated by the State of California, listed above under the definition of “air basin” as a starting point for designating Tribal air basins as the air basins created by the State of California follow the natural topography and air currents of the State.

2. Classification and definition of different degrees or types of air pollution; or
 3. Emission control regulations that are applicable to the entire [Reservation/Rancheria], that are applicable only within specified areas or zones of the [Reservation/Rancheria], or that are applicable only when a specified class of pollution is present.
- B. The Commission may hold public hearings, issue notice of hearings, issue subpoenas requiring the attendance of witnesses and the production of evidence, administer oaths and take such testimony as it deems necessary.
 - C. The Commission may adopt such rules and regulations governing procedures before the [name of Tribal Agency] as may be necessary to assure that hearings before such Agency will be fair and impartial.
 - D. The Commission may exercise all incidental powers necessary to carry out the purposes of this Ordinance.
 - E. The Commission may require the owner or operator of any air contamination source to:
 1. Establish and maintain reports as prescribed by the Commission;
 2. Install, use and maintain monitoring equipment or methods as prescribed by the Commission;
 3. Record sample emissions in accordance with such methods, at such locations, at such intervals and in such manner as the Commission shall prescribe; and
 4. Provide such other information as the Commission may require.

Section 306 Commission to Promulgate Ambient Air Quality Standards

- A. In addition to the other powers and duties enumerated in this Ordinance, the Commission shall have the power to adopt, promulgate, amend and modify such standards for the quality of ambient air as may be appropriate or necessary to carry out the purposes of this Ordinance, including, but not limited to:

COMMENTARY

“Promulgate” means to formally make public.

“Ambient air” means outdoor air.

1. Standards which describe the maximum concentrations of specifically described contaminants that can be tolerated, consistent with the protection of the good health of the public at large; such standards may differ for different parts of the [Reservation/Rancheria] as may be necessitated by variations in altitude, topography, climate or meteorology.;
2. Standards which describe the air quality goals that are to be achieved by control programs within specified periods of time; such standards may be either [Reservation/Rancheria]-wide or restricted to specified control areas; and
3. Standards which describe varying degrees of contamination of ambient air.

Section 307 Commission to Promulgate Air Emission Control Regulations

COMMENTARY

This program is required for the Tribe to maximize its control over the air quality on the Reservation/Rancheria under the Federal Clean Air Act. The USEPA requires the Tribe to have such a program in place before it will allow the Tribe to assert control over its air quality.

- A. As quickly as possible, the Commission shall adopt and promulgate emission control regulations which require the use of effective practical air pollution controls for each significant source, potential source and type of source of air contamination throughout the entire [Reservation/Rancheria] and thereafter may modify such regulations from time to time. In the formation of each emission control regulation, the Commission shall take into consideration the following:
1. The Tribal policy regarding air pollution as set for above;
 2. Federal recommendations;
 3. The degree to which the concentrations of certain types of contaminants in certain portions of the [Reservation/Rancheria] require that emission control

regulations be more stringent than in other portions of the [Reservation/Rancheria];

4. The degree to which any particular type of emission is subject to treatment, the availability and feasibility of control, techniques and the extent to which the emission to be controlled is significant;
 5. The continuous, intermittent or seasonal nature of the emission to be controlled;
 6. Whether the emission control regulation should be applied throughout the entire [Reservation/Rancheria] or only in a specified portion;
 7. The need for specification of safety precautions that should be taken with respect to any source or potential source or type of source of air contamination.
- B. Such emission control regulations may include, but shall not be limited to, regulations pertaining to:
1. Visible pollutants;
 2. Particulates;
 3. Sulfur oxides, sulfuric acids, hydrogen sulfide, nitrogen oxides, carbon oxides, hydrocarbons, fluorides and any other chemical substance;
 4. Odors;
 5. Open burning of incidental refuse, open burning at dumps, open burning for agricultural purposes, open burning of junk automobiles and any other open burning activity;
 6. Organic solvents;
 7. Photochemical substances; and
 8. Toxic gases.
- C. The Commission has the duty to identify each type of facility, process and activity which produces or which potentially or accidentally might produce significant

emission of air contaminants and shall promulgate an emission control regulation for each such facility, process and activity, except for motor vehicles and airplanes to the extent prohibited by federal law. The requirements and prohibitions contained in such regulations shall be set forth with as much particularity and clarity as is practicable. Upon adoption of an emission control regulation under this Ordinance, such regulation shall apply to the exclusion of other emission control regulations adopted pursuant to this Section; prior to such adoption, the general regulations adopted pursuant to this Section shall be applicable to such facility, process or activity. Emission control regulations adopted pursuant to this Section may include, but shall not be limited to, regulations pertaining to the following facilities, processes and activities:

1. Incinerator and incinerator design;
2. Storage and transfer of petroleum products and any other volatile substance;
3. Activities which frequently result in particulate matter becoming airborne, such as construction and demolition operations and operation of parking lots;
4. Specifications, prohibitions and requirements pertaining to fuels and fuel additives, such as tetraethyl lead;
5. Pulp mills, alfalfa dehydrators, asphalt plants and any other industrial or commercial activity which tends to emit air contaminants as a by-product;
6. Industrial process equipment;
7. Industrial spraying operations; or
8. Storage and transfer of toxic gases.

COMMENTARY

The Tribe should add or delete activities to address the needs and concerns of the community.

- E. Among its emission control regulations, the Commission shall include appropriate regulations pertaining to accidents, shutdowns and other conditions which justify temporary relief from controls.

- F. Each emission control regulation shall be operative with regard to any ambient air quality standard unless such regulation expressly provides otherwise.

Section 308 Inspection and Entry

In addition to the authority specified elsewhere in this Ordinance, the Tribe, through its [name of Tribal Agency], has the power to enter and inspect any property, premises or place for the purposes of investigating any actual, suspected or potential source of air pollution or air contamination of ascertaining compliance or noncompliance with any emission standard or any order promulgated under this Ordinance; except that, if such entry or inspection is denied or not consented to, the [name of Tribal Agency] or its agent is empowered to and shall obtain from the [name of Tribal Court] a warrant to enter and inspect any such property, premise or place prior to entry and inspection. The [name of Tribal Court] of this [Reservation/Rancheria] is empowered to issue such warrants upon a proper showing of the need for such entry and inspection. Any information relating to secret commercial process, method, manufacture or production obtained in the course of the inspection or investigation shall be kept confidential.

Section 4 Tribal Implementation Plans

COMMENTARY
<p>The Clean Air Act establishes national levels of air quality that states must attain through an implementation plan. Tribes can create their own implementation plans consistent with the Act (42 U.S.C. §7601(d)). The Act requires that each air pollution source must obtain a permit from the local agency (state or tribal) to construct and/or operate so that the it will not cause significant deterioration in ambient air quality. Implementation plans must meet the requirements of 42 U.S.C. §7410 and generally details how ambient air quality will be attained in non-attainment areas and how ambient air quality will be maintained in attainment areas by controlling specific new and existing sources of air pollution. Tribes are exempt from some of the time lines and other criteria set out in the Act (see 40 C.F.R. §49.4).</p> <p>Tribes and states may, but are not required to, include provisions in their plans to address indirect sources. An “indirect source” is “a facility, building, structure, installation, real property, road or highway which attracts or may attract, mobile sources of air pollution.” Examples of indirect sources include parking lots or garages.</p>

401 Designation of Air Quality Control Regions

- A. Designations: The [name of Tribal agency] may request the [name of Tribal official] to submit to the Administrator of the USEPA a list of all areas on the [Reservation/Rancheria] designating, with regard to each pollutant for which a national ambient air quality standard exists, each such area as:
1. nonattainment, if it does not meet (or contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant;
 2. attainment, if it meets the national primary or secondary ambient air quality standard for the pollutant; or
 3. unclassifiable, if it cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant.

COMMENTARY

In order to minimize the amount of work the Tribe needs to do with respect to the designations, the Tribe can use the designations set out by the State of California. See “Commentary” to Section 2, Definitions, “Air Basin” for a list of the Air Basins in California.

- B. Redesignations: If the [name of Tribal official] has submitted designations to the Administrator of the USEPA pursuant to subsection (A) of this section, and the Administrator of the USEPA promulgates a new or revised National Air Quality Standards (NAAQS) pursuant to section 109 of the Clean Air Act, the [name of Tribal official] may, and in the case of a revised NAAQS for which the [name of Tribal official] has submitted designations pursuant to subsection (A), shall submit to the Administrator of the USEPA a new list of designations not later than one year after promulgation of the new or revised NAAQS.

The [name of Tribal official] also shall submit to the Administrator of the USEPA a redesignation of a particular area no later than 120 days after receiving notification from the Administrator of the USEPA, pursuant to section 107(d)(3) of the Clean Air Act, of the need to redesignate.

The [name of Tribal agency] may request the [name of Tribal official], on his/her own motion, to submit to the Administrator of the USEPA for approval, pursuant to section 107 of the Clean Air Act, a redesignation of any area within the

[Reservation/Rancheria] if air quality changes within such area. In the case of an area on the [Reservation/Rancheria] which the Administrator of the USEPA finds may significantly affect air pollution concentrations in a state or another tribe, the [name of Tribal agency] may redesignate that area only with the consent of the states or tribes which the Administrator of the USEPA determines may be significantly affected.

The submission of a redesignation shall not affect the effectiveness or enforceability of the applicable tribal implementation plan.

C. Regulations: If the [name of Tribal official] decides to submit designations to the Administrator of the USEPA under this section, the [name of Tribal agency] shall adopt regulations to implement this section that both:

1. describe the geographic extent of attainment, nonattainment or unclassified areas of the [Reservation/Rancheria] for all pollutants for which a national ambient air quality standard exists; and
2. establish procedures and criteria for redesignating such areas that include:
 - a. the technical bases for proposed changes, including ambient air quality data, types and distributions of sources of air pollution, population density and projected population growth, transportation system characteristics, traffic congestion, projected industrial and commercial development, meteorology, pollution transport and political boundaries, and
 - b. provisions for review of and public comment on proposed changes to area designations.

402 Tribal Implementation Plans for National Primary and Secondary Ambient Air Quality Standards

COMMENTARY

This is the section that gives the Tribe maximum control over the air pollutants and sources that are of greatest concern to the community.

National Ambient Air Quality Standards are divided into two levels: 1) primary ambient air quality standards, which set the level of ambient air quality for specified pollutants that are necessary to protect public health; and 2) secondary ambient air quality standards, which set the level of ambient air quality that are necessary to protect public welfare from any known or anticipated adverse effects associated with the presence of specified air pollutants. The pollutants for which standards have been established include sulfur oxides, carbon monoxide, nitrogen dioxide, ozone, hydrocarbons, lead and total suspended particulates.

A. Ambient Air Quality Standards

The Tribe shall establish ambient air quality standards that are at least as stringent as the National Ambient Air Quality Standards set forth below:

Sulfur dioxide	365 ug/m ³ - daily mean; 80 ug/m ³ - annual mean
Particulate matter	
PM 2.5	65 ug/m ³ - daily mean; 15 ug/m ³ - annual mean
PM 10	150 ug/m ³ - daily mean; 50 ug/m ³ - annual mean
Nitrogen dioxide	0.053 ppm - annual mean
Carbon monoxide	35 ppm - 1 hour; 9 ppm - 8 hour
Ozone	0.08 8 hour
Lead	1.5 ug/m ³ - quarterly mean

COMMENTARY

When a national ambient air quality standard is promulgated or changed, each tribe or state with approved implementation plans must identify all non-attainment, attainment and unclassified areas with regard to the new or revised standard (42 U.S.C. §7407(d)(1)(A) and (B)).

B. Submission of and Contents of Plans: The [name of Tribal agency] may submit to the Administrator of the USEPA a tribal implementation plan for any pollutant for which a national ambient air quality standard exists. The plan shall provide for implementation, maintenance and enforcement of such standard and protection of visibility in each air quality control region within the [Reservation/Rancheria]. The plan shall be adopted by the [name of Tribal agency] and shall contain the following

provisions:

1. Each tribal implementation plan shall--
 - a. include enforceable emission limitations and other control measures, means, or techniques as may be necessary or appropriate to meet the applicable requirements of this Ordinance and the Clean Air Act;
 - b. provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality;
 - c. include a program to enforce the measures described herein and regulate the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required under this Ordinance;
 - d. contain adequate provisions--
 - (1) prohibiting any source within the [Reservation/Rancheria] from emitting any air pollutant in amounts that will contribute significantly to nonattainment of national primary or secondary ambient air quality standard in a neighboring tribe or state, and
 - (2) insuring compliance with the applicable requirements of this section (relating to interstate pollution abatement);
 - e. provide--
 - (1) necessary assurances that the Tribe will have adequate personnel, funding, and authority under Tribal law to carry out such implementation plan (and that the plan is not prohibited by any provision of federal or tribal law from carrying out such implementation plan or portion thereof), and
 - (2) necessary assurances that, where the Tribe has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the Tribe has

responsibility for ensuring adequate implementation of such plan provision;

- f. require, as may be prescribed by the Administrator of the USEPA,
 - (1) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,
 - (2) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and
 - (3) correlation of such reports by the [name of Tribal agency] with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection;
- g. provide for revision of such plan--
 - (1) from time to time as may be necessary to incorporate revisions of national primary or secondary ambient air quality standards or the availability of improved or more expeditious methods of attaining such standards, and
 - (2) whenever the Administrator of the USEPA finds that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under the Clean Air Act or this Ordinance.
- h. meet the applicable requirements of this Ordinance relating to public notification and the prevention of significant deterioration of air quality and visibility protection;
- i. provide for--
 - (1) the performance of such air quality modeling as the Administrator of the USEPA may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator of the

USEPA has established a national ambient air quality standard, and

- (2) the submission, upon request, of data related to such air quality modeling to the Administrator of the USEPA;
- C. Revisions to Plans: The [name of Tribal agency] shall adopt regulations that describe procedures for revising tribal implementation plans as needed from time to time and as required by the Administrator of the USEPA, pursuant to the Clean Air Act and the regulations hereunder, after promulgation of new or revised national ambient air quality standards.
- D. Interstate Pollution abatement: Each applicable implementation plan shall require each proposed new or modified major source that is subject to this Ordinance or that may significantly contribute to levels of air pollution in excess of the NAAQS in any air quality control region outside the [Reservation/Rancheria] to provide written notice to all nearby states or tribes in which air pollution levels may be affected by such source at least sixty (60) days prior to the date on which commencement of construction is to be permitted. Each applicable plan shall also identify all major existing stationary sources that may significantly contribute to levels of air pollution in excess of the NAAQS in any area outside the [Reservation/Rancheria] and shall provide for notice to all nearby states or tribes in which air pollution levels may be affected of the identity of such sources.

COMMENTARY

Congress must approve of any cooperative agreements entered into between a tribe and other tribes or states (42 U.S.C. §7403(c)). Variances for emission sources may require USEPA approval.

- E. Public Notification: Each plan shall contain measures that will be effective to notify the public on a regular basis of instances or areas in which any national primary ambient air quality standard is or was exceeded, to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures that can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality.

Section 5 Prevention of Significant Deterioration of Air Quality

501 Plan Requirements

Each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each area designated pursuant to this section and section 107 of the Clean Air Act as attainment or unclassifiable. The provisions of this part do not apply to hazardous air pollutants under this section.

502 Initial Classification

All areas on the [Reservation/Rancheria] that are designated as attainment or unclassifiable pursuant to this section and section 107 of the Clean Air Act shall be class II areas, as defined under Part C of Title I of the Clean Air Act, unless reclassified under this section.

503 Increments and Ceilings

- A. Sulfur Oxide and Particulate Matter: Each applicable implementation plan shall contain measures ensuring that maximum allowable increases over baseline concentrations of, and maximum allowable concentrations of, sulfur dioxide and particulate matter shall not be exceeded. The maximum allowable increases and concentrations and provisions affecting those increases and concentrations are specified in sections 163 and 165(d) of the Clean Air Act and the regulations hereunder.
- B. Other Pollutants: In the case of nitrogen oxides, each applicable implementation plan shall contain measures ensuring compliance with the maximum allowable increases set forth at 40 C.F.R. § 51.166. With respect to any air pollutant for which a NAAQS is established, other than sulfur oxides or particulate matter, an area classification plan shall not be required if the implementation plan adopted by the Tribe and submitted for the USEPA Administrator's approval or promulgated by the Administrator of the USEPA under section 110(c) of the Clean Air Act contains other provisions that, when considered as a whole, the Administrator of the USEPA finds will carry out the purposes in section 110 of the Clean Air Act at least as effectively as an area classification plan for such pollutant.

504 Area Reclassification

- A. Authority to Reclassify Areas: The [name of Tribal agency], upon approval of [name of Tribe's governing body], may reclassify such areas as it deems appropriate as class I areas. An area may be reclassified as class III if:

1. such reclassification will not cause or contribute to concentrations of any air pollutant which exceed any maximum allowable increase or maximum allowable concentration permitted under the classification of any other area; and
2. such reclassification otherwise meets the requirements of this part.

COMMENTARY

The Tribe may want to reclassify areas that are Class II or Class III under the State program to Class I if such areas are of special cultural significance to the Tribe and emissions could cause harm to these areas.

B. Notice and Hearing; Disapproval of Administrator of the USEPA

1. Prior to reclassification of any area under this part, notice shall be afforded and public hearings shall be conducted in areas proposed to be reclassified and in areas which may be affected by the proposed reclassification. Prior to any such public hearing, a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed reclassification shall be prepared and made available for public inspection, and prior to any such reclassification the description and analysis of such effects shall be reviewed and examined by the [name of Tribe's governing body].
2. Prior to the issuance of notice under this section respecting the reclassification of any area under this subsection if such area includes any federal lands, the [name of Tribal official] shall provide for written notice to be given to the appropriate federal land manager and afford adequate opportunity (but not in excess of sixty (60) days) to confer with the [name of Tribal official] and to submit written comments and recommendations with respect to the intended notice of reclassification. In reclassifying any area under this section with respect to which any federal land manager has submitted written comments and recommendations, the [name of Tribal official] shall publish a list of any inconsistency between such reclassification and such recommendations and an explanation of such inconsistency (together with the reasons for making such reclassification against the recommendation of the federal land manager).
3. Any reclassification is subject to disapproval by the Administrator of the

USEPA pursuant to section 164(b)(2) of the Clean Air Act.

- C. Resolution of Disputes Between the Tribe and Other Indian Tribes or States: If any state or tribe is affected by the reclassification of an area or issuance of a construction permit by the Tribe disagrees with such reclassification or permit, the [name of Tribal agency] shall enter into negotiations with the representative of such governor or other Indian governing body to attempt to resolve such dispute. If the parties are unable to reach an agreement, the [name of Tribal agency] shall request the USEPA Administrator's involvement pursuant to section 164(e) of the Clean Air Act.

505 Preconstruction Requirements

- A. Major Emitting Facilities on Which Construction Is Commenced: No major emitting facility on which construction is commenced after [date of enactment of Ordinance] may be constructed in any area to which this Ordinance applies unless--
1. a permit has been issued for such proposed facility in accordance with this Ordinance setting forth emission limitations for such facility which conform to the requirements of this Ordinance;
 2. the proposed permit has been subject to a review in accordance with this Ordinance, the required analysis has been conducted in accordance with regulations promulgated by the Administrator of the USEPA, and a public hearing has been held with opportunity for interested persons including representatives of the Administrator of the USEPA to appear and submit written or oral presentations on the air quality impact of such source, alternatives to the proposed construction, control technology requirements, and other appropriate considerations;
 3. the owner or operator of such facility demonstrates, as required pursuant to section 110(j) of the Clean Air Act, that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (a) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this Ordinance applies more than one time per year, (b) national ambient air quality standard in any air quality control region, or (c) any other applicable emission standard or standard of performance under this Ordinance;
 4. the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this Ordinance that is emitted from or results from such facility;

5. the proposed facility has complied with the provisions of Ordinance with respect to protection of class I areas, where applicable;
 6. there has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility;
 7. the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this part agrees to conduct monitoring necessary to determine the effect that emissions from the facility may have, or are having, on air quality in any area that may be affected by such emissions; and
 8. in the case of proposed construction in a class III area of a facility with emissions that would cause or contribute to exceeding the maximum allowable increments applicable in a class II area and where no standard under section 111 of the Clean Air Act been promulgated for such source category, the Administrator of the USEPA has approved the determination of best available technology as set forth in the permit.
- B. Permit Applications: Any completed permit application for a major emitting facility shall be granted or denied not later than one (1) year after the date of filing of such completed application.
- C. Action Taken on Permit Applications; Notice; Adverse Impact on Air Quality-Related Values; Variance; Emission Limitations
1. The [name of Tribal agency] shall transmit to the Administrator of the USEPA a copy of each permit application relating to a major emitting facility that it receives and provide notice to the Administrator of the USEPA of every action related to the consideration of such permit. The Administrator of the USEPA will provide notice of the permit application to the federal land manager and the federal official directly responsible for management of any lands within a class I area that may be affected by emissions from the proposed facility pursuant to the requirements of section 165(d)(2) of the Clean Air Act.
 - a. In any case where the federal official charged with direct responsibility for management of any lands within a class I area, or the federal land manager of such lands, or the Administrator of the USEPA, or the governor of an adjacent state or governing body of a

nearby tribe containing such a class I area files a notice alleging that emissions from a proposed major emitting facility may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change, a permit shall not be issued unless the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur dioxide will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area.

- b. In any case where the federal land manager demonstrates to the satisfaction of the [name of Tribal agency] that the emissions from such facility will have an adverse impact on the air quality-related values (including visibility) of such lands, notwithstanding the fact that the change in air quality resulting from emissions from such facility will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area, a permit shall not be issued.
- c. In any case where the owner or operator of such facility demonstrates to the satisfaction of the federal land manager, and the federal land manager so certifies, that the emissions from such facility will have no adverse impact on the air quality-related values of such lands (including visibility), notwithstanding the fact that the change in air quality resulting from emissions from such facility will cause or contribute to concentrations which exceed the maximum allowable increases for class I areas, the [name of Tribal agency] may issue a permit.
- d. In the case of a permit issued pursuant to paragraph (c), the facility shall comply with such emission limitations under the permit as may be necessary to assure that emissions of sulfur oxides and particulates from the facility will not cause or contribute to concentrations of such pollutant which exceed the maximum allowable increases over the baseline concentration for such pollutants as prescribed in section 165(d)(2)(C)(iv) of the Clean Air Act and the regulations hereunder.
- e. In any case where the owner or operator of a proposed major emitting facility who has been denied a certification under paragraph (c) demonstrates to the satisfaction of the [name of Tribal official], after notice and public hearing, and the [name of Tribal official] finds, that the facility cannot be constructed by reason of any maximum

allowable increase for sulfur dioxide for periods of twenty- four (24) hours or less applicable to any class I area, the [name of Tribal official], after consideration of the federal land manager's recommendation (if any) and subject to his/her concurrence, may grant a variance from such maximum allowable increase. If such variance is granted, a permit may be issued to such source pursuant to the requirements of this subparagraph.

- f. In any case in which the [name of Tribal official] recommends a variance under this subsection in which the federal land manager does not concur, the recommendations of the [name of Tribal official] and the federal land manager shall be transmitted to the President of the United States, according to the provisions of section 165(d)(2)(D)(ii) of the Clean Air Act.
- g. In the case of a permit issued pursuant to paragraphs (e) and (f), the facility shall comply with such emission limitations under the permit as may be necessary to assure that emissions of sulfur oxides from such facility will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which exceed the maximum allowable increases for such areas over the baseline concentration of such pollutant, as prescribed in section 165(d)(2)(D)(iii) of the Clean Air Act and the regulations hereunder, and to assure that such emissions will not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less on more than eighteen (18) days during any annual period.

D. Analysis; Continuous Air Quality Monitoring Data; Regulations; Model Adjustments

- 1. The review provided for in subsection (A) of this section shall be preceded by an analysis in accordance with regulations of the Administrator of the USEPA, promulgated under section 165 of the Clean Air Act, which shall be conducted by the major emitting facility applying for such permit of the ambient air quality at the proposed site and in areas which may be affected by emissions from the proposed facility for each pollutant subject to regulations under this Ordinance which will be emitted from such facility.
- 2. The analysis required by this subsection shall include continuous air quality monitoring data gathered for purposes of determining whether emissions

from the proposed facility will exceed the maximum allowable increases or the maximum allowable concentration permitted under this part. Such data shall be gathered over a period of one (1) calendar year preceding the date of application for a permit under this part unless the [name of Tribal agency] in accordance with regulations promulgated by the Administrator of the USEPA, determines that a complete and adequate analysis for such purposes may be accomplished in a shorter period. The results of such analysis shall be available at the time of the public hearing on the application for such permit.

506 Air Pollution Emergencies Endangering Public Health

- (A) Whenever the [name of Tribal Agency] shall determine, after investigation, that any person is either engaging in any activity involving significant risk of air contamination or is discharging or causing to be discharged into the atmosphere, directly or indirectly, any air contaminant and such activity or discharge constitutes a clear, present and immediate danger to the health of the public, or that any such activity or discharge of air contaminants, if permitted to continue unabated, will result in a condition of clear, present and immediate danger to the health of the public, the [name of Tribal Agency] shall:
- (1) Issue a written cease and desist order to said person requiring immediate discontinuance of such activity or discharge of such contaminant into the atmosphere, and upon receipt of such order, such person shall immediately discontinue such activity or discharge; or
 - (2) Apply to the [name of Tribal Court] of the Tribe for a temporary restraining order, preliminary injunction or permanent injunction as provided for in this Ordinance or the Tribe's laws of civil procedure; or
 - (3) Both issue such a cease and desist order and apply for such restraining order or injunction.

Section 6 Protection of Visibility

601 Visibility Protection for Federal Class I Areas

- A. Plan Requirements: In the case of an area listed by the Administrator of the USEPA under section 169A(a)(2) of the Clean Air Act that is located within the [Reservation/Rancheria] or that could reasonably be anticipated to have impaired visibility due in part or in whole to emissions coming from within the

[Reservation/Rancheria], each applicable tribal implementation plan under this section shall contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal of preventing any future and remedying any existing impairment of visibility due to man-made air pollution in mandatory class I federal areas. Such provisions shall include--

1. except as otherwise provided pursuant to section 169A(c) of the Clean Air Act, regarding exemptions, a requirement that each major stationary source that was in existence on August 7, 1977, but was not in operation for more than fifteen years prior to such date, and that, as determined by the [name of Tribal agency] (or the Administrator of the USEPA in the case of a federal implementation plan under section 110(c) of the Clean Air Act), emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area, shall procure, install, and operate, as expeditiously as practicable (and maintain thereafter) the best available retrofit technology, as determined by the [name of Tribal agency] or the Administrator of the USEPA, as the case may be, for controlling emissions from such source for the purpose of eliminating or reducing any such impairment; and
2. A long-term (ten-to-fifteen year) strategy for making reasonable progress toward meeting the national goal specified herein and in section 169A(a)(1) of the Clean Air Act.

The [name of Tribal agency] shall make such determinations in accordance with regulations and guidelines promulgated by the Administrator of the USEPA pursuant to section 169A of the Clean Air Act.

- B. Consultations with Appropriate Federal Managers: Before holding the public hearing required on a proposed promulgation of or revision to an applicable implementation plan to meet the requirements of this section, the [name of Tribal agency] shall consult in person with the appropriate federal land manager or managers and shall include a summary of the conclusions and recommendations of the federal land managers in the notice to the public.

602 Visibility Transport Regions and Commissions

- A. Visibility Transport Regions: The [name of Tribal official], in conjunction with at least one other tribe or state, may petition the Administrator of the USEPA for a determination that current or projected transport of air pollutants from the Tribe or

from one or more other tribes or states contributes significantly to visibility impairment in class I areas located on the [Reservation/Rancheria] or in the other affected tribes or states and that a transport region for such pollutants that includes the Tribe and such other tribes or states should be established. The [name of Tribal official] may also petition the Administrator of the USEPA to add or remove any state or tribe or portion thereof to a visibility transport region.

- B. Visibility Transport Commissions: The [name of Tribal official] or his/her designee may be a member of a visibility transport commission established by the Administrator of the USEPA pursuant to section 169B of the Clean Air Act, and as such shall participate in all activities required under that section.

COMMENTARY
<p>A “visibility transport commission” assesses the adverse impacts on visibility from potential or projected growth in emissions from sources located in a federally-designated “Visibility Transport Region” under section 169B of the Clean Air Act.</p> <p>A “Visibility Transport Region” may be established by the USEPA when either the Administrator of the USEPA or the leaders (governors or tribal leaders) in at least two affected states has reason to believe that the current or projected interstate transport of air pollutants from one or more states contributes significantly to visibility impairment in a Class I area located in those states.</p>

Section 7 New Source Performance Standards

701 Implementation and Enforcement of Standards of Performance

- A. Implementation and Enforcement by [name of Tribal agency]: The [name of Tribal agency] may develop and submit to the Administrator of the USEPA a procedure for implementing and enforcing standards of performance for new sources located on the [Reservation/Rancheria]. The [name of Tribal agency] is authorized under the Clean Air Act to implement and enforce such standards upon delegation of such authority from the Administrator of the USEPA.
- B. Standards of Performance for Existing Sources: The [name of Tribal agency] may submit to the Administrator of the USEPA a plan that:
1. establishes standards of performance for any existing source for any air pollutant--

- a. for which air quality criteria have not been issued or that is not included on a list published under section 108 of the Clean Air Act or emitted from a source category that is regulated under section 112 of the Clean Air Act but
 - b. to which a standard of performance under section 111 of the Clean Air Act would apply if such existing source were a new source, and
2. provides for the implementation and enforcement of such standards of performance.

In applying a standard of performance for any particular source under a plan submitted under this paragraph, the [name of Tribal agency] may take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

C. Solid Waste Incineration Units

1. If existing solid waste incineration units of a category for which the Administrator of the USEPA has promulgated guidelines are operating within the [Reservation/Rancheria], the [name of Tribal agency] may submit to the Administrator of the USEPA for approval, pursuant to section 129(b)(2) of the Clean Air Act, a plan to implement and enforce the guidelines. The plan shall be at least as protective as the guidelines and shall provide that each unit subject to the guidelines shall be in compliance with all requirements of section 129 of the Clean Air Act within three (3) years of the date that the plan is approved by the Administrator of the USEPA. The [name of Tribal agency] may modify and resubmit a plan that has been disapproved.
2. The [name of Tribal agency] may implement a model program for the training of solid waste incineration unit operators if the [name of Tribal agency] has adopted a program that is at least as effective as the model program developed by the Administrator of the USEPA under section 129(d) of the Clean Air Act and has been authorized to do so by the Administrator of the USEPA.
3. Each solid waste incinerator unit within the [Reservation/Rancheria] in a category for which the Administrator of the USEPA has promulgated performance standards under sections 111 or 129 of the Clean Air Act shall operate pursuant to a permit issued under this section if the Tribe as an approved permit program for such source. Such permits may be renewed

according to the provisions of this section. Notwithstanding any other provision of this section, each permit for a solid waste incineration unit that combusts municipal waste shall be issued for a period of up to twelve (12) years and shall be review every five (5) years from the date of issuance or reissuance.

- D. Prohibited Acts: It shall be unlawful for any owner or operator of any new source (or any existing source for which standards of performance are established pursuant to subsection (B) of this section) or any new or existing solid waste incineration unit to operate such source in violation of any standard of performance applicable to such source, as prescribed by the Administrator of the USEPA pursuant to sections 111 or 129 of the Clean Air Act and the regulations hereunder and by the [name of Tribal agency] pursuant to this section and the regulations hereunder.
- E. Revision of Regulations: The [name of Tribal agency], with the approval of the [name of Tribal official], may submit an application to the Administrator of the USEPA for revision of the regulations promulgated under section III (f)(1) of the Clean Air Act. The application shall demonstrate that:
1. the Administrator of the USEPA has failed to specify in regulations under section 111(f)(1) of the Clean Air Act any category of major stationary sources required to be specified under such regulations;
 2. the Administrator of the USEPA has failed to include in the list under section 111(b)(1)(A) of the Clean Air Act any category of stationary sources that contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (notwithstanding that such category is not a category of major stationary sources);
 3. the Administrator of the USEPA has failed to apply properly the criteria required to be considered under section 111(f)(2) of the Clean Air Act; or
 4. a new, innovative or improved technology or process that achieves greater continuous emission reduction has been adequately demonstrated for any category of stationary sources and, as a result, the new source standard of performance in effect for such category no longer reflects the greatest degree of emission limitation achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) has been adequately demonstrated.

Section 8 Provisions for Nonattainment Areas and New Source Review

801 Nonattainment Plan Provisions

- A. Plan Submissions: With respect to any area within the [Reservation/Rancheria] that the Administrator of the USEPA designates as nonattainment for any NAAQS, pursuant to section 107 of the Clean Air Act, the [name of Tribal agency] may submit a plan or plan revision meeting the applicable requirements prescribed in sections 110(a)(2) and 172(c) of the Clean Air Act and in this section and in the regulations promulgated hereunder.
- B. Plan Provisions: The plan shall provide for attainment of the national primary ambient air quality standards and shall also contain the following provisions:
1. A requirement for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology);
 2. A requirement for reasonable further progress;
 3. A comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator of the USEPA may determine necessary to assure that the requirements of this part are met;
 4. An identification and quantification of the emissions, if any, of any such pollutant or pollutants which will be allowed, in accordance with section 214(A)(1)(b) of this Ordinance, from the construction and operation of major new or modified stationary sources in each such area. The plan shall demonstrate to the satisfaction of the Administrator of the USEPA that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable national ambient air quality standard by the applicable attainment date;
 5. A requirement for permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 214 of this Ordinance;

6. Enforceable emission limitations and such other control measures, means or techniques (including economic incentives such as fees, marketable permits and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date specified by the Administrator of the USEPA pursuant to regulations issued under section 172(a)(2) and (b) of the Clean Air Act, as modified for Indian tribes by regulations issued under section 301(d) of the Clean Air Act. The [name of Tribal agency] may apply to the Administrator of the USEPA for the use of equivalent modeling, emission inventory and planning procedures, if the proposed techniques are, in the aggregate, at least as effective as the methods specified by the Administrator of the USEPA; and
 7. A requirement for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress or to attain the national primary ambient air quality standard by the applicable attainment date. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the [name of Tribal agency] or the Administrator of the USEPA.
- C. Plan Revisions in Response to Finding of Plan Inadequacy: Any plan revision for a nonattainment area which is submitted in response to a finding by the Administrator of the USEPA pursuant to section 110(k)(5) of the Clean Air Act must correct the plan deficiencies specified by the Administrator of the USEPA and meet all other applicable plan requirements of section 202 of this Ordinance and this part.
- D. Planning Procedures: For any ozone, carbon monoxide, or PM-10 nonattainment area for which the [name of Tribal agency] intends to submit a plan, the [name of Tribal agency] shall develop planning procedures pursuant to this subsection. The organization preparing the plan shall be certified by the [name of Tribal agency]. In the case of a nonattainment area that is also included within another tribe or state, the Tribe may jointly with the other tribes or states, through intergovernmental agreement or otherwise, undertake and implement all or part of the planning procedures described in this subsection.
- E. Maintenance Plans: If the [name of Tribal agency] submits a request for redesignation of a nonattainment area as an area that has attained the national primary ambient air quality standard for any air pollutant, the [name of Tribal agency] shall also submit a revision of the applicable implementation plan to provide for the maintenance of the standard for such air pollutant in the area concerned for at least ten (10) years after the redesignation. The plan shall contain such additional

measures, if any, as may be necessary to ensure such maintenance. Until a plan revision is approved and an area is redesignated as attainment, the requirements of this part shall continue in force and effect with respect to such area. Moreover, eight (8) years after redesignation of any area as an attainment area under section 107(d) of the Clean Air Act, the [name of Tribal agency] shall submit to the Administrator of the USEPA an additional revision of the applicable implementation plan for maintaining the standard for an additional ten (10) years after the expiration of the 100 year period referred to above.

- F. Contingency Provisions: Each plan revision submitted under this section shall contain such contingency provisions as the Administrator of the USEPA deems necessary to assure that the [name of Tribal agency] will promptly correct any violation of the standard that occurs after the redesignation of the areas as an attainment area. Such provisions shall include a requirement that the [name of Tribal agency] implement all measures with respect to the control of the air pollutant concerned that were contained in the implementation plan for the area before redesignation as an attainment area. The failure of an area to maintain the NAAQS concerned shall not result in a requirement that the [name of Tribal agency] revise the implementation plan unless the Administrator of the USEPA requires the [name of Tribal agency] to do so.
- G. Interstate Transport Commissions: **[OPTIONAL PROVISION]** The [name of Tribal official] may petition the Administrator of the USEPA to establish an interstate transport commission under section 176A of the Clean Air Act and to add or remove the Tribe or any other tribe or state or portion thereof to or from any such commission established under that section.

802 Additional Provisions for Nonattainment Areas for Specific Pollutants

In the event any area of the [Reservation/Rancheria] is designated nonattainment for any pollutant for which a NAAQS has been promulgated by the Administrator of the USEPA, the relevant provisions of sections 181 through 192 of the Clean Air Act pertaining to that pollutant and of the regulations hereunder shall apply, to the extent such provisions are applicable to the Tribe and as modified by regulations promulgated by the Administrator of the USEPA under section 301(d) of the Clean Air Act.

803 Permit Requirements

- A. General Requirements: The [name of Tribal agency] may issue permits to construct and operate a proposed new or modified major stationary source if--

1. the [name of Tribal agency] determines, in accordance with regulations issued under section 173 of the Clean Air Act and under this section, that:
 - a. by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained such that total allowable emissions from existing sources in the region, from new or modified sources that are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources prior to the application for such permit to construct or modify so as to represent, when considered together with the plan provisions required under this Ordinance, reasonable further progress; or
 - b. in the case of a new or modified major stationary source that is located in a zone (within the nonattainment area) identified by the Administrator of the USEPA as a zone to which economic-development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emission levels that exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under this Ordinance and section 172(c) of the Clean Air Act;
2. the proposed source is required to comply with the lowest achievable emission rate;
3. the owner or operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) on the [Reservation/Rancheria] are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this Ordinance;
4. the Administrator of the USEPA has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified; and
5. an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification. Any

emission reductions required as a precondition to the issuance of a permit shall be federally enforceable before such permit may be issued.

B. Offsets

1. The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this Ordinance and Part D of Title I of the Clean Air Act for increased emissions of any air pollutant only by obtaining emission reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the [name of Tribal agency] may allow the owner or operator to obtain such emission reductions in another nonattainment area if (a) the other area has an equal or higher nonattainment classification than the area in which the source is located, and (b) emissions from such other area contribute to a violation of the NAAQS in the nonattainment area in which the source is located. Such emission reductions shall be in effect and enforceable by the time a new or modified source commences operation, and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.
2. Emission reductions otherwise required by this Ordinance or by the Clean Air Act shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by this Ordinance shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of paragraph (1).

COMMENTARY

In non-attainment areas, emissions from new or modified sources must be offset by reductions in emissions from existing sources.

- C. Control Technology Information: The [name of Tribal agency] shall provide that control technology information from permits issued under this section will be promptly submitted to the Administrator of the USEPA for purposes of making such information available through the Reasonably Available Control Technology (RACT)/ Best Available Control Technology (BACT)/Lowest Achievable Emission Rate (LAER) clearinghouse to other tribes and states and to the general public.

COMMENTARY

“RACT,” or Reasonably Available Control Technology, is required on existing sources in areas that are not meeting national ambient air quality standards (i.e., non-attainment areas).

BACT, or Best Available Control Technology, is required on major new or modified sources in clean areas (i.e., attainment areas).

LAER, or Lowest Achievable Emission Rate, is required on major new or modified sources in non-attainment areas.

The New Source Review Clearinghouse (RBLC) is a database that contains information distilled from early notification submittals and air permits received from state and local (including tribal) pollution control programs. The website also contains summary information on air pollution emission standards. The data assists state and local agency personnel and private companies in determining what types of controls and pollution prevention measures have been applied to and/or are required for various sources and the effectiveness of these technologies. (See “www.epa.gov/ttn/catc/rblc” for more information on the Clearinghouse.)

Section 9 Control of Hazardous Air Pollutants

901 Control of Hazardous Air Pollutants

- A. In General: The [name of Tribal agency] may develop and submit to the Administrator of the USEPA for approval a program for the implementation and enforcement of emission standards and other requirements for hazardous air pollutants pursuant to section 112 of the Clean Air Act or requirements for the prevention and mitigation of accidental releases pursuant to section 112(r) of the Clean Air Act, or both. The program may provide for partial or complete delegation of the USEPA Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements.
- B. Tribal Standards: As part of the program developed under subsection (A) of this section, the [name of Tribal agency] may adopt and enforce regulations, requirements, limitations or standards that are more stringent than those in effect under section 112 of the Clean Air Act or that apply to a substance that is not subject to section 112 of the Clean Air Act, pursuant to this Ordinance. Any standards set by the [name of Tribal agency] shall be at least as stringent as those promulgated by the

Administrator of the USEPA.

COMMENTARY

The Clean Air Act establishes emission standards for specific hazardous air pollutants, including asbestos, beryllium, mercury and vinyl chloride. It also establishes specific emissions standards for industrial sources, which are divided into two categories: 1) existing source performance standards; and 2) new source performance standards (42 U.S.C. §7411).

902 List of Hazardous Air Pollutants

- A. Contents of List: The hazardous air pollutants that are subject to regulation under this part shall consist of:
1. the federally listed hazardous air pollutants, as listed in section 112 of the Clean Air Act;
 2. hazardous air pollutants that are designated by the [name of Tribal agency], pursuant to subsection (b) of this section.
- B. Designation of Hazardous Air Pollutants: The [name of Tribal agency] may, by regulation, designate hazardous air pollutants in addition to the federally listed hazardous air pollutants if the [name of Tribal agency] finds that the pollutants present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects or adverse environmental effects, whether through ambient concentration, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under section 112(r) of the Clean Air Act. The [name of Tribal agency] shall rely on technical protocols appropriate for the development of a list of hazardous air pollutants and shall base any designation on credible medical and toxicological evidence that has been subjected to peer review. The [name of Tribal agency] shall not include any air pollutant that is listed under section 108 of the Clean Air Act, except that it may include a pollutant that independently meets the listing criteria of this subsection and is a precursor to a pollutant listed under section 108(a) or to any pollutant in a class of pollutants listed under that section. An adequate and reliable methodology must exist for quantifying emissions and ambient concentrations of a pollutant before that pollutant may be listed under this subsection. The [name of Tribal agency] shall not list elemental lead as a hazardous air pollutant under this subsection.

COMMENTARY

“Bioaccumulation” means the build up concentrations of hazardous air pollutants in plants, animals, soil, water, etc.

- C. Review of List: The [name of Tribal agency] shall periodically review the list of hazardous air pollutants that are designated pursuant to subsection (B) of this section and, where appropriate, shall revise such list by rule, adding or deleting substances as warranted. A current list of all hazardous air pollutants designated pursuant to subsection (B) of this section shall be kept on file at the [name of Tribal agency] office and shall be available for examination by the public during regular business hours.
- D. Petitions to Modify List: Any person may petition the [name of Tribal agency] to modify the list of hazardous air pollutants under this Ordinance by adding or deleting substances. The petition must include a showing that there is adequate data on the health or environmental effects of the pollutant or other evidence adequate to support the petition. The [name of Tribal agency] shall commence a rulemaking pursuant to this Ordinance within six (6) months of receipt of the petition.

903 List of Source Categories

- A. Contents of List: The categories and subcategories of major sources and area sources of hazardous air pollutants listed under this Ordinance shall consist of:
1. source categories listed by the Administrator of the USEPA pursuant to section 112(c) of the Clean Air Act; and
 2. categories and subcategories of sources that emit the hazardous air pollutants designated by the [name of Tribal agency] pursuant to this Ordinance.
 3. The [name of Tribal agency] may list a major source or area source category under this Ordinance if the [name of Tribal agency] finds, through rulemaking pursuant to this Ordinance, that emissions of hazardous air pollutants from that category present a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section. The [name of Tribal agency] shall periodically review the list of hazardous air pollutants that are designated pursuant to this Ordinance and, where appropriate, shall revise such list by rule, adding or deleting substances as warranted.

- B. Petitions to Modify List: Any person may petition the [name of Tribal agency] to modify the list of source categories under this Ordinance by adding or deleting categories. The petition must include a showing as to the lifetime risk of cancer to the most exposed individual in the affected population caused by the hazardous air pollutants emitted from such source category, the extent to which hazardous air pollutants emitted from such source category exceed or do not exceed a level which is adequate to protect public health with an ample margin of safety, the degree to which adverse environmental effects will or will not result from hazardous air pollutants emitted from such source category, or other evidence adequate to support the petition. The [name of Tribal agency] shall commence a rulemaking pursuant to this Ordinance within six (6) months of receipt of the petition to add or delete the source category from the list.

904 Emission Standards

- A. In General: The [name of Tribal agency] shall adopt the standards promulgated by the Administrator of the USEPA pursuant to section 112(d), (e)(5), (f) and (n) of the Clean Air Act and, in addition, shall promulgate regulations establishing emissions standards for each category or subcategory listed by the [name of Tribal agency]. The [name of Tribal agency] may distinguish among classes, types and sizes of sources within a category or subcategory in establishing such standards. Notwithstanding the first sentence of this subsection, the [name of Tribal agency] may adopt more stringent standards than those promulgated by the Administrator of the USEPA, except in the case of emissions of radionuclides from facilities licensed by the U.S. Nuclear Regulatory Commission. The [name of Tribal agency] shall comply with section 112(n)(4) of the Clean Air Act with respect to the non-aggregation of emissions from oil and natural gas facilities and pipelines. Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with 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, except as provided by regulation promulgated by the [name of Tribal agency], and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this part, except as provided by regulation promulgated by the [name of Tribal agency].
- B. Criteria: Emissions standards promulgated by the [name of Tribal agency] under this section shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this part (including a prohibition on such emissions, where

achievable) that the [name of Tribal agency], taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures that-

1. reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;
2. enclose systems or processes to eliminate emissions,
3. collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,

COMMENTARY

“Fugitive” refers to an uncontrolled or uncontrollable emissions source, as in an accidental emission or one that has escaped.

4. are design, equipment, work practice or operational standards (including requirements for operator training or certification), as provided in section 112(h) of the Clean Air Act, or
 5. are a combination of the above.
- C. New and Existing Sources: The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the [name of Tribal agency].
- D. Compliance : For those standards promulgated by the Administrator of the USEPA that the [name of Tribal agency] adopts pursuant to this Ordinance, the [name of Tribal agency] shall also adopt the same compliance dates. The [name of Tribal agency] shall establish compliance dates for each category or subcategory of existing sources for which the [name of Tribal agency] promulgates emissions standards under this section. These dates shall provide for compliance as expeditiously as practicable, but not until ninety (90) days after the effective date of the standard, and no later than two (2) years after the effective date of such standard.

905 Hazardous Air Pollutant Permit Program

- A. In General: Permits issued to sources of hazardous air pollutants covered under this Ordinance shall be issued pursuant to the relevant provisions of this Ordinance and subject to the requirements and conditions contained within this section.

- B. Construction, Reconstruction and Modifications: After the effective date of the permit program, no person may obtain a permit or permit revision to modify, construct or reconstruct a major source of hazardous air pollutants or area source in a category listed under this Ordinance unless the [name of Tribal agency] determines that the appropriate maximum achievable control technology emission limitation under this part will be met. In the case of modifications, the appropriate emission limitation shall be that for existing sources; in the case of construction or reconstruction, for new sources, determined pursuant to this Ordinance. In both cases, where the Administrator of the USEPA or the [name of Tribal agency], as the case may be, has not established applicable emission limitations, the [name of Tribal agency] shall make such determination on a case-by-case basis.

- C. Exemption from Definition of Modification: A physical change in a source or change in the method of operation of a source that results in a greater than de minimis increase in actual emissions of a hazardous air pollutant shall not be considered a modification if such increase in the quantity of actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant or pollutants from such source that is deemed more hazardous, pursuant to guidance issued by the Administrator of the USEPA under section 112(g)(1)(B) of the Clean Air Act. The owner or operator of such source shall submit a showing to the [name of Tribal agency] that such increase has been offset under this subsection.

COMMENTARY
The term “de minimis” means insignificant.

- D. Schedule for Compliance: Once the Tribe has an approved permit program--
 - 1. After the effective date of any emission standard, limitation, or regulation under section 112(d), (f) or (h) of the Clean Air Act or under this Ordinance, no person may construct any new major source or area source or reconstruct any existing major source or area source subject to such emission standard, regulation or limitation unless the [name of Tribal agency] determines that

such source, if properly constructed or reconstructed and operated, will comply with the standard, regulation or limitation.

2. Notwithstanding paragraph (1), a new source that commences construction or reconstruction after an applicable standard, limitation or regulation is proposed and before such standard, limitation or regulation is promulgated shall not be required to comply with such promulgated standard until the date three (3) years after the date of promulgation if--
 - a. The promulgated standard, limitation or regulation is more stringent than the standard, limitation or regulation proposed; and
 - b. The source complies with the standard, limitation or regulation as proposed during the three (3) year period immediately after promulgation.
3. After the effective date of any emissions standard, limitation or regulation promulgated under section 112(d), (f) or (h) of the Clean Air Act or under this Ordinance and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the source shall comply with the emissions standard, limitation or regulation by the date set by the Administrator of the USEPA, pursuant to section 112(i) of the Clean Air Act, or by the [name of Tribal agency], pursuant to this section or other sections of this Ordinance, as the case may be.
4. The [name of Tribal agency] may issue a permit that grants an extension permitting an existing source up to one (1) additional year to comply with standards under section 112(d) of the Clean Air Act or this section if such additional period is necessary for the installation of controls.
5. If the owner or operator of an existing source demonstrates that the source has achieved a reduction of at least 90% in emissions of hazardous air pollutants (at least 95% in the case of hazardous air pollutants that are particulates) before the otherwise applicable standard under section 112(d) of the Clean Air Act or this Ordinance is first proposed, the [name of Tribal agency] shall issue a permit allowing the source to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under section 112(d) of the Clean Air Act or of this Ordinance. The permit shall provide for an extension of six (6) years from the compliance date for the otherwise applicable standard. The [name of Tribal

Agency] may, through regulations, require greater reductions than those specified in this paragraph as a condition of granting this extension. The reduction shall be determined according to the provisions of section 112(i)(5)(C) of the Clean Air Act and the regulations hereunder.

6. The reduction in paragraph (5) shall be determined with respect to verifiable and actual emissions in a base year not earlier than calendar year [year], provided that there is no evidence that emissions in the base year are artificially or substantially greater than emissions in other years prior to implementation of emission reduction measures.
7. For each source granted an alternative emission limitation under paragraph (5) above, the permit shall establish an enforceable emission limitation for hazardous air pollutants reflecting the reduction which qualifies the source for an alternative emission limitation under paragraph (5). An alternative emission limitation shall not be available with respect to standards or requirements promulgated pursuant to section 112(f) of the Clean Air Act.

E. Equivalent Emission Limitation Permit: Once the Tribe has an approved permit program under this Ordinance--

1. If the Administrator of the USEPA fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to section 112(e)(1) and (3) of the Clean Air Act, then beginning eighteen (18) months after that date (but not prior to the effective date of the Tribal permit program), the owner or operator of any major source in such category or subcategory shall submit a permit application to the [name of Tribal agency], pursuant to requirements established by the Administrator of the USEPA under section 112(j) of the Clean Air Act. If the owner or operator has submitted a timely and complete application for a permit, any failure to have a permit shall not be a violation of this requirement, unless the delay in final action is due to the failure of the applicant to timely submit information required or requested to process the application.
2. Permit applications submitted under this subsection shall be reviewed and approved or disapproved according to the provisions of this Ordinance. If the [name of Tribal agency] disapproves a permit application or determines that the application is incomplete, the applicant shall have up to six (6) months to revise the application to meet the objections of the [name of Tribal agency].
3. The permit shall contain emission limitations for the hazardous air pollutants

subject to regulation under this section and emitted by the source that the [name of Tribal agency] determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under section 112(d) of the Clean Air Act. In the alternative, if the applicable criteria are met, the permit may contain an emissions limitation established according to the provisions of this section. For these purposes, the reduction required by this section shall be achieved by the date on which the relevant standard should have been promulgated under section 112(d) of the Clean Air Act. No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and as expeditiously as practicable but no later than three (3) years after the permit is issued for existing sources, or such other compliance date as would apply under this section.

4. If the Administrator of the USEPA promulgates an emission standard that is applicable to the major source prior to the date on which a permit application is approved, the emission limitation in the permit shall reflect the promulgated standard rather than the emission limitation determined pursuant to paragraph (3), provided that the source shall have the compliance period provided under this section. If the Administrator of the USEPA promulgates a standard under section 112(d) of the Clean Air Act that would be applicable to the source in lieu of the emission limitation established by permit under this subsection after the date on which the permit has been issued, the [name of Tribal agency] shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator of the USEPA, providing such source a reasonable time to comply but no longer than eight (8) years after such standard is promulgated or eight (8) years after the date on which the source is first required to comply with the emissions limitation established by paragraph (3), whichever is earlier.

Section 10 Acid Deposition Control [OPTIONAL PROVISION]

COMMENTARY
“Section 10 - Acid Deposition Control” corresponds to Title IV of the Clean Air Act, as amended in 1990. It focuses mainly on power generating facilities; therefore, if the Tribe does not have such a facility and does not anticipate having one on the Reservation or Rancheria in the future, then this section is probably not necessary.

1001 Acid Deposition Permits and Compliance Plans

A. Permit Program

1. The [name of Tribal agency] may submit a permit program for approval in accordance with Title IV of the Clean Air Act and this Ordinance to provide for permits for: new utility units required under section 403(e) of the Clean Air Act to have allowances; affected units or sources under section 405 of the Clean Air Act; and units subject to nitrogen oxide emission reductions under section 407 of the Clean Air Act.
2. Any permit issued by the [name of Tribal agency] shall prohibit:
 - a. annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that the owner or operator of the unit or designated representative of the owners or operators hold for the unit;
 - b. violations of applicable emissions rates;
 - c. the use of any allowance prior to the year for which it has allocated; and
 - d. contravention of any other provision of the permit.

Permits shall be issued for a period of (five) 5 years. No permit shall be issued that is inconsistent with the requirements of this section and Title IV of the Clean Air Act and the regulations hereunder, and with the applicable provisions of this Ordinance and Title V of the Clean Air Act and the regulations hereunder.

- B. Compliance Plans: Each affected source when submitting an initial permit application to the [name of Tribal agency] shall include a compliance plan for the source to comply with its requirements under Title IV of the Clean Air Act. Where an affected source consists of more than one affected unit, the compliance plan shall cover all such units, and for purposes of section 502(c) of the Clean Air Act the source shall be considered a "facility." Nothing in this section regarding compliance plans or in this Ordinance shall be construed as affecting allowances. Except as provided under section 408(c)(1)(B) of the Clean Air Act, submission of a statement by the owner or operator of a unit subject to the emissions limitation requirements of sections 405 and 407 of the Clean Air Act that the unit will meet the applicable emissions limitation requirements of such sections in a timely manner or that; in the case of the emissions limitation requirements of section 405 of the Clean Air Act, the owners and operators will hold allowances to emit not less than the total annual

emissions of the unit, shall be deemed to meet the compliance planning requirements of this section and Title V of the Clean Air Act, except that, for any unit that will meet the requirements of Title IV of the Clean Air Act by means of an alternative method of compliance authorized under sections 407(d) or (e), 409 or 410 of the Clean Air Act or this Ordinance, the proposed and approved compliance plan, permit application and permit shall include, pursuant to regulations promulgated by the Administrator of the USEPA, for each alternative method of compliance a comprehensive description of the schedule and means by which the unit will rely on one or more alternative methods of compliance in the manner and time authorized under Title IV of the Clean Air Act. Recordation by the Administrator of the USEPA of transfers of allowances shall amend automatically all applicable proposed or approved permit applications, compliance plans and permits. The [name of Tribal agency] may also require-

1. for a source, a demonstration of attainment of national ambient air quality standards, and
2. from the owner or operator of two or more affected sources, an integrated compliance plan providing an overall plan for achieving compliance at the affected sources.

C. Phase II Permits:

1. The owner or operator or the designated representative thereof of each affected source under section 405 of the Clean Air Act that is located within the [Reservation/Rancheria] shall submit a permit application and compliance plan for that source to the [name of Tribal agency] not later than [date].
2. Not later than [date] provided that the Tribe has an approved acid deposition control permit program, the [name of Tribal agency] shall issue permits to the owner, operator or designated representative thereof of affected sources under section 405 of the Clean Air Act that satisfy the requirements of this Ordinance and Title V of the Clean Air Act provided that the owner, operator or a designated representative has submitted to the [name of Tribal agency] a permit application and compliance plan pursuant to paragraph (1). The permit application and the compliance plan, including amendments thereto, shall be binding on the owner, operator or designated representative and shall be enforceable as a permit for purposes of this Ordinance until a permit is issued by the [name of Tribal agency] for the affected source.
3. The permit issued in accordance with this subsection for an affected source

shall provide that the affected units at the affected source may not emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that the owner or operator holds for the unit.

- D. New Units: The owner or operator of each source that includes a new utility unit that is located within the [Reservation/Rancheria] shall submit a permit application and compliance plan to the [name of Tribal agency] not later than two (2) years before [date], or the date on which the unit commences operation, whichever is later . The [name of Tribal agency] shall issue a permit to the owner, operator or designated representative of the unit that satisfies the requirements of this Ordinance and of Titles IV and V of the Clean Air Act.
- E. Units Subject to NO_x Emission Limitations: The owner or operator of any unit subject to an emission rate requirement under section 407 of the Clean Air Act and located within the [Reservation/Rancheria] shall submit a permit application and compliance plan for such unit to the [name of Tribal agency] not later than [date]. The [name of Tribal agency] shall issue a permit to the owner or operator that satisfies the requirements of Titles IV and V of the Clean Air Act and this Ordinance, including any appropriate monitoring and reporting requirements.
- F. Amendment of Application and Compliance Plan: At any time after the submission of an application and compliance plan under this section, the applicant may submit a revised application and compliance plan in accordance with the requirements of this section and the regulations hereunder. In considering any permit application and compliance plan under this section, the [name of Tribal agency] shall ensure coordination with the applicable electric ratemaking authority, in the case of regulated utilities, and with unregulated public utilities.
- G. Prohibition:
1. It shall be unlawful for an owner or operator, or designated representative thereof, required to submit a permit application or compliance plan under this part to fail to submit such application or plan in accordance with the requirements specified in this section or to otherwise fail to comply with regulations implementing this section.
 2. It shall be unlawful for any person to operate any source subject to this section except in compliance with the terms and requirements of a permit application and compliance plan (including amendments thereto) or permit issued by the [name of Tribal agency], provided that there is an approved Tribal acid deposition permit program.

3. In order to ensure reliability of electric power, nothing in this Ordinance shall be construed as requiring termination of operations of an electric utility steam generating unit for failure to have an approved permit or compliance plan, except that any such unit may be subject to the applicable enforcement provisions of this Ordinance.
- H. Certificate of Representation: No permit shall be issued under this section to an affected unit until the owner or operator has filed, with the Administrator of the USEPA and the [name of Tribal agency], a certificate of representation with regard to matters under Title IV of the Clean Air Act and this part, including the holding and distribution of allowances and the proceeds of transactions involving allowances. Such certificate shall comply with the requirements of section 408(i) of the Clean Air Act and the regulations hereunder, including where there are multiple holders of a legal or equitable title to, or a leasehold interest in, such a unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, as those terms are defined under Title IV of the Clean Air Act and the regulations hereunder.

1002 Special Provisions Related to Nitrogen Oxides

- A. Alternative Emission Limitations: Upon request by an owner or operator of a unit subject to section 407 of the Clean Air Act, the [name of Tribal agency] shall authorize an emission limitation less stringent than the applicable limitation established under section 407(b) of the Clean Air Act upon a determination that--
1. a unit subject to section 407(b)(1) of the Clean Air Act cannot meet the applicable limitation using low NO_x burner technology, as defined in Title IV of the Clean Air Act and the regulations hereunder; or
 2. a unit subject to section 407(b)(2) of the Clean Air Act cannot meet the applicable rate using the technology on which the Administrator of the USEPA based the applicable emission limitation.
- B. Demonstration Required: The [name of Tribal agency] shall base such determination upon a showing satisfactory to the [name of Tribal agency], in accordance with regulations promulgated by the Administrator of the USEPA, that the owner or operator:
1. has properly installed appropriate control equipment designed to meet the applicable emission rate;

2. has properly operated such equipment for the period required by the Administrator of the USEPA in regulations and provides operating and monitoring data for such period demonstrating that the unit cannot meet the applicable emission rate; and
 3. has specified an emission rate that such unit can meet on an annual average basis.
- C. Permit: The [name of Tribal agency] shall issue an operating permit for the unit in question in accordance with this Ordinance that permits the unit during the demonstration period referred to in subsection (B)(2) above to emit at a rate in excess of the applicable emission rate. At the conclusion of the demonstration period, the [name of Tribal agency] shall revise the operating permit to reflect the alternative emission rate demonstrated in subsection (B)(2) and (3) above.
- D. Emissions Averaging:
1. In lieu of complying with the applicable emission limitations under section 407(b)(1), (2) or (d) of the Clean Air Act, the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to those sections may petition the [name of Tribal agency] for alternative contemporaneous annual emission limitations for such units that ensure that the actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than or equal to the Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limitations set in accordance with the applicable emission rates set pursuant to section 407(b)(1) and (2) of the Clean Air Act.
 2. If the [name of Tribal agency] determines, in accordance with regulations promulgated by the Administrator of the USEPA, that the conditions in paragraph (1) can be met, the [name of Tribal agency] shall issue operating permits for such units, in accordance with section 221 of this Ordinance, that allow alternative contemporaneous annual emission limitations. Such emission limitations shall only remain in effect while all such units continue operation under the conditions specified in their respective operating permits.

Section 11 Permits

1101 Permit Programs

A. Submission and Approval:

1. The [name of Tribal agency] may develop and submit to the Administrator of the USEPA a permit program or portion thereof meeting the requirements of Title V of the Clean Air Act and the regulations hereunder. The [name of Tribal agency] may establish additional permitting requirements in regulations under this section, provided that the additional requirements are not inconsistent with the requirements of Title V of the Clean Air Act. In addition, the [name of Tribal agency] shall submit to the Administrator of the USEPA a legal opinion from the Attorney General that the laws of the Tribe provide adequate authority to carry out the program.
2. If the Administrator of the USEPA disapproves the permit program, in whole or in part, and notifies the [name of Tribal agency] of any revisions or modifications necessary to obtain approval, the [name of Tribal agency] may revise and resubmit the program for review under section 502 of the Clean Air Act.

B. Requirements: The permit program shall contain the elements required by the Administrator of the USEPA by regulation pursuant to Title V of the Clean Air Act, as well as such other elements as the [name of Tribal agency] may require by regulation, including, but not limited to:

1. in the case of permits for major sources with a remaining term of three (3) or more years, a requirement that revisions be made to the permit to incorporate applicable standards and regulations promulgated under this Ordinance or under the Clean Air Act after the issuance of such permit, as expeditiously as practicable and consistent with the procedures established hereunder but not later than 18 months after the promulgation of such standards and regulations, except that no revision shall be required if the effective date of the standards or regulations is after the expiration of the permit term. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this part regarding renewals;
2. in the case of affected sources under the acid rain program, a requirement that revisions be made to the permit to incorporate applicable requirements under this Ordinance and Title IV of the Clean Air Act and the regulations hereunder; or
3. provisions to allow changes within a permitted facility or one operating pursuant to this Ordinance or section 503(d) of the Clean Air Act without

requiring a permit revision, if the changes are not modifications under any provision of Title I of the Clean Air Act and the changes do not exceed the emissions allowable under the permit (whether expressed as a rate of emissions or as total emissions), and if the facility provides the [name of Tribal agency] and the Administrator of the USEPA with written notification a minimum of seven (7) days in advance of the proposed changes according to the requirements of the regulations promulgated under section 502(b)(10) of the Clean Air Act and under this section.

- C. Effective Date: The effective date of a permit program or partial or interim program approved under section 502 of the Clean Air Act shall be the effective date of approval by the Administrator of the USEPA.
- D. Minor Source Permits: Notwithstanding any other provisions under this part, the [name of Tribal agency] shall establish by regulation a minor source permitting program, under which sources not classified as major sources or not otherwise subject to the provisions of this part shall nevertheless be required to obtain operating permits, in order to control emissions, including fugitive emissions, from such sources. The [name of Tribal agency] shall promulgate regulations pursuant to this subsection which shall identify the minor sources subject to this subsection, provide for the filing of permit applications and compliance plans and for the payment of fees pursuant to this Ordinance, and require monitoring and reporting.

1102 Permit Applications

- A. Applicable Date: Any source specified in this Ordinance shall become subject to a permit program under this part on the later of the following dates:
 - 1. the effective date of a permit program or partial or interim permit program applicable to the source; or
 - 2. the date such source becomes subject to this Ordinance.
- B. Deadline: Any person required to have a permit shall, not later than 1 year after the date on which the source becomes subject to a permit program under this part (including permit programs that have received interim approvals and partial permit programs), or such earlier date as the [name of Tribal agency] may establish, submit to the [name of Tribal agency] a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. Permit applications shall be filed in the manner and according to the requirements prescribed by this Ordinance and by the [name of Tribal agency]

through regulation. The [name of Tribal agency] shall approve or disapprove a completed application and shall issue or deny the permit within 18 months after the date of receipt thereof, except that the [name of Tribal agency] shall establish, in conjunction with EPA Region 9, a phased schedule for acting on permit applications submitted within the first full year after the effective date of the permit program or the partial or interim program. This schedule shall ensure that all such applications will be acted on by the [name of Tribal agency] within five years after such effective date. The [name of Tribal agency] shall establish reasonable procedures to review permit applications and to prioritize approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of this Ordinance.

C. Permit Applications

1. Each issued permit shall contain the following statement to which the permittee must agree and subscribe for the permit to be complete and as a condition precedent to the final issuance of any permit:

"Permittee consents to the jurisdiction of the Tribe with respect to those activities conducted pursuant to this permit issued by the [name of Tribal agency] pursuant to the provisions of the [name of Tribe] Air Quality Ordinance. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents, including contractors and subcontractors of permittee whose activities fall within the scope of the issued permit."

2. Permittee shall include the foregoing statement as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the [Reservation/Rancheria] in connection with any permit issued by the [name of Tribal agency], and each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for "permittee" as appropriate.

- D. Application Under Oath: Each applicant shall sign the permit application under oath, certifying the truth and accuracy of the information contained in the permit application, in a form approved by the [name of Tribal agency].

- E. Compliance Plan: The applicant shall submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this Ordinance. The compliance plan shall include a schedule of compliance and a schedule under which the permittee will submit progress reports to the [name of Tribal agency] no less frequently than every six (6) months. In addition, the permittee shall periodically certify that the facility is in compliance with any applicable requirements of the permit, and promptly report any deviations from permit requirements to the [name of Tribal agency], as provided in the regulations promulgated under this part.
- F. Availability to Public: 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 part, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure, the applicant or permittee may submit such information separately.
- G. Fees: A processing and monitoring fee, as established by [name of Tribal agency], shall be paid to the Tribe at the time of filing. These fees shall be used for costs associated with administering the Air Quality Control Plan.
- H. Emergency Power of Tribe: Nothing in any permit shall ever be construed to prevent or limit the application of any emergency power of the Tribe.

1103 Permit Requirements and Conditions

- A. In General : Permits shall be issued under this part for fixed terms, not to exceed five (5) years, except that affected sources under this Ordinance must have five (5)-year fixed terms and solid waste incineration units under this Ordinance may have up to twelve (12)-year fixed terms. Each permit shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the [name of Tribal agency], no less often than every six (6) months, the results of any required monitoring, provisions under which the permit can be revised, terminated, modified or reissued for cause, an identification of all alternative operating scenarios, and such other conditions as are necessary to assure compliance with applicable requirements of this Ordinance and the regulations hereunder, including the requirements of the applicable implementation plan.
- B. Inspection, entry, monitoring, certification and reporting: Each permit issued under this part shall set forth inspection, entry, monitoring, compliance certification and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable

regulation promulgated under section 504(b) of the Clean Air Act Any report required to be submitted by a permit issued to a corporation under this part shall be signed by a responsible corporate official, who shall certify its accuracy.

- C. Temporary Sources : The [name of Tribal agency] may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of this Ordinance at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under this Ordinance. Any such permit shall in addition require the owner or operator to notify the [name of Tribal agency] in advance of each change in location. The [name of Tribal agency] may require a separate permit fee for operations at each location.

1104 Notification to Administrator of the USEPA and Contiguous Tribes and States; Notification to Public

- A. Notice: Unless the following notification requirements are waived by the Administrator of the USEPA for a particular category of sources (other than major sources), pursuant to section 505(d) of the Clean Air Act,
1. The [name of Tribal agency] shall-
 - a. transmit to the Administrator of the USEPA a copy of each permit application (including any application for a permit modification or renewal) or such portion thereof, including any compliance plan, as the Administrator of the USEPA may require to effectively review the application and otherwise carry out the USEPA Administrator's responsibilities under the Clean Air Act, and
 - b. provide to the Administrator of the USEPA a copy of each permit proposed to be issued and issued as a final permit.
 2. The [name of Tribal agency] shall notify all states and tribes-
 - a. whose air quality may be affected and that are contiguous to the Tribe, or
 - b. that are within 50 miles of the source, of each permit application or proposed permit forwarded to the Administrator of the USEPA under this section, and shall provide an opportunity for such states and

tribes to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the [name of Tribal agency], the [name of Tribal agency] shall notify the state or tribe submitting the recommendations and the Administrator of the USEPA in writing of its refusal to accept those recommendations and the reasons therefor.

B. Objection by USEPA: Unless the following requirements are waived by the Administrator of the USEPA for any particular category of sources (other than major sources), pursuant to section 505(d) of the Clean Air Act:

1. The [name of Tribal agency] shall respond in writing to any objection by the Administrator of the USEPA to the issuance of a permit, pursuant to the provisions of section 505(b) of the Clean Air Act and the regulations hereunder.
2. Upon receipt of an objection by the Administrator of the USEPA under section 505 of the Clean Air Act, the [name of Tribal agency] may not issue the permit unless it is revised and issued in accordance with subsection (C) of this section. If the [name of Tribal agency] has issued a permit prior to receipt of an objection by the Administrator of the USEPA under section 505(b)(2) of the Clean Air Act, the [name of Tribal agency] may issue a revised permit in accordance with subsection (C) of this section after the permit has been modified, terminated or revoked by the Administrator of the USEPA.

C. Issuance or Denial

1. The [name of Tribal agency] shall, within 90 days after the date of an objection under section 505(b) of the Clean Air Act, submit a permit revised to meet the objection.
2. If the Administrator of the USEPA notifies the [name of Tribal agency] that cause exists to terminate, modify or revoke and reissue a permit, the [name of Tribal agency] shall, within 90 days after receipt of such notification, forward to the Administrator of the USEPA a proposed determination of termination, modification or revocation and reissuance, as appropriate. The [name of Tribal agency] may request a ninety-day extension for this submittal, in accordance with Section 505(e) of the Clean Air Act.

1104 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 mobile or portable source that has notified the [name of Tribal agency] in advance of the transfer, pursuant to regulations promulgated under this section. A permit for a source may be transferred from one person to another if the person who holds the permit notifies the [name of Tribal agency] in advance in writing of the transfer, according to regulations promulgated by the [name of Tribal agency], and if the [name of Tribal agency] finds that the transferee is capable of operating the source in compliance with the permit requirements of this part and the regulations hereunder.

Section 12 - Enforcement Program/Administrative Procedures

1201 Enforcement Policy

It is the policy of the [name of Tribal Agency] to encourage informal, practical, result-oriented resolution of alleged violations and actions needed to prevent damage to [Reservation/Rancheria] resources or harm to the health, safety or welfare of the [Reservation/Rancheria] population. It is also the policy of the [name of Tribal Agency], consistent with the principles of due process, to provide effective procedures for enforcement.

1202 Enforcement Agency

The [name of Tribal Agency] shall be responsible for enforcing the provisions of this Ordinance. Specifically, the [name of Tribal Agency] shall conduct investigations when a complaint is received by the [names of Tribal agencies] or other Tribal agency believes that a violation of this Ordinance has occurred.

1203 Enforcement Activities

Where a written and verified complaint shall be filed with the [name of Tribal Agency] and reviewed by the [name of Tribal Agency] alleging that, or where the [name of Tribal Agency(ies)] itself shall have cause to believe that, any person is violating any air quality regulation or permit condition, the [name of Tribal Agency] shall cause a prompt investigation to be made.

1204 Notice of Violation; Cease and Desist Order

If the [name of Tribal Agency] finds after an investigation pursuant to this Ordinance that a violation of any regulation or permit condition exists, the [name of Tribal Agency] shall promptly notify both the alleged violator and the [name of Tribe's governing body] in writing.

In the case of an apparent violation of this Ordinance, the [name of Tribal Agency] is authorized to issue a Notice of Violation to the person(s) apparently responsible for the violation, and, if the apparent violation occurred on property owned by a person other than the alleged violator, a Notice of Violation shall also be issued to the landowner.

In the case of a continuing violation or a threatened violation, the [name of Tribal Agency] is authorized to issue a Cease and Desist Order to prevent the violation from continuing or occurring.

Failure to comply with a Cease and Desist Order shall constitute a violation of this Ordinance. Both a Notice of Violation and a Cease and Desist Order may be issued for a single incident. A Notice of Violation will include a Summons to appear before the [name of Tribal Agency] at an enforcement hearing at a specified time and date, and shall advise the alleged violator that failure to appear may result in the imposition of civil penalties.

If a Cease and Desist Order is issued without an accompanying Notice of Violation, the Order will inform the recipient that failure to comply with the Order will constitute a violation of this Ordinance which will result in the issuance of a Notice of Violation and may result in the imposition of civil penalties.

1205 Informal Conferences

The [name of Tribal Agency] shall afford the landowner or his or her representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the [name of Tribal Agency] determines that there may be either imminent environmental damage to a [Reservation/Rancheria] resource or adverse impact upon the health, safety and welfare of the [Reservation/Rancheria] population. Informal conferences may be used at any stage in the enforcement proceedings, except that the [name of Tribal Agency] may refuse to conduct informal conferences with respect to any matter then pending before the [name of Tribal Agency] or [name of Tribal court].

1206 Reports Required

The [name of Tribal Agency] shall keep written notes of the date and place of the conference, the persons in attendance, the subject matter discussed and any decisions reached with respect to further enforcement action.

1207 Enforcement Hearings

If the landowner and the [name of Tribal Agency] are unable to resolve the matter via an informal conference, the [name of Tribal Agency] is authorized to conduct adjudicatory hearings to determine if a violation of this Ordinance has occurred. In such a hearing the [designated official

or agency], in cooperation with the [name of Tribal official] shall present the case to the [name of Tribal Agency] to establish that the person(s) charged has (have) committed a violation of this Ordinance. Any person so charged shall be entitled, at his or her own expense, to be represented by an attorney or other representative.

- A. Burden of Proof. The [designated official or agency] shall have the burden of proving that a violation of this Ordinance has occurred and that a person charged was responsible for the violation. The [name of Tribal Agency] shall rule that a violation of this Ordinance has occurred if it finds that the charges are supported by substantial evidence and that a preponderance of the credible evidence supports a finding that a violation has occurred.

- B. Enforcement Orders. Within thirty (30) days after the date of any enforcement hearing, the [name of Tribal Agency] shall issue a written decision. If the [Agency] determines that a violation has occurred and that the person(s) charged was (were) responsible for the violation, the [Agency]'s decision shall include an Enforcement Order.

1208 Civil Penalties and Corrective Action

An Enforcement Order shall direct any person(s) found to have committed a violation of this Ordinance to take whatever corrective action the [name of Tribal Agency] deems appropriate under the circumstances. An Enforcement Order may impose civil penalties in accordance with a schedule of civil penalties prescribed in the [name of Tribal agency]'s rules. Alternatively, an Enforcement Order may impose civil penalties in the event that a person found to have committed a violation of this Ordinance does not take corrective action in accordance with the Order within a prescribed time frame. If a person who has been found to have committed a violation does not take corrective action within the prescribed time frame, an appropriate department or agency of the Tribal government may take the necessary corrective action, in which case the amount of any civil penalty shall be increased by twice the amount of the cost incurred by the Tribal department or agency in taking the corrective action.

COMMENTARY

If there is no Tribal administrative procedure act or if the Tribal act does not establish procedures for such hearings, this section, or another section of this Ordinance, should establish minimum requirements for the Agency's rules in order to ensure that the Agency provides due process for all persons who are subject to its rulings. Due process, at a minimum, requires adequate notice to the person being charged with a violation of the Ordinance and an opportunity to present his or her side of the story.

- A. Emergency Orders. Notwithstanding any other provision of this Ordinance, if the [name of Tribal Agency] determines that noncompliance with this Ordinance is presenting an imminent and substantial threat to the public health, welfare or environment and determines, in consultation with the Tribe's attorneys, that it is not practicable to assure prompt protection of the public health, welfare or environment of an administrative or judicial enforcement action under this Part, the [name of Tribal Agency] may issue such orders as may be necessary to protect the public health, welfare or environment. Any such order shall be effective immediately upon issuance and shall remain in effect for a period not to exceed sixty (60) days.
- B. Revocation of Permit. Failure of any person to comply with any Enforcement Orders will result in an immediate revocation of his or her permit. In order to obtain a reinstatement of such permit, the person(s) against whom the Enforcement Order was issued must first demonstrate compliance with the Order and pay all outstanding penalties and then petition for reinstatement of the permit with the [name of Tribal Agency].

1209 Judicial Enforcement

The [name of Tribal Court] shall have jurisdiction of all cases and controversies arising under this Ordinance.

- A. The [name of Tribal Agency] may request the [name of Tribe's governing body] to authorize the [name of Tribal Agency] to file an action in Tribal Court pursuant to this Ordinance for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties and clean up and administrative costs associated with the enforcement of this Ordinance (except that any suit against the Tribe or a tribal department or agency shall be for injunctive relief only and not for penalties or other money damages), in any of the following instances:
1. whenever a person has violated, or is in violation of, any provision of this

Ordinance, including but not limited to a regulation, permit or order issued pursuant to this Ordinance;

2. whenever a person submits false information under this Ordinance or regulations promulgated under this Ordinance; or
3. whenever a person is creating an imminent and substantial endangerment to the public health, welfare, environment or cultural resources of the Tribe, in which case the [name of Tribal Agency] shall pursue injunctive relief but not the assessment of penalties, unless the endangerment is caused by a violation, as specified in paragraphs (1) and (2) above.

- B. Any person who in violation of this Ordinance emits air pollutants or hazardous air pollutants into the air within the boundaries of the [Reservation/Rancheria] shall be liable for all costs associated with or necessary to clean up, abate or close the source and restore the quality of the air of the [Reservation/Rancheria] to its condition as it existed immediately prior to the emissions.

1210 Special Provisions for Tribal Departments and Agencies: In any case in which the [name of Tribe's governing body] or any Tribal agency or department is alleged to have violated the terms and conditions of a permit, or to have conducted activities without a permit, the [name of Tribal Agency] shall bring the matter to the attention of [name of head of tribal governing body] who shall consider taking action to ensure compliance with this Ordinance. If the matter cannot be resolved informally, the [name of Tribal Agency] shall conduct an enforcement hearing for the purpose of making factual determinations and issuing a decision recommending a course of corrective action if necessary.

Section 13 - Appeals

1301 Judicial Review

Any person who is aggrieved by the issuance or denial of a permit without respect to whether that person, corporation or other entity is a party to such permit application, or who is the subject of an Enforcement Order, may file an appeal with the Tribal Court. The Court is authorized to hear such appeal.

Section 14 - Other Provisions

1401 Severability

If any provision of this Ordinance, or the application thereof, is held invalid, the remainder

of this Ordinance, or applications of such provisions, shall not be affected.

1402 Amendments

The [name of Tribe’s governing body] reserves the sole right to amend this [name of Ordinance] and to issue rules effecting all aspects of the Ordinance. Provisions in the Ordinance allow the [name of Tribe’s governing body] full flexibility to enact measures which will benefit the Tribe. The inclusion of these provisions does not necessitate their implementation, but allows the [name of Tribe’s governing body] flexibility to alter the Ordinance according to the evolving needs of the [name of Tribal community].

1403 Effective Date

This Ordinance shall become effective on _____ [date].

Section 15 - Sovereign Immunity Preserved

1501 Sovereign Immunity Preserved

Nothing in this Ordinance is intended to, nor should be interpreted as a waiver of the Tribe’s sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages from the Tribe.

APPENDIX A

PERMIT APPLICATION FORM

[to be completed by Tribe]

APPENDIX B

FLOW CHART OF ENVIRONMENTAL AGENCIES

[to be completed by Tribe]

COMMENTARY