THE NAVAJO NATION

AIR POLLUTION PREVENTION

AND CONTROL ACT

Containing Amendments

Enacted by the Navajo Nation Council

April 22, 2004

Navajo Nation Air Quality Control Program
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Subchapter 1.General Provisions

§1101 Definitions

A. For purposes of this chapter:

1. "Administrator" means the Administrator of the United States Environmental Protection Agency (USEPA).

2. "Adverse human health effects," for purposes of part F of subchapter 2 of this chapter, means those effects that result in or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, including adverse effects that are known to be or may reasonably be anticipated to be caused by substances that are acutely or chronically toxic, carcinogenic, mutagenic, teratogenic, neurotoxic or causative of reproductive dysfunction.

3. "Adverse environmental effect" means, for purposes of part F of subchapter 2 of this chapter, any significant and widespread detrimental effect which may reasonably be anticipated on wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

4. "Affected source" means, for purposes of parts G and H of subchapter 2 of this chapter, a source that includes one or more affected units.

5. "Affected unit" means, for purposes of part G of subchapter 2 of this chapter, a unit that is subject to emission reduction requirements or limitations under that part and under title IV of the Clean Air Act.

6. "Air pollutant" means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by product material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant to the extent the Administrator of USEPA has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used.

7. "Air pollution" means the presence in the ambient air of one or more air pollutants or combinations thereof in sufficient quantities, which either alone or in connection with other substances, by reason of their concentration and duration, is or tends to be injurious to human, plant or animal life, causes damage to property, unreasonably interferes with the comfortable enjoyment of life or property of a substantial part of a community, obscures visibility, or in any way degrades the quality of the ambient air.

8. "Allowance" means an authorization, allocated to an affected unit by the Administrator

of the USEPA under title IV of the Clean Air Act, to emit, during or after a specified calendar year, one ton of sulfur dioxide.

9. "Alternative method of compliance" means, for purposes of part G of subchapter 2 of this chapter, a method of compliance in accordance with one or more of the following authorities:

   a. an alternative NOx emission limitation, authorized in accordance with §1132 of this chapter or § 407(d) of the Clean Air Act;

   b. NOx emissions averaging, under § 1132(D) of this chapter or § 407(e) of the Clean Air Act; or

   c. repowering with a qualifying clean coal technology under § 1133 of this chapter or § 409 of the Clean Air Act.

10. "Area source" means, for purposes of part F of subchapter 2 of this chapter, any stationary source of air pollutants that is not a major source. The term "area source" shall not include motor vehicles or nonroad vehicles subject to regulation under title II of the Clean Air Act.

11. "Attainment area" means any area that has been identified in regulations promulgated by the Administrator of the USEPA as being in compliance with national ambient air quality standards.

12. "Attorney General" means the Navajo Nation Attorney General.

13. "Baseline concentration" means, with respect to a pollutant, the ambient concentration levels which exist at the time of the first application for a permit in an area subject to part B of subchapter 2 of this chapter, based on air quality data available to EPA or NNAQCP and on such monitoring data as the permit applicant is required to submit.

14. "Best available control technology" or "BACT" means, with respect to each pollutant subject to regulation under this chapter, an emission limitation based on the maximum degree of emission reduction from a major emitting facility which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to §§ 111 or 112 of the Clean Air Act or parts D or F of subchapter 2 of this chapter.

15. "Building," "structure," "facility" or "installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or of persons under common control, except that it shall not include the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., have the same two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

16. "Carcinogenic" shall have the same meaning, for purposes of part F of subchapter 2 of this chapter, as provided by the Administrator of the USEPA under Guidelines for Carcinogenic Risk Assessment as of the date of enactment of the Clean Air Act Amendments of 1990.

17. "Class I", "Class II", and "Class III" shall have the same meaning as provided under Part C of Title I of the Clean Air Act.

18. "Clean Air Act" or "Act" means the federal Clean Air Act, as amended, that is set forth at 42 U.S.C. § 7401 *et seq*.

19. "Commence" means, as applied to construction of a source:

    a. For purposes other than for part G of subchapter 2 of this chapter, that the owner or operator has obtained all necessary preconstruction approvals or permits required by federal law and this chapter and has done either of the following:

        (1) Begun or caused to begin a continuous program of physical on-site construction of the source to be completed within a reasonable time, or

        (2) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed within a reasonable time.

    b. For purposes of part G of subchapter 2 of this chapter, that the owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete within a reasonable time a continuous program of construction.

20. "Commenced commercial operation" means, for purposes of part G of subchapter 2 of this chapter, to have begun to generate electricity for sale.

21. "Compliance plan" means, for purposes of part G of subchapter 2 of this chapter, either

a statement that the source will comply with all applicable requirements of that part or, where applicable, a schedule and description of the method or methods for compliance and certification by the owner or operator that the source is in compliance with the requirements of that part.

22. "Construction" means any physical change in a source or change in the method of operation of a source, including fabrication, erection, installation, demolition or modification of a source, that would result in a change in actual emissions.

23. "Continuous Emission Monitoring System" or "CEMS" means the equipment required by § 412 of the Clean Air Act and the regulations thereunder and used to sample, analyze, measure, and provide on a continuous basis a permanent record of emissions and flow expressed in pounds per million British thermal units, pounds per hour or such other form as the Administrator of the USEPA prescribes by regulation.

24. "Designated representative" means a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications and compliance plans for the unit.

25. "Director" means the Executive Director of the Navajo Nation Environmental Protection Agency.

26. "Excess emissions" means emissions of an air pollutant in excess of any applicable emission standard. The averaging time and test procedures for determining such excess emissions shall be as specified as part of the applicable emission standard.

27. "Existing solid waste incineration unit" means a solid waste incineration unit that is not a new or modified solid waste incineration unit.

28. "Existing source" means any stationary source that is not a new source.

29. "Existing unit" means, for purposes of part G of subchapter 2 of this chapter, a unit (including units subject to § 111 of the Clean Air Act) that commenced commercial operation before November 15, 1990. Any unit that commenced commercial operation before November 15, 1990 that is modified, reconstructed or repowered after November 15, 1990 shall continue to be an existing unit for the purposes of part G. Existing units shall not include simple combustion turbines, or units that serve a generator with a nameplate capacity of 25 MWe or less.

30. "Federal land manager" means the Secretary of the United States Department with authority over the federal class I area.

31. "Federally listed hazardous air pollutant" means any air pollutant listed pursuant to §

112 of the Clean Air Act and not deleted from the list pursuant to that section.

32. "Hazardous air pollutant" means any federally listed hazardous air pollutant and any air pollutant that the Director has listed as a hazardous air pollutant pursuant to § 1126 of this chapter.

33. "Lowest achievable emission rate" or "LAER" means, for any source, the rate of emissions that reflects:

    a. the most stringent emission limitation that is contained in the implementation plan of any tribe or state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

    b. the most stringent emission limitation that is achieved in practice by such class or category of source, whichever is more stringent.

    In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

34. "Major emitting facility" means any of the following stationary sources of air pollutants that emit, or have the potential to emit, 100 tons per year or more of any air pollutant: fossil-fuel fired steam electric plants of more than 250 mBtu per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 50 tons of refuse per day, hydrofluoric, sulfuric and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than 250 mBtu per hour heat input, petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, and charcoal production facilities. Such term also includes any other source with the potential to emit 250 tons per year or more of any air pollutant.

35. "Major source" for purposes of part F of subchapter 2 means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator of the USEPA establishes a lesser quantity or, in the case of radionuclides, different criteria, as provided in § 112(a)(1) of the Clean Air Act. For purposes of part B of subchapter 2, "major source" means "major stationary source," as defined in the USEPA regulations

under Clean Air Act Title I, part C. For purposes of all other parts of subchapter 2, "major source" means any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator of the USEPA as provided in § 302(j) of the Clean Air Act), or that is defined in part D of title I of the Clean Air Act or the regulations thereunder or in regulations of the NNAQCP as a major source.

36. "Maximum achievable control technology" or "MACT" means an emission standard that requires the maximum degree of reduction in emissions of the hazardous air pollutants subject to this chapter, including a prohibition on such emissions where achievable, that the Director, after considering the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines to be achievable by new or existing sources in the category or subcategory to which such standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures that:

    a. reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;

    b. enclose systems or processes to eliminate emissions;

    c. collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point;

    d. are design, equipment, work practice, or operational standards, including requirements for operator training or certification, as provided in § 112(h) of the Clean Air Act; or

    e. are a combination of the above.

37. "Mobile source" means any combustion engine, device, machine or equipment that operates during transport and that emits or generates air pollutants whether in motion or at rest.

38. "Modification" means, for purposes of parts B, D, E and F of subpart 2 of this chapter, a physical change in or change in the method of operation of a source that increases the actual emissions of any air pollutant (or, in the case of part F, hazardous air pollutant) emitted by such source by more than a de minimis amount or that results in the emission of any air pollutant (or hazardous air pollutant) not previously emitted by more than such de minimis amount.

39. "Modified solid waste incineration unit" means a solid waste incineration unit at which modifications have occurred after the effective date of a standard under § 129(a) of the

Clean Air Act if:

a. the cumulative cost of the modifications, over the life of the unit, exceed 50% of the original cost of construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs; or

b. the modification is a physical change in or change in the method of operation of the unit that increases the amount of any air pollutant emitted by the unit for which standards have been established under § 111 or 129 of the Clean Air Act.

40. "Municipal solid waste" means refuse and refuse-derived fuel collected from the general public and from residential, commercial, institutional and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber and other combustible materials and noncombustible materials such as metal, glass and rock, provided that:

a. the term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and

b. an incineration unit shall not be considered to be combusting municipal waste for purposes of §§ 111 and 129 of the Clean Air Act and § 1121 of this chapter if it combusts a fuel feed stream 30% or less of the weight of which is comprised, in aggregate, of municipal waste.

41. "Nation" means the Navajo Nation, and shall encompass the area defined in 7 N.N.C. § 254.

42. "National ambient air quality standard" or "NAAQS" means the ambient air pollutant concentration limits established by the Administrator of the USEPA pursuant to § 109 of the Clean Air Act.

43. "Navajo Nation Air Quality Control Program" or "NNAQCP" means the program within the Navajo Nation Environmental Protection Agency responsible for implementing and enforcing this chapter.

44. "New solid waste incineration unit" means a solid waste incineration unit the construction of which is commenced after the Administrator of the USEPA proposes requirements under § 129 of the Clean Air Act establishing emissions standards or other requirements that would be applicable to such unit or to a modified solid waste incineration unit.

45. "New source" means, for purposes of § 1121 of this chapter, any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, of proposed regulations) prescribing a standard of performance under §

111 of the Clean Air Act that will be applicable to such source. For purposes of part F of subchapter 2 of this chapter, "new source" means a stationary source the construction or reconstruction of which is commenced after the Administrator of the USEPA first proposes regulations under § 112 of the Clean Air Act establishing an emission standard applicable to such source.

46. "New unit" means, for purposes of part G of subchapter 2 of this chapter, a unit that commences commercial operation on or after November 15, 1990.

47. "Nonattainment area" means any area that is designated pursuant to § 107 of the Clean Air Act and where violations of national ambient air quality standards have been measured.

48. "Owner or operator" means any person who owns, leases, operates, controls, or supervises a source.

49. "Person" means any public or private corporation, company, partnership, firm, association or society of persons, the federal or state governments and any of their programs or agencies, the Nation and any of its agencies, programs, enterprises, companies or political subdivisions, as well as a natural person.

50. "Phase II" means, for purposes of part G of subchapter 2 of this chapter, the period beginning January 1, 2000 and extending into the future.

51. "Portable source" means any stationary source that is capable of being transported and operated in more than one location.

52. "President" means the President of the Navajo Nation.

53. "Reasonable future progress" means, for purposes of part E of subchapter 2 of this chapter, such annual incremental reductions in emissions of the relevant air pollutant as are required by part E or may reasonably be required by the Director or the Administrator of the USEPA in order to ensure attainment of the applicable national ambient air quality standard by the applicable date.

54. "Reasonably available control technology" or "RACT" means devices, systems process modifications, or other apparatus or techniques that are reasonably available taking into account:

    a. the necessity of imposing such controls in order to attain and maintain a national ambient air quality standard,

    b. the social, environmental and economic impact of such controls, and

c. alternative means of providing for attainment and maintenance of such standard.

55. "Repowering" means replacement of an existing coal-fired boiler with one of the clean coal technologies specified in § 402 and 415 of the Clean Air Act and in the regulations thereunder.

56. "Resources Committee" means the standing committee of the Navajo Nation Council with oversight authority over the Navajo Nation Environmental Protection Agency.

57. "Schedule of compliance" means, for purposes of part H of subchapter 2 of this chapter, a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation or emission prohibition.

58. "Small business stationary source" means a stationary source that:

a. is owned or operated by a person that employs 100 or fewer individuals;

b. is a small business concern as defined in the Small Business Act, 42 U.S.C. § 631 *et seq*.;

c. is not a major stationary source;

d. emits fewer than 50 tons per year of any regulated pollutant; and

e. emits fewer than 75 tons per year of all regulated pollutants combined, except as excluded by the Administrator of the USEPA pursuant to § 507(c)(3)(A) of the Clean Air Act or as modified by the Director pursuant to § 1140(A) of this chapter.

59. "Solid waste incineration unit" means a distinct operating unit of any facility that combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels and motels). Such term does not include incinerators or other units required to have a permit under § 3005 of the Solid Waste Disposal Act, 42 U.S.C. § 6925. The term also does not include:

a. materials recovery facilities (including primary or secondary smelters) that combust waste for the primary purpose of recovering metals;

b. qualifying small power production facilities, as defined in 16 U.S.C. § 769(17)(C), or qualifying cogeneration facilities, as defined in 16 U.S.C. § 769(18)(B), that burn homogeneous waste (such as units that burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or, in the case of qualifying cogeneration facilities, that burn homogeneous

waste for the production of electric energy and steam or other useful forms of energy (such as heat) that are used for industrial, commercial, heating or cooling purposes; or

c. air curtain incinerators, provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with capacity limitations established by rule by the Administrator of the USEPA.

60. "Source" means any building, structure, facility or installation that may cause or contribute to air pollution.

61. "Standard of performance" means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator of the USEPA determines has been adequately demonstrated.

62. "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant and that is not a nonroad engine under title II of the Clean Air Act.

63. "Tribal (Navajo Nation) implementation plan" means the accumulated record of enforceable air pollution control measures, programs and plans adopted by the Director and submitted to the Administrator of the USEPA pursuant to §§ 110(o) and 301(d) of the Clean Air Act and part A of subchapter 2 of this chapter.

64. "Unclassifiable area" means an area of the Navajo Nation for which inadequate ambient air quality data exist to determine compliance with the national ambient air quality standards.

65. "Unit" means, for purposes of part G of subchapter 2 of this chapter, a fossil fuel-fired combustion device.

66. "Utility unit" means, for purposes of part G of subchapter 2 of this chapter:

a. a unit that serves a generator that produces electricity for sale, or a unit that, during 1985, served a generator that produced electricity for sale.

b. Notwithstanding subparagraph (a), a unit described in subparagraph (a) that was in commercial operation during 1985 but did not, during 1985, serve a generator that produced electricity for sale shall not be a utility unit for purposes of part G.

c. A unit that cogenerates steam and electricity is not a "utility unit" for purposes

of part G unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990 and supplies, more than one third of its potential electric output capacity, and more than 25 megawatts electrical output to any utility power distribution system for sale.

67. "Visibility Transport Region" means whenever, upon the USEPA Administrator's motion or by petition from the Governors of at least two affected States, the Administrator of the USEPA 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 Class I areas located in the affected States, the Administrator of the USEPA may establish a transport region for such pollutants that includes such States.

§1102 Declaration of Policy

A. Legislative findings and purposes

1. The Navajo Nation Council finds and declares that air pollution exists with varying degrees of severity within the Navajo Nation; is an increasing danger to the health and welfare of residents of the Navajo Nation; can cause physical discomfort and injury to property and property values, including injury to agricultural crops and livestock; discourages recreational and other uses of the Navajo Nation's resources; and is aesthetically unappealing.

2. The Navajo Nation Council, by enacting this chapter, is creating a coordinated program to control present and future sources of air pollution on the Navajo Nation. This chapter provides for the regulation of air pollution activities in a manner that ensures the health, safety and general welfare of all the residents of the Navajo Nation, protects property values and protects plant and animal life. The Council further is placing primary responsibility for air pollution control and abatement in the Navajo Nation Air Quality Control Program, a program of the Navajo Nation Environmental Protection Agency.

B. Maintenance of air quality

It is declared to be the policy of this Nation that no further significant degradation of the air in the Navajo Nation shall be tolerated, and that economic growth will occur in a manner consistent with the preservation of existing clean air resources. Those sources emitting pollutants in excess of the emission standards set by the Director of the Navajo Nation Environmental Protection Agency shall bring their emissions into conformity with the standards with all due speed. A new source shall not commence operation until it has secured a permit according to the provisions of this chapter, the conditions of which require that operation of the source will not cause pollution in excess of the standards set by the Director.

C. Modular approach to air quality control programs

The Navajo Nation is committed to providing for an air quality control program to ensure clean air for residents of the Navajo Nation. Pursuant to § 301(d) of the Clean Air Act and the regulations thereunder, however, it is discretionary with the Navajo Nation as to whether and which Clean Air Act programs to implement, and in what order. The Director shall determine which programs are essential to the protection of the environment and the health and welfare of the Navajo Nation, and of those programs shall determine which should be developed first. The Director may also determine that only parts of such programs are essential, and may develop these severable portions, as provided in the regulations under § 301(d) of the Clean Air Act. The Director shall not be required to develop any of the programs described in this chapter by any particular time.

However, once the Director determines that a particular program or portion of a program should be developed, the Director and the NNAQCP must comply with all of the relevant statutory and regulatory requirements for that program or portion of a program.

§1103 Administration

A. Regulations

The Director is authorized to prescribe such regulations as are necessary to carry out his/her functions under this chapter, pursuant to the provisions of § 1161 of this chapter. This shall include setting air quality standards, emission limitations and standards of performance for the prevention, control and abatement of air pollution in the Navajo Nation. In prescribing regulations, the Director shall give consideration to but shall not be limited to the relevant factors prescribed by the Clean Air Act and the regulations thereunder, except that the regulations prescribed by the Director shall be at least as stringent as those promulgated under the Clean Air Act. All regulations promulgated under this Chapter shall be subject to approval by the Resources Committee of the Navajo Nation Council.

B. Authority of Director

In addition, in order to fulfill his/her obligations under this chapter, the Director may:

1. conduct investigations, inspections and tests to carry out the duties of this chapter according to the procedures established by this chapter;

2. hold hearings related to any aspect of or matter within the duties of this section and, in connection therewith, compel the attendance of witnesses and the production of records;

3. prepare and develop a comprehensive plan or plans for the abatement and control of air pollution in the Navajo Nation;

4. encourage voluntary cooperation by advising and consulting with persons or affected groups, tribes or states to achieve the purposes of this chapter, including voluntary testing of actual or suspected sources of air pollution;

5. subject to 2 N.N.C. § 164(B)(2) and 2 N.N.C. § 1005(C)(2), enter into voluntary compliance agreements with entities that otherwise may not be subject to the provisions of this chapter, or as to which there is a dispute regarding the applicability of this chapter, under which the entity would be regulated by the Navajo Nation for air quality in order to achieve the goals and purposes of this chapter, and provided that the Director finds, after consultation with the Resources Committee, that entering into the agreement is in the best interests of the Navajo Nation. Such agreements may contain provisions that differ from and supersede the requirements of this chapter and implementing regulations, provided that the minimum federal requirements apply to the entity in question;

6. make continuing determinations of the quantity and nature of emissions of air pollutants, topography, wind and temperature conditions, possible chemical reactions in the atmosphere, the character of development of the various areas of the Navajo Nation, the economic effect of remedial measures on the various areas of the Navajo Nation, the availability, use and economic feasibility of air-cleaning devices, the effect on human health and property of air pollutants, and other matters necessary to arrive at a better understanding of air pollution and its control;

7. consistent with Title II, Navajo Nation Code, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this chapter, provided that all monies resulting therefrom shall be deposited in the Navajo treasury to the account of the Air Quality Control Program, as authorized under Navajo law;

8. secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, to carry on the purposes of this chapter;

9. compile and publish from time to time reports, data and statistics with respect to matters studied or investigated by the Director or at his/her direction;

10. require, as specified in § 1151 of this chapter, any source of air pollution to monitor, sample or perform other studies to quantify emissions of air pollutants or levels of air pollution that may reasonably be attributable to that source; and

11. perform such other activities as the Director may find necessary to carry out his/her functions under this chapter.

C. Delegation of powers and duties

The Director may delegate to any officer or employee of the Navajo Nation Environmental Protection Agency such powers and duties under this chapter, except the making of regulations, as he/she may deem necessary or expedient.

§1104 Air Quality Impact Reports

A. Contents of report

Whenever a Navajo agency proposes to carry out or approve a Navajo-funded project relating to transportation that may have a significant impact on air quality, the agency shall file with the Director a report that contains the following information:

1. a description of the proposed project;

2. any significant impact on air quality of the proposed project;

3. significant environmental effects that can not be avoided if the project is implemented, including any significant irreversible air quality changes that would be involved in the proposed project if it is implemented;

4. mitigation measures proposed to minimize any significant air quality effects;

5. alternatives to the proposed project;

6. the known views of any local groups concerning the proposed project; and

7. a statement briefly indicating the reasons for determining that various effects of a project are not significant and consequently have not been discussed in detail in the impact report.

B. Exemptions

This section shall not apply to:

1. emergency repairs to public service facilities that are necessary to maintain service;

2. projects that are undertaken, carried out or approved to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been declared by the President;

3. projects related to the interstate highway system; and

4. projects that were already in existence before the date of enactment of this chapter.

§1105 Emergency Powers

A. Injunctive relief

Notwithstanding any permit granted pursuant to this chapter, the Director, upon receipt of evidence that a pollution source or combination of sources (including mobile or portable sources) is presenting an imminent and substantial endangerment to public health or welfare or the environment, may bring suit on behalf of the Navajo Nation, pursuant to § 1154 of this chapter, to immediately restrain any person causing or contributing to the alleged pollution to cease such emissions or to take such other action as may be necessary.

B. Orders of the Director

1. If the Director determines that air pollution is presenting an imminent and substantial endangerment to public health or welfare or the environment and determines, in consultation with the Attorney General, that it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of a civil action pursuant to subsection (A) of this section, the Director may issue such orders as may be necessary to protect public health or welfare or the environment. Such orders may prohibit, restrict or condition any and all activities that contribute or may contribute to the emergency, including but not limited to motor vehicles; retail, commercial, manufacturing and industrial activities; incinerators; and the burning or other consumption of fuels or other materials.

2. Any order issued by the Director under this section shall be effective immediately upon issuance and shall remain in effect for a period of not more than 60 days, unless the Director brings an action pursuant to subsection (A) of this section within the 60-day period. If the Director brings such an action, the order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

3. Orders of the Director shall be enforced by the NNAQCP, the Navajo Department of Justice, Resources Enforcement and the Division of Public Safety. Those authorized to enforce the orders may take reasonable steps to assure compliance, including but not limited to:

    a. entering upon any property or establishment believed to be violating the order and demanding compliance;
    b. stopping, detouring, rerouting and prohibiting vehicle traffic; and

    c. terminating operations at incinerators or other types of combustion facilities.

§1106 Severability and Preservation of Rights

A. Severability

If any provision of this chapter, or the application of any provision of this chapter to any person

or circumstance, is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall remain unaffected.

B. Preservation of rights

It is the purpose of this chapter to provide additional and cumulative remedies to prevent, abate and control air pollution in the Navajo Nation. Nothing contained in this chapter shall be construed to abridge or alter rights of action or remedies in equity under the common law or statutory law, nor shall any provisions of this part or any act done by virtue thereof be construed as preventing the Navajo Nation or individuals from the exercise of their rights under the common law or statutory law to suppress nuisances or to abate pollution.

Subchapter 2. Air Quality Control Programs

PART A. Tribal (Navajo Nation) implementation plans

§1111 Designation of Air Quality Control Regions

A. Designations

The Director may request the President to submit to the Administrator of the USEPA a list of all areas in the Navajo Nation, 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 can not 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.

B. Redesignations

1. If the President 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 NAAQS pursuant to § 109 of the Clean Air Act, the President may, and in the case of a revised NAAQS for which the President 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.

2. The President 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 § 107(d)(3) of the Clean Air Act, of the need to redesignate.

3. The Director may request the President, on his/her own motion, to submit to the Administrator of the USEPA for approval, pursuant to § 107 of the Clean Air Act, a redesignation of any area within the Navajo Nation if air quality changes within such area. In the case of an area in the Nation which the Administrator of the USEPA finds may significantly affect air pollution concentrations in a state or another tribe, the Director may redesignate that area only with the consent of the states or tribes which the Administrator of the USEPA determines may be significantly affected.

4. The submission of a redesignation shall not affect the effectiveness or enforceability of the applicable tribal (Navajo Nation) implementation plan.

C. Regulations

If the President decides to submit designations to the Administrator of the USEPA under this section, the Director shall adopt regulations to implement this section that both:

1. describe the geographic extent of attainment, nonattainment or unclassified areas of the Navajo Nation 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.

§1112 Tribal (Navajo Nation) Implementation Plans for National Primary and Secondary Ambient Air Quality Standards

A. Submission of and contents of plans

The Director may submit to the Administrator of the USEPA a tribal (Navajo Nation) 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 Navajo Nation. The plan shall be adopted by the

Director according to the provisions of § 401 of this chapter and shall contain the following provisions:

1. Each tribal Navajo Nation implementation plan shall:

   a. include enforceable emission limitations and 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 necessary or appropriate to meet the applicable requirements of this chapter 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, and upon request, make such data available to the Administrator of the USEPA;

   c. include a program to enforce the measures described in subparagraph (a) 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 in parts B and E of this subchapter;

   d. contain adequate provisions:

      (1) prohibiting, consistent with the provisions of this chapter, any source within the Navajo Nation from emitting any air pollutant in amounts that will:

         (a) contribute significantly to nonattainment in, or interfere with maintenance by, any neighboring state or tribe with respect to any such national primary or secondary ambient air quality standard, or

         (b) interfere with measures required to be included in an applicable implementation plan for any neighboring state or tribe under Part C of title I of the Clean Air Act to prevent significant deterioration of air quality or to protect visibility; and

      (2) insuring compliance with the applicable requirements of subsection (C) of this section (relating to interstate pollution abatement);

   e. provide:

      (1) necessary assurances that the Navajo Nation will have adequate personnel, funding, and authority under Navajo Nation law to carry out

such implementation plan (and that the NNAQCP 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 Navajo Nation has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the Navajo Nation 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 NNAQCP with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection;

g. provide for authority comparable to that in § 1105 of this chapter and adequate contingency plans to implement such authority;

h. provide for revision of such plan:

(1) from time to time as may be necessary to take account of 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, on the basis of information available to the Administrator of the USEPA and pursuant to the requirements of § 110 of the Clean Air Act and the regulations thereunder, 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 chapter;

i. in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part E of this subchapter (relating to nonattainment areas);

j. meet the applicable requirements of subsection (D) of this section (relating to public notification) and parts B and C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection);

k. 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;

l. require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permits required under this chapter, a fee sufficient to cover:

(1) the reasonable costs of reviewing and acting upon any application for such a permit; and

(2) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the USEPA Administrator's approval of a fee program under title V of the Clean Air Act;

m. provide for consultation and participation by Navajo chapters, as defined in 2 N.N.C. § 4001, and any Navajo-created townships affected by the plan; and

n. provide that in the case of any source which uses a supplemental or intermittent control system for purposes of meeting the requirements of an order under § 113(d) of the Clean Air Act, the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion-dependent control system.

B. Revisions to plans

1. The Director shall adopt regulations that describe procedures for revising tribal (Navajo Nation) 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

thereunder, after promulgation of new or revised national ambient air quality standards.

2. If the Director has adopted and submitted to the Administrator of the USEPA a proposed plan revision which the Director determines:

   a. meets the requirements of this section; and

   b. is necessary (i) to prevent the closing for one year or more of any source of air pollution, and (ii) to prevent substantial increases in unemployment which would result from such closing, and which the Administrator of the USEPA has not approved or disapproved under this section within 12 months of submission of the proposed plan revision, the Director may issue a temporary emergency suspension of the part of the applicable implementation plan that is proposed to be revised with respect to such source. The determination under subparagraph (b) may not be made with respect to a source that would close without regard to whether or not the proposed plan revision is approved.

3. A temporary emergency suspension issued by the Director under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator of the USEPA.

4. The Director may include in any temporary emergency suspension issued under this subsection a provision denying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under § 113(d) of the Clean Air Act upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

C. Interstate pollution abatement

Each applicable implementation plan shall require each proposed new or modified major source that is subject to part B of this chapter or that may significantly contribute to levels of air pollution in excess of the NAAQS in any air quality control region outside the Navajo Nation to provide written notice to all nearby states or tribes in which air pollution levels may be affected by such source at least 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 Navajo Nation 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.

D. 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 standards 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. Provisions shall be made to notify the public in both the Navajo and English languages.

E. Prohibition against modification of plan requirement.

No order, suspension, plan revision or other action modifying any requirement of any applicable implementation plan may be taken with respect to any stationary source except for those specifically allowed under the provisions of this chapter and the Clean Air Act.

§1113 Regulation of Fuels and Motor Vehicles

The provisions of §§ 177, 211(c), (k) and (m), 246 and 249 of the Clean Air Act and the regulations hereunder, regarding fuels and motor vehicles, shall apply as required by the Clean Air Act in certain nonattainment areas or as adopted by the Navajo Nation.

PART B. PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

§1114 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 § 1111 of this chapter and § 107 of the Clean Air Act as attainment or unclassifiable. The provisions of this part do not apply to hazardous air pollutants listed under Part F of this subchapter.

§1115 Initial Classification

All areas in the Navajo Nation that are designated as attainment or unclassifiable pursuant to § 1111 of this chapter and § 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 § 1117 of this chapter.

§1116 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 §§ 163 and 165(d) of the Clean Air Act and the regulations thereunder.

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 Navajo Nation and submitted for the USEPA Administrator's approval or promulgated by the Administrator of the USEPA under § 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 § 110 of the Clean Air Act at least as effectively as an area classification plan for such pollutant. Such other provisions referred to in the preceding sentence need not require the establishment of maximum allowable increases with respect to such pollutant for any area to which this section applies.

§1117 Area Reclassification

A. Authority to reclassify areas

The President may reclassify, upon approval of the Navajo Nation Council, such areas as he deems appropriate as class I areas. The land comprising Canyon de Chelly National Monument, as established in 16 U.S.C. § 445, may be reclassified only as class I or II. 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.

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 Navajo Nation Council.

2. Prior to the issuance of notice under paragraph (1) respecting the reclassification of any area under this subsection, if such area includes any federal lands, the President shall provide for written notice to be given to the appropriate federal land manager and afford adequate opportunity (but not in excess of 60 days) to confer with the President 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

President 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 § 164(b)(2) of the Clean Air Act.

C. Resolution of disputes between the Navajo Nation and other Indian tribes or states

If any state or tribe is affected by the reclassification of an area by the Navajo Nation and if such party disagrees with such reclassification, or if a permit is proposed to be issued for any new major emitting facility proposed for construction in the Navajo Nation which the governor of an affected state or governing body of an affected tribe, as the case may be, determines will cause or contribute to a cumulative change in air quality in excess of that allowed in the affected state or tribe, the Director 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 Director shall request the USEPA Administrator's involvement pursuant to § 164(e) of the Clean Air Act.

§1118 Preconstruction Requirements

A. Major emitting facilities on which construction is commenced

No major emitting facility on which construction was commenced after August 7, 1977, may be constructed in any area to which this part applies unless:

1. a permit has been issued for such proposed facility in accordance with this Part (and Part H of this subchapter) setting forth emission limitations for such facility which conform to the requirements of this part;

2. the proposed permit has been subject to a review in accordance with this section, 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 § 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 part 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 chapter;

4. the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this chapter that is emitted from or results from such facility;

5. the proposed facility has complied with the provisions of subsection (D) of this section 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 such monitoring as may be necessary to determine the effect that emissions from any such facility may have, or are having, on air quality in any area that may be affected by emissions from such source; and

8. in the case of a source which proposes to construct in a class III area, emissions from which would cause or contribute to exceeding the maximum allowable increments applicable in a class II area and where no standard under § 111 of the Clean Air Act has been promulgated subsequent to August 7, 1977 for such source category, the Administrator of the USEPA has approved the determination of best available technology as set forth in the permit.

B. Exception

The demonstration pertaining to maximum allowable increases required under subsection (A)(3) of this section shall not apply to maximum allowable increases for class II areas in the case of an expansion or modification of a major emitting facility that was in existence on August 7, 1977, whose allowable emissions of air pollutants, after compliance with subsection (A)(4) of this section, will be less than fifty tons per year and for which the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur oxides will not cause or contribute to ambient air quality levels in excess of the national secondary ambient air quality standard for either of such pollutants.

C. Permit applications

Any completed permit application under this part and the regulations hereunder for a major emitting facility in any area to which this part applies shall be granted or denied not later than one year after the date of filing of such completed application.

D. Action taken on permit applications; notice; adverse impact on air quality-

related values; variance; emission limitations

1. The Director shall transmit to the Administrator of the USEPA a copy of each permit application relating to a major emitting facility that he/she 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 § 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 Director 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 increase 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 NNAQCP 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 § 165(d)(2)(C)(iv) of the Clean Air Act and the regulations thereunder.

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 President, after notice and public hearing, and the President finds, that the facility cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty-four hours or less applicable to any class I area, the President, after consideration of the federal land manager's recommendation (if any) and subject to his 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 President recommends a variance under this subsection in which the federal land manager does not concur, the recommendations of the President and the federal land manager shall be transmitted to the President of the United States, according to the provisions of § 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 § 165(d)(2)(D)(iii) of the Clean Air Act and the regulations thereunder, 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 24 hours or less on more than l8 days during any annual period.

E. 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 § 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 chapter 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 calendar year

preceding the date of application for a permit under this part unless the NNAQCP, 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.

PART C. PROTECTION OF VISIBILITY

§1119 Visibility Protection for Federal Class I Areas

A. Plan requirements

In the case of an area listed by the Administrator of the USEPA under § 169A(a)(2) of the Clean Air Act that is located within the Navajo Nation or that could reasonably be anticipated to have impaired visibility due in part or in whole to emissions coming from within the Navajo Nation, each applicable tribal (Navajo Nation) implementation plan under part A of this subchapter 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 § 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 Director (or the Administrator of the USEPA in the case of a federal implementation plan under § 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 Director 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 in the first paragraph of this subsection (A) and in § 169A(a)(1) of the Clean Air Act.

The Director shall make such determinations in accordance with regulations and guidelines promulgated by the Administrator of the USEPA pursuant to § 169A of the Clean Air Act. In the case of a fossil fuel-fired power plant having a total generating capacity in excess of 750 megawatts, the emission limitations required under this paragraph shall be determined pursuant to guidelines promulgated by the Administrator of the USEPA under § 169A(b)(1) of the Clean Air Act.

B. Consultations with appropriate federal land 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 Director 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.

§1120 Visibility Transport Regions and Commissions

A. Visibility transport regions

The President, 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 Navajo Nation or from one or more other tribes or states contributes significantly to visibility impairment in class I areas located in the Navajo Nation or in the other affected tribes or states and that a transport region for such pollutants that includes the Navajo Nation and such other tribes or states should be established. The President 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 President or his designee may be a member of a visibility transport commission established by the Administrator of the USEPA pursuant to § 169B of the Clean Air Act, and as such shall participate in all activities required under that section.

PART D. NEW SOURCE PERFORMANCE STANDARDS

§1121 Implementation and Enforcement of Standards of Performance

A. Implementation and enforcement by Director

The Director may develop and submit to the Administrator of the USEPA a procedure for implementing and enforcing standards of performance for new sources located in the Navajo Nation. The Director 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 Director 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 § 108 of the Clean Air Act or emitted from a source category

that is regulated under § 112 of the Clean Air Act, but

b. to which a standard of performance under § 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 to any particular source under a plan submitted under this paragraph, the Director 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 Navajo Nation, the Director may submit to the Administrator of the USEPA for approval, pursuant to § 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 § 129 of the Clean Air Act within 3 years of the date that the plan is approved by the Administrator of the USEPA. The Director may modify and resubmit a plan that has been disapproved.

2. The Director may implement a model program for the training of solid waste incineration unit operators and high-capacity fossil fuel-fired plant operators, if the Director has adopted a program that is at least as effective as the model program developed by the Administrator of the USEPA under § 129(d) of the Clean Air Act and has been authorized to do so by the Administrator of the USEPA.

3. Each solid waste incineration unit in the Navajo Nation in a category for which the Administrator of the USEPA has promulgated performance standards under § 111 or 129 of the Clean Air Act shall operate pursuant to a permit issued under this subsection and part H of this subchapter, if the Navajo Nation has an approved permit program for such source. Such permits may be renewed according to the provisions of part H of this subchapter. Notwithstanding any other provision of this chapter, each permit for a solid waste incineration unit that combusts municipal waste shall be issued for a period of up to 12 years and shall be reviewed every 5 years from the date of issuance or reissuance. Each permit shall continue in effect after the date of issuance until the date of termination, unless the Director determines that the unit is not in compliance with all standards and conditions contained in the permit. Such determination shall be made at regular intervals during the term of the permit, such intervals not to exceed 5 years, and only after public comment and public hearing. No permit may be issued by any person who is also responsible, in whole or in part, for the design and construction or operation of the unit. Notwithstanding any other provision of this paragraph, the Director may require the owner or operator of any unit to comply with emissions limitations or

implement any other measures, if the Director determines that emissions in the absence of such limitations or measures may reasonably be anticipated to endanger public health or the environment.

4. The Director may adopt and enforce any regulation, requirement, limitation or standard relating to solid waste incineration units that is more stringent than one in effect under the Clean Air Act, and may establish any other requirements applicable to solid waste incineration units, including the authority to establish for any air pollutant an ambient air quality standard, except that no solid waste incineration unit subject to performance standards under §§ 111 and 129 of the Clean Air Act shall be subject to standards under § 1128 of this chapter.

5. A solid waste incineration unit shall not be a utility unit for purposes of part G of this subchapter, provided that more than 80% of its annual average fuel consumption measured on a Btu basis, during a period or periods to be determined by the Administrator of the USEPA, is from a fuel (including any waste burned as a fuel) other than a fossil fuel.

6. No requirement of an applicable implementation plan under § 1118 or 1122 of this chapter may be used to weaken the standards in effect under this subsection.

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 § 111 or 129 of the Clean Air Act and the regulations thereunder and by the Director pursuant to this section and the regulations hereunder.

E. Revision of regulations

The Director, with the approval of the President, may submit an application to the Administrator of the USEPA for revision of the regulations promulgated under § 111(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 § 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 § 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 § 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.

PART E. PROVISIONS FOR NONATTAINMENT AREAS AND NEW SOURCE REVIEW

§1122 Nonattainment Plan Provisions

A. Plan submissions

With respect to any area within the Navajo Nation that the Administrator of the USEPA designates as nonattainment for any NAAQS, pursuant to § 107 of the Clean Air Act, the Director may submit a plan or plan revision meeting the applicable requirements prescribed in §§ 110(a)(2) and 172(c) of the Clean Air Act and in subsection (B) of this section and § 1112(A) of this chapter 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 § 1124(A)(1)(b) of this chapter,

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 § 1124 of this chapter;

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 § 172(a)(2) and (b) of the Clean Air Act, as modified for Indian tribes by regulations issued under § 301(d) of the Clean Air Act. The Director 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 Director or the Administrator of the USEPA.

C. Plan revision 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 § 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 §1112 of this chapter and this part.

D. Planning procedures

For any ozone, carbon monoxide, or PM-10 nonattainment area for which the Director intends to submit a plan, the Director shall develop planning procedures pursuant to this subsection. The organization preparing the plan shall be certified by the Director, and shall include elected officials from the affected area, representatives of the NNAQCP and representatives of any transportation planning agency and of any other organization with responsibilities for developing, submitting or implementing the plan under this part. In the case of a nonattainment area that is also included within another tribe or state, the Navajo Nation 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. Planning grants

The Director, in accordance with Navajo Nation law, may apply to the Administrator of the USEPA for grants for the planning activities required by this section.

F. Maintenance plans

If the Director submits a request under § 1111(B) of this chapter for redesignation of a nonattainment area as an area that has attained the national primary ambient air quality standard for any air pollutant, the Director 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 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, 8 years after redesignation of any area as an attainment area under § 107(d) of the Clean Air Act, the Director shall submit to the Administrator of the USEPA an additional revision of the applicable implementation plan for maintaining the standard for an additional 10 years after the expiration of the 10-year period referred to above.

G. Contingency provisions

Each plan revision submitted under subsection (F) shall contain such contingency provisions as the Administrator of the USEPA deems necessary to assure that the Director will promptly correct any violation of the standard that occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the Director 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 Director revise the implementation plan unless the Administrator of the USEPA requires the Director to do so.

H. Interstate transport commissions

The President may petition the Administrator of the USEPA to establish an interstate transport commission under § 176A of the Clean Air Act and to add or remove the Navajo Nation or any other tribe or state or portion thereof to or from any such commission established under that section.

§1123 Additional Provisions for Nonattainment Areas for Specific Pollutants

In the event any area of the Navajo Nation is designated nonattainment for any pollutant for which a NAAQS has been promulgated by the Administrator of the USEPA, the relevant provisions of §§ 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 Navajo Nation and as modified by

regulations promulgated by the Administrator of the USEPA under § 301(d) of the Clean Air Act.

§1124 Permit Requirements

A. General requirements

The Director may issue permits to control and operate a proposed new or modified major stationary source if:

1. the Director determines, in accordance with regulations issued under § 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 § 1122 of this chapter, 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 § 1122 of this chapter and § 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) in the Navajo Nation are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this chapter;

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.

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

C. Offsets

1. The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this part 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 Director 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 chapter 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 chapter shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of paragraph (1).

D. Control technology information

The Director 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 RACT/BACT/LAER clearinghouse to other tribes and states and to the general public.

PART F. CONTROL OF HAZARDOUS AIR POLLUTANTS

§1125 Control of Hazardous Air Pollutants

A. In general

The Director 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 § 112 of the Clean Air Act or requirements for the prevention and mitigation of accidental releases pursuant to § 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. Navajo standards

As part of the program developed under subsection (A) of this section, the Director may adopt and enforce regulations, requirements, limitations or standards that are more stringent than those in effect under § 112 of the Clean Air Act or that apply to a substance that is not subject to § 112 of the Clean Air Act, pursuant to §§ 1126, 1127 and 1128 of this chapter. Any standards set by the Director shall be at least as stringent as those promulgated by the Administrator of the USEPA.

C. Grants

The Director, in accordance with Navajo Nation law, may apply to the Administrator of the USEPA, pursuant to § 112(l)(4) of the Clean Air Act, for grants to assist in developing and implementing a program under subsection (A) of this section.

§1126 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 defined in § 1101 of this chapter;

2. hazardous air pollutants that are designated by the Director, pursuant to subsection (B) of this section.

B. Designation of hazardous air pollutants

The Director may, by regulation, designate hazardous air pollutants in addition to the federally listed hazardous air pollutants if the Director 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 § 112(r) of the Clean Air Act. The Director 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 Director shall not include any air pollutant that is listed under § 108 of the Clean Air Act, except that he/she may include a pollutant that independently meets the listing criteria of this subsection and is a precursor to a pollutant listed under § 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 Director shall not list elemental lead as a hazardous air pollutant under this subsection.

C. Review of list

The Director 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 NNAQCP office and shall be available for examination by the public during regular business hours.

D. Petitions to modify list

Any person may petition the Director to modify the list of hazardous air pollutants under subsection (B) of this section 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 Director shall commence a rulemaking pursuant to § 1161 of this chapter within 6 months of receipt of the petition.

§1127 List of Source Categories

A. Contents of list

The categories and subcategories of major sources and area sources of hazardous air pollutants listed under § 1126 of this chapter shall consist of:

1. source categories listed by the Administrator of the USEPA pursuant to §112(c) of the Clean Air Act; and

2. categories and subcategories of sources that emit the hazardous air pollutants designated by the Director pursuant to § 1126(B) of this chapter.

3. The Director may list a major source or area source category under paragraph (2) of this subsection if the Director finds, through rulemaking pursuant to § 1161 of this chapter, 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 Director shall periodically review the list of hazardous air pollutants that are designated pursuant to paragraph (2) of this subsection 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 Director to modify the list of source categories under subsection (A)(2) of this section 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 Director shall commence a rulemaking pursuant to § 1161 of this chapter within 6 months of receipt of the petition to add or delete the source category from the list under subsection (A).

§1128 Emission Standards

A. In general

The Director shall adopt the standards promulgated by the Administrator of the USEPA pursuant to § 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 Director pursuant to § 1127(A)(2) of this chapter. The Director 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 Director 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 Director shall comply with § 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 Director, 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 Director.

B. Criteria

Emissions standards promulgated by the Director 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 Director, 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;

4. are design, equipment, work practice or operational standards (including requirements for operator training or certification), as provided in § 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 Director. Emission standards promulgated under this section for existing sources in a category or subcategory may be less stringent than standards for new sources in the same category or subcategory but shall not be less stringent, and may be more stringent, than:

1. the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator of the USEPA has emissions information); excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources; or

2. the average emission limitation achieved by the best performing five sources (for which the Administrator of the USEPA has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources.

D. Alternative standard for area sources

With respect to categories and subcategories of area sources listed pursuant to § 1127, the Director may, in lieu of the authorities provided in subsection (B) of this section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories that provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

E. Compliance

For those standards promulgated by the Administrator of the USEPA that the Director adopts pursuant to subsection (A) of this section, the Director shall also adopt the same compliance dates. The Director shall establish compliance dates for each category or subcategory of existing sources for which the Director promulgates emissions standards under this section. These dates shall provide for compliance as expeditiously as practicable, but not until 90 days after the effective date of the standard, and no later than 2 years after the effective date of such standard, except as provided in § 1129(D) of

this chapter.

§1129 Hazardous Air Pollutant Permit Program

A. In general

Permits issued to sources of hazardous air pollutants covered under § 1127 of this chapter shall be issued pursuant to the provisions of Part H of this chapter and subject to the requirements and conditions contained within this section.

B. Construction, reconstruction and modification

After the effective date of the permit program under part H of this subchapter, 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 § 1127 of this chapter unless the Director 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 § 1128(C) of this part. In both cases, where the Administrator of the USEPA or the Director, as the case may be, has not established applicable emission limitations, the Director 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 § 112(g)(1)(B) of the Clean Air Act. The owner or operator of such source shall submit a showing to the Director that such increase has been offset under this subsection.

D. Schedule for compliance

Once the Navajo Nation has an approved permit program under Part H of this subchapter:

1. After the effective date of any emission standard, limitation, or regulation under § 112(d), (f) or (h) of the Clean Air Act or under § 1128 of this chapter, 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 Director 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 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 3-year period immediately after promulgation.

3. After the effective date of any emissions standard, limitation or regulation promulgated under § 112(d), (f) or (h) of the Clean Air Act or under § 1128 of this chapter 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 § 112(i) of the Clean Air Act, or by the Director, pursuant to this section and § 1128 of this chapter, as the case may be.

4. The Director may issue a permit that grants an extension permitting an existing source up to 1 additional year to comply with standards under § 112(d) of the Clean Air Act or § 1128 of this chapter if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations if the compliance time required under § 112(i)(3) of the Clean Air Act and the regulations thereunder, together with the 1-year extension provided by the Director under this paragraph, is insufficient to dry and cover mining waste in order to reduce emissions of any pollutant listed under § 112(b) of the Clean Air Act.

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 § 112(d) of the Clean Air Act or § 1128 of this chapter is first proposed, the Director shall issue a permit allowing the source to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under § 112(d) of the Clean Air Act or § 1128 of this chapter. The permit shall provide for an extension of 6 years from the compliance date for the otherwise applicable standard. The Director 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 § 112(i)(5)(C) of the Clean Air Act and the regulations thereunder.

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 1987, 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 § 112(f) of the Clean Air Act.

E. Equivalent emission limitation by permit

Once the Navajo Nation has an approved permit program under Part H of this chapter:

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 § 112(e)(1) and (3) of the Clean Air Act, then beginning 18 months after that date (but not prior to the effective date of the Navajo permit program), the owner or operator of any major source in such category or subcategory shall submit a permit application to the Director, pursuant to requirements established by the Administrator of the USEPA under § 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 Part H of this chapter. If the Director disapproves a permit application or determines that the application is incomplete, the applicant shall have up to 6 months to revise the application to meet the objections of the Director.

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 Director 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 § 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 subsection (D)(5) of this section. For these purposes, the reduction required by subsection (D)(5) shall be achieved by the date on which the relevant standard should have been promulgated under § 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 3 years after the permit is issued for existing sources, or such other compliance date as would apply under subsection (D) of 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 subsection (D) of this section. If the Administrator of the USEPA promulgates a standard under § 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 Director 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 8 years after such standard is promulgated or 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.

§1130 Research Program on Hazardous Air Pollutants

A. Research program

The NNAQCP may, in cooperation with the U.S. Environmental Protection Agency and the National Academy of Sciences, undertake a research program to evaluate the existing risk to public health from hazardous air pollutants and to provide options and recommendations for programs to control the release of hazardous substances into the ambient air. This research may include any or all of the following:

1. identification of hazardous air pollutants that are or may be emitted into the ambient air in the Navajo Nation;

2. identification and evaluation of methods for conducting ambient air monitoring, modeling, measuring emissions and performing related analyses;

3. surveying concentrations of hazardous air pollutants within the ambient air of the Navajo Nation and estimating contributions to those concentrations from permitted, nonpermitted and natural sources as well as background concentrations;

4. identification and evaluation of residual risk after implementation of controls during the term of study, of actual risk from exposure to hazardous air pollutants and of alternative risk assessment methodologies;

5. evaluation of the feasibility of, need for and potential methods for establishing ambient air quality standards or health-based guidelines for hazardous air pollutants; and

6. development of a public education program to provide information and increase public awareness of hazardous air pollutants.

B. Report

If the NNAQCP conducts any such research program, it shall submit a report of its findings and recommendations to the President and shall make such report available to the public.

PART G. ACID DEPOSITION CONTROL

§1131 Acid Deposition Permits and Compliance Plans

A. Permit Program

1. The Director may submit a permit program for approval in accordance with title V of the Clean Air Act and part H of this subchapter to provide for permits for new utility units required under § 403(e) of the Clean Air Act to have allowances; affected units or sources under § 405 of the Clean Air Act; and units subject to nitrogen oxide emission reductions under § 407 of the Clean Air Act.

2. Any permit issued by the Director 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 was allocated; and

    d. contravention of any other provision of the permit.

3. Permits shall be issued for a period of 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 thereunder, and with the applicable provisions of part H of this subchapter and title V of the Clean Air Act and the regulations thereunder.

B. Compliance plans

Each affected source when submitting an initial permit application to the Director 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 § 502(c) of the Clean Air Act the source shall be considered a "facility." Nothing in this section regarding compliance plans or in part H of this subchapter shall be construed as affecting allowances. Except as provided under § 408(c)(1)(B) of the Clean Air Act, submission of a statement by the owner or operator, or the designated representative thereof, of a unit

subject to the emissions limitation requirements of §§ 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 § 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 §§ 407(d) or (e), 409 or 410 of the Clean Air Act or § 1132 or 1133 of this chapter, 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 Director 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 § 405 of the Clean Air Act that is located within the Navajo Nation shall submit a permit application and compliance plan for that source to the Director not later than January 1, 1996.

2. Not later than December 31, 1997, provided that the Navajo Nation has an approved acid deposition control permit program, the Director shall issue permits to the owner, operator or designated representative thereof of affected sources under § 405 of the Clean Air Act that satisfy the requirements of part H of this subchapter and title V of the Clean Air Act and that submitted to the Director 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 part and part H of this subchapter until a permit is issued by the Director 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, operator or designated representative 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 Navajo Nation shall submit a permit application and compliance plan to the Director not later than 2 years before January 1, 2000 or the date on which the unit commences operation, whichever is later. The Director shall issue a permit to the owner, operator or designated representative of the unit that satisfies the requirements of this part and part H of this subchapter and of titles IV and V of the Clean Air Act.

E. Units subject to NOx emission limitations

The owner or operator, or designated representative thereof, of any unit subject to an emission rate requirement under § 407 of the Clean Air Act and located within the Navajo Nation shall submit a permit application and compliance plan for such unit to the Director not later than January 1, 1998. The Director 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 part and part H of this subchapter, 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 Director 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 Director, provided that there is an approved Navajo Nation acid deposition permit program. For purposes of this subsection, compliance, as provided in § 1136(E) of this chapter, with a permit issued under part H of this subchapter which complies with this part for sources subject to this part shall be deemed compliance with this part as well as with § 1134(E) of this chapter.

3. In order to ensure reliability of electric power, nothing in this part or part H of this subchapter 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 subchapter 3 of this chapter.

H. Certificate of representation

No permit shall be issued under this section to an affected unit until the designated representative of the owners or operators has filed, with the Administrator of the USEPA and the Director, 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 § 408(i) of the Clean Air Act and the regulations thereunder, 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 thereunder.

§1132 Special Provisions Related to Nitrogen Oxides

A. Alternative emission limitations

Upon request by an owner or operator of a unit subject to § 407 of the Clean Air Act, the Director shall authorize an emission limitation less stringent than the applicable limitation established under § 407(b) of the Clean Air Act upon a determination that:

1. a unit subject to § 407(b)(1) of the Clean Air Act can not meet the applicable limitation using low NOx burner technology, as defined in title IV of the Clean Air Act and the regulations thereunder, or

2. a unit subject to § 407(b)(2) of the Clean Air Act can not meet the applicable rate using the technology on which the Administrator of the USEPA based the applicable emission limitation.

B. Demonstration required

The Director shall base such determination upon a showing satisfactory to the Director, 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 property 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 can not 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 Director shall issue an operating permit for the unit in question in accordance with § 1131 of this chapter that permits the unit during the demonstration period referred to in paragraph (B)(2) above to emit at a rate in excess of the applicable emission rate. At the conclusion of the demonstration period, the Director shall revise the operating permit to reflect the alternative emission rate demonstrated in paragraphs (B)(2) and (3) above.

D. Emissions averaging

1. In lieu of complying with the applicable emission limitations under§ 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 Director 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 § 407(b)(1) and (2) of the Clean Air Act.

2. If the Director determines, in accordance with regulations promulgated by the Administrator of the USEPA, that the conditions in paragraph (1) can be met, the Director shall issue operating permits for such units, in accordance with § 1131 of this chapter, 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.

§1133 Repowered Sources

A. Eligibility

Not later than December 31, 1997, the owner or operator of an existing unit subject to the emission limitation requirements of § 405(b) or (c) of the Clean Air Act may demonstrate to the Director, if the Navajo Nation has an approved acid deposition control permit program by that date, that one or more units will be repowered with a qualifying clean coal technology, as that term is defined in title IV of the Clean Air Act and the regulations hereunder, to comply with the requirements of § 405 of the Clean Air Act. The owner or operator shall, as part of any such demonstration, provide, not later than January 1, 2000, satisfactory documentation of a preliminary design and engineering effort for such repowering and an executed and binding contract for the majority of the equipment to repower such unit and such other information as is required by regulation

under this section and § 409 of the Clean Air Act.

B. Extension

The Director shall grant to an owner or operator satisfying the requirements of subsection (A) of this section an extension of the emission limitation requirement compliance date for that unit from January 1, 2000 to December 31, 2003. The extension shall be specified in the permit issued to the source, together with any compliance schedule and other requirements necessary to meet Phase II requirements by the extended date. Any unit that is granted an extension under this section shall not be eligible for a waiver under § 111(j) of the Clean Air Act.

C. Control requirements

Any unit qualifying for an extension under this section that does not increase actual hourly emissions for any pollutant regulated under this chapter or the Clean Air Act shall not be subject to any standard of performance under § 1121 of this chapter. Notwithstanding the preceding sentence, no new unit that is designated as a replacement for an existing unit, qualifies for an extension under this section and is located at a different site than the existing unit shall receive an exemption from the requirements imposed under § 1121 of this chapter.

D. Expedited permitting

The Director shall attempt to give expedited consideration to permit applications under parts B and E of this subchapter for any source qualifying for an extension under this section.

E. Prohibition

It shall be unlawful for the owner or operator of a repowered source to fail to comply with the requirements of this section, or any regulations or permit requirements to implement this section, including the prohibition against emitting sulfur dioxide in excess of allowances held.

PART H. PERMITS

§1134 Permit Programs

A. Submission and approval

1. The Director 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 thereunder. The Director 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 Director shall submit to the Administrator of the USEPA a legal opinion from the Attorney General that the laws of the Navajo Nation 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 Director of any revisions or modifications necessary to obtain approval, the Director may revise and resubmit the program for review under § 502 of the Clean Air Act.

3. The Director may, subject to 2 N.N.C. § 824(B)(6), 2 N.N.C. § 164(B)(2) and 2 N.N.C. § 1005(C)(2), enter into a delegation agreement with USEPA providing for the Director to implement a CAA Title V operating permit program pursuant to 40 C.F.R. part 71, pending USEPA's approval of a permit program submitted by the Director pursuant to 40 C.F.R. part 70 and the requirements of this part, and pending the transition from part 71 to part 70 permits, and in other instances when it may be appropriate to enter into such an agreement.

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 Act, as well as such other elements as the Director may require by regulation, including but not limited to:

1. requirements for permit applications, including a standard application form and criteria for processing permit applications and for determining in a timely fashion the completeness of applications;

2. adequate, streamlined and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing on permit applications and compliance plans and for expeditious review of permit actions, including applications, renewals and revisions, and including an opportunity for judicial review in the Navajo Nation Court system of final permit actions (including review of failures to take timely action on permit applications or permit renewal applications, to require that action be taken on such permit applications without additional delay), by the permit applicant, any person who participates in the public comment process provided according to § 1137(D) of this part, and any other person who obtains judicial review under Navajo law;

3. monitoring and reporting requirements;

4. requirements for adequate personnel and funding to administer the program;

5. provisions ensuring adequate authority to issue permits; assure compliance by all sources required to have a permit under this part with each applicable standard, regulation or requirement under this chapter; assure that upon issuance or renewal

permits incorporate emission limitations and other requirements in an applicable implementation plan; terminate, modify or revoke and reissue permits for cause; enforce permits and permit requirements imposed pursuant to this part; assure that no permit will be issued if the Administrator of the USEPA objects to its issuance in a timely manner under this part; and generally administer the permit program;

6. in the case of permits for major sources with a remaining term of 3 or more years, a requirement that revisions be made to the permit to incorporate applicable standards and regulations promulgated under this chapter or under the Clean Air Act after the issuance of such permit, as expeditiously as practicable and consistent with the procedures established under paragraph (2) 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;

7. 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 part G of this subchapter and title IV of the Clean Air Act and the regulations hereunder;

8. provisions to allow changes within a permitted facility or one operating pursuant to § 1135(D) of this chapter or § 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 Director and the Administrator of the USEPA with written notification a minimum of 7 days in advance of the proposed changes according to the requirements of the regulations promulgated under § 502(b)(10) of the Clean Air Act and under this section;

    a. a requirement that the owner or operator of a source required to obtain a permit under this part pay a fee pursuant to a system of fees established by the Director under this part and designed solely to cover all reasonable direct and indirect costs required to develop and administer the permit program under this part and the small business assistance program under § 1140 of this part (if such program is developed by the Director), including the reasonable costs of reviewing and acting upon permit applications; implementing and enforcing the terms and conditions of permits (not including costs associated with enforcement actions); performing emissions and ambient monitoring; preparing generally applicable regulations and guidance; conducting modeling, analyses and demonstrations; preparing inventories and tracking emissions; the general administrative costs of running the permit program; and the costs of providing direct and indirect support to sources under the small business assistance program in determining and meeting their obligations under this part and the

regulations hereunder (if such program is developed by the Director);

b. a requirement that the fee program result in the collection, in the aggregate, from all sources subject to fees, of an amount not less than $25 per ton of each regulated pollutant, as such term is defined and as such amount is calculated in accordance with § 502(b)(3)(B) of the Clean Air Act and the regulations hereunder, unless a lesser amount will meet the requirements of the preceding paragraph; and that the NNAQCP regulations prescribe procedures for increasing the fee each year by the percentage, if any, by which the Consumer Price Index for the immediately preceding calendar year exceeds the Consumer Price Index for calendar year 1989, as defined in § 502(b)(3)(B) of the Clean Air Act, and provide that any fees collected shall be deposited in the fund established by § 1139 of this chapter and used solely to cover the reasonable costs of the permit program; and

9. authority, and reasonable procedures consistent with the need for expeditious action by the Director on permit applications and related matters, to make available to the public any permit application, compliance plan, permit and monitoring or compliance report under § 1135(E) of this chapter, subject to the provisions of § 1151(D) of this chapter.

C. Effective date

The effective date of a permit program or partial or interim program approved under § 502 of the Clean Air Act shall be the effective date of approval by the Administrator of the USEPA.

D. Interim approval

If a program, including a partial permit program, submitted under subsection (A) of this section receives interim approval from the Administrator of the USEPA, for the period of any such interim approval the provisions of subsection (E) of this section shall be suspended.

E. Violations

After the effective date of any permit program promulgated under this part, it shall be unlawful for any person to violate any requirement of a permit issued under this part or to operate an affected source or a major source, as those terms are defined under § 1101 of this chapter, or any other source (including an area source) subject to regulation under parts D and F of this subchapter, any other source required to have a permit under parts B or E of this subchapter, or any other stationary source in a category designated in whole or in part by the Administrator of the USEPA or the Director as requiring a permit, except in compliance with a permit issued by the Director under this part. If the Director designates a category in whole or in part under this subsection he/she shall do so by regulation after notice and public comment and shall include a finding setting forth the basis for such designation. If the Administrator of the USEPA exempts a source category from the requirements of § 502(a) of the Clean Air Act, pursuant to that subsection, the Director may, but is not required to,

exempt that source category from the requirements of this subsection. Nothing in this subsection shall be construed to alter the applicable requirements of this chapter that a permit be obtained before construction or modification.

F. Permits implementing acid deposition provisions

The requirements of this part, including regarding schedules for submission and approval or disapproval of permit applications, shall apply to permits implementing the requirements of part G of this subchapter except as modified by part G. Nothing in the permits or compliance plans issued pursuant to this part shall be construed as affecting allowances under part G of this subchapter or title IV of the Clean Air Act.

G. Minor source permits

Notwithstanding any other provisions under this part, the Director 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 Director 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 subsection (B)(9) of this section, and require monitoring and reporting. Minor sources identified by the Director may include coal mines and uranium mines, in addition to such other sources as the Director identifies by regulation.

§1135 Permit Applications

A. Applicable date

Any source specified in § 1134(E) of this part 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 § 1134 of this chapter.

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 Director may establish, submit to the Director 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 chapter and by the

Director through regulation. The Director 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 Director 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 Director within five years after such effective date. The Director 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 chapter.

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 Navajo Nation with respect to those activities conducted pursuant to this permit issued by the Director pursuant to the provisions of the Navajo Nation Air Pollution Prevention and Control Act. 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 Navajo Nation in connection with any permit issued by the Director, 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. 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 chapter. The compliance plan shall include a schedule of compliance and a schedule under which the permittee will submit progress reports to the Director no less frequently than every 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 Director, as provided in the regulations promulgated under this part.

E. Timely and complete applications

Except for sources required to have a permit before construction or modification under this chapter, if an applicant has submitted a timely and complete application for a permit required by this part (including for a renewal) but final action has not been taken on such application, the source's failure to have a permit shall not be a violation of this chapter, unless the delay in final action was due

to the failure of the applicant timely to submit information required or requested to process the application. No source required to have a permit under this part shall be in violation of § 1134(E) of this chapter before the date on which the source is required to submit an application under subsection (B) of this section.

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 under § 1151(D) of this chapter, the applicant or permittee may submit such information separately. The requirements of § 1151(D) shall apply to such information. The contents of a permit shall not be entitled to protection under § 1151(D) of this chapter.

§1136 Permit Requirements and Conditions

A. In general

Permits shall be issued under this part for fixed terms, not to exceed 5 years, except that affected sources under part G of this subchapter must have 5-year fixed terms and solid waste incineration units under part D of this subchapter may have up to 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 Director, no less often than every 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 chapter 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 § 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. General permits

The Director may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under this subchapter. No source covered by a general permit shall thereby be relieved from the obligation to file an application under § 1135 of this chapter.

D. Temporary sources

The Director 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 chapter at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under parts B and C of this subchapter. Any such permit shall in addition require the owner or operator to notify the Director in advance of each change in location. The Director may require a separate permit fee for operations at each location.

E. Permit shield

Compliance with a permit issued in accordance with this part shall be deemed compliance with § 1134 of this chapter. Except as otherwise provided by the Administrator of the USEPA by regulation, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of this chapter that relate to the permittee if:

1. the permit includes the applicable requirements of such provisions; or

2. the Director, in acting on the permit application, makes a determination relating to the permittee that such other provisions are not applicable and the permit includes the determination or a concise summary thereof.

3. Nothing in the preceding sentence shall alter or affect the provisions of § 1105 of this chapter, including the authority of the Director under that section.

§1137 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 § 505(d) of the Clean Air Act:

1. The Director 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 Director shall notify all states and tribes:

   a. whose air quality may be affected and that are contiguous to the Navajo Nation; 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 Director, the Director shall notify the state or tribe submitting the recommendations and the Administrator of the USEPA in writing of his/her 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 § 505(d) of the Clean Air Act:

1. The Director shall respond in writing to any objection by the Administrator of the USEPA to the issuance of a permit, pursuant to the provisions of § 505(b) of the Clean Air Act and the regulations hereunder.

2. Upon receipt of an objection by the Administrator of the USEPA under § 505 of the Clean Air Act, the Director may not issue the permit unless it is revised and issued in accordance with subsection (C) of this section. If the Director has issued a permit prior to receipt of an objection by the Administrator of the USEPA under § 505(b)(2) of the Clean Air Act, the Director 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 Director shall, within 90 days after the date of an objection under § 505(b) of the Clean Air Act, submit a permit revised to meet the objection.

2. If the Administrator of the USEPA notifies the Director that cause exists to terminate, modify or revoke and reissue a permit, the Director 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 Director may request a ninety-day extension for this submittal, in accordance with § 505(e) of the Clean Air Act.

D. Notification to general public

The NNAQCP shall give notice of permit applications and proposed permits to the public, according to regulations promulgated by the Director under this part, providing an opportunity for public hearing and comment. Any person may petition the Administrator of the USEPA to veto a permit, pursuant to § 505(b) of the Clean Air Act, if the Administrator of the USEPA fails to object to the permit within the period prescribed by title V of the Clean Air Act and the regulations thereunder. The objections in the petition must have been raised in the public comment period provided for in this subsection, unless the petitioner shows that it was impracticable to have done so.

§1138 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 NNAQCP 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 NNAQCP in advance in writing of the transfer, according to regulations promulgated by the Director, and if the Director finds that the transferee is capable of operating the source in compliance with the permit and the requirements of this part and the regulations hereunder.

§1139 Permit Fund

There is hereby established a Permit Fund in the Navajo Treasury, consisting of fees, penalties and interest collected pursuant to this part, § 1153 of this chapter and Title V of the Clean Air Act. The fund shall be administered by the Director and shall be used to pay for all direct and indirect costs of developing and administering the permit program under this part, as described in § 1135 of this part, including the cost of issuing conditional orders under § 1153 of this chapter. In addition, penalties collected pursuant to § 1154(D)(3) and § 1156(E) may be utilized for the purposes set out therein. The Permit Fund shall not be utilized for any purpose not authorized by this chapter or the Clean Air Act. The Director may invest money from the fund, and money earned from investment shall be credited to the fund.

§1140 Technical and Environmental Compliance Assistance for Small Businesses

A. Eligibility

This section shall apply to small business stationary sources, as such term is defined in § 1101 of this chapter, except that the Director may, upon petition by a source and after notice and opportunity for public comment, include as a small business stationary source a stationary source that does not meet the criteria of paragraphs (c) to (e) of § 1101(A)(58) but that does not emit more than 100 tons per year of all regulated pollutants combined. In addition, the Director may, in consultation with the Administrator of the USEPA and the Administrator of the Small Business Administration and

after providing notice and opportunity for public hearing, exclude from the definition any category or subcategory of sources that the Director determines to have sufficient technical and financial capabilities to meet the requirements of this chapter and the Clean Air Act without the application of this section.

B. Content of program

The Director may, after reasonable notice and public hearings, adopt and submit to the Administrator of the USEPA as part of the tribal (Navajo Nation) implementation plan or as a revision to the tribal (Navajo Nation) implementation plan a program to provide technical and environmental compliance assistance to small business stationary sources. The program must include each of the following:

1. adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with this chapter and the Clean Air Act;

2. adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution;

3. a designated office within NNEPA to serve as ombudsman for small business stationary sources in connection with the implementation of this chapter and the Clean Air Act;

4. a compliance assistance program for small business stationary sources that assists such sources in determining applicable requirements and in receiving permits under this chapter and the Clean Air Act in a timely and efficient manner;

5. adequate mechanisms to assure that small business stationary sources receive notice of their rights under this chapter and the Clean Air Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under this chapter or the Clean Air Act;

6. adequate mechanisms for informing small business stationary sources of their obligations under this chapter and the Clean Air Act, including mechanisms for referring such sources to qualified auditors or, at the option of the Director, for providing audits of the operations of such sources to determine compliance with this chapter and the Clean Air Act; and

7. procedures for consideration of requests from a small business stationary source, made

before any applicable compliance date, for modification of any work practice or technological method of compliance or modification of the schedule for implementing such work practice or method of compliance, based on the technological and financial capability of any such source. No such modification may be granted unless it is in compliance with the applicable requirements of this chapter and the Clean Air Act, including the requirements of the applicable implementation plan. Where such requirements are set forth in federal regulations, only modifications authorized in such regulations may be allowed.

C. Compliance advisory panel

1. A compliance advisory panel shall be established which shall:

   a. advise the Director on the effectiveness of the program operated pursuant to this section, including on the difficulties encountered and the degree and severity of enforcement;

   b. review information developed by the program to ensure that it is understandable by the general public; and

   c. have the program develop and disseminate reports and advisory opinions concerning the findings made pursuant to paragraphs (a) and (b) above.

2. The panel shall consist of five members, appointed for staggered terms, as follows:

   a. two members, who are not owners or representatives of owners of small business stationary sources, selected by the President to represent the general public;

   b. two members selected by the Speaker of the Navajo Nation Council who are owners or who represent owners of small business stationary sources; and

   c. one member selected by the Director to represent NNEPA.

D. Fees

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

Subchapter 3. Enforcement

§1151 Record-keeping, Inspections, Monitoring and Entry

A. Requirements in orders or permits

The Director may require, by order or permit and on a one-time, periodic or continuous basis, any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Director believes may have information necessary for the purposes set forth in this subsection, or who is subject to any requirement of this chapter, to:

1. establish and maintain such records;

2. make such reports;

3. install, use and maintain such monitoring equipment, and use such audit procedures or methods;

4. sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator of the USEPA or the Director shall prescribe);

5. keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical;

6. submit compliance certifications in accordance with subsection (B) of this section; and

7. provide such other information as the Director may reasonably require.

B. Monitoring

The Director may require sources to monitor, sample or otherwise quantify their emissions as follows:

1. The Director may adopt regulations requiring sources to monitor, sample or otherwise quantify their emissions of air pollutants for which ambient air quality standards or emission, design, equipment, work practice or operational standards have been adopted. In the development of these regulations, the Director shall consider the cost and effectiveness of the monitoring, sampling or other studies.

2. In prescribing monitoring, sampling or other quantification requirements under subsection (A), the Director shall consider the relative cost and accuracy of any reasonable alternatives to such requirements. The Director may require monitoring, sampling or other quantifications under subsection (A) if the Director determines in writing that the actual or potential emissions in question may adversely affect public health or the environment and the monitoring, sampling or other quantification method to be required is technically feasible, reasonably accurate and reasonable in cost in light of the use to be made of the data.

3. The Director may require enhanced monitoring and submission of compliance certifications in cases where the Administrator of the USEPA has not already done so pursuant to § 114(a)(3) of the Clean Air Act. Compliance certifications shall be subject to the same requirements as those prescribed under § 114(a)(3) of the Clean Air Act and the regulations hereunder and, together with monitoring data, shall be subject to subsection (D) of this chapter. Submission of a compliance certification shall not limit the Director's authority to investigate or otherwise implement this chapter.

C. Production of records

Whenever the Director has reasonable cause to believe that any person has violated or is in violation of any requirement of this chapter or of any regulation hereunder or any requirement of a permit issued pursuant to this chapter, he/she may require in writing that such person produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with such requirements.

D. Public availability of information

Any records, reports or information obtained under subsections (A), (B) or (C) of this section shall be available to the public, except that upon a showing satisfactory to the Director by any person that records, reports or information, or any portion thereof (other than emission data), would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Director shall consider such record, report, information or portion thereof confidential, except that such material may be disclosed to other officers, employees or authorized representatives of the Navajo Nation and of the United States concerned with carrying out this chapter or when relevant to any proceeding under this chapter.

§1152 Orders to Comply

A. In general

Whenever, on the basis of any information available to the Director, the Director finds that any person has violated, or is in violation of, any requirement or prohibition of this chapter, the regulations promulgated under this chapter, or permits, orders, plans (including tribal (Navajo Nation) implementation plans), waivers or fees issued or approved pursuant to this chapter, the Director may:

1. issue and serve on such person an order requiring such person to comply with such requirement or prohibition, pursuant to the provisions of this section;

2. issue and serve on such person an administrative penalty order in accordance with §1155 of this chapter;

3. bring a civil action in accordance with § 1154 of this chapter; and/or

4. bring a criminal action in accordance with § 1154 of this chapter and/or refer any criminal enforcement action or portion of such action to the EPA Regional Administrator for the appropriate EPA region.

B. In addition, when a person has consistently violated any requirements or prohibitions of this chapter, the regulations promulgated under this chapter, or permits, orders, plans (including tribal (Navajo Nation) implementation plans), waivers or fees issued or approved pursuant this chapter, or refused to comply with any such requirements or prohibitions, the Director may issue an order prohibiting such person from continuing to operate a source within the Navajo Nation, and/or prohibiting such person from entering into any new contracts (including leases) that would permit such person to operate a source within the Navajo Nation.

C. Requirements for orders to comply

An order to comply issued under this section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to regulations promulgated by the Director under § 1161 of this chapter, if such hearing is requested in writing within 30 days after the date of issuance of the order, and shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. The order shall become effective immediately upon the expiration of the 30 days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. In the case of a source required to obtain a permit pursuant to part H of subchapter 2 of this chapter and title V of the Clean Air Act, the order shall require compliance no later than one year after the date the order is issued and shall be nonrenewable. A copy of the order shall be sent to the appropriate EPA region and, if the order is issued to a corporation, to the appropriate corporate officers. No order to comply issued under this section shall prevent the Navajo Nation from assessing any penalties nor otherwise affect or limit the Navajo Nation's authority to enforce under other provisions of this chapter, nor affect any person's obligations to comply with any section of this chapter or with a term or condition of any permit or implementation plan promulgated or approved under this chapter.

§1153 Conditional Orders

A. Issuance

The Director may adopt regulations providing for the issuance of conditional orders to owners or operators of air pollution sources, which would allow sources to vary from provisions of this chapter and regulations and plans adopted and permits issued pursuant to this chapter. Such regulations shall allow owners and operators of sources to petition the Director for conditional orders, and shall specify the minimum requirements for such petitions and procedures for processing petitions and for public participation. For a conditional order that would vary from a requirement of a tribal (Navajo Nation) implementation plan, the regulations shall provide for submittal of the order to the

Administrator of the USEPA pursuant to § 110(l) of the Clean Air Act and shall provide for a public hearing on the petition. For a conditional order that would vary from a requirement of a permit issued pursuant to this chapter, the regulations shall conform to the procedures established for permit revisions pursuant to part H of subchapter 2 of this chapter. In all cases, the Director shall grant a petition for a conditional order only if he/she finds that:

1. there has been a breakdown of equipment or operations beyond the control of the petitioner, the source was in compliance before the breakdown and the breakdown can be corrected within a reasonable time; and

2. issuance of the conditional order will not endanger public health or the environment, impede attainment of the national ambient air quality standards or cause significant deterioration of existing air quality.

B. Terms and conditions of orders

The requirements imposed as a basis for granting or renewing a conditional order shall include, but not be limited to:

1. a detailed plan for the completion of corrective steps needed to conform to the provisions of this chapter and the regulations adopted and permits issued hereunder;

2. a requirement that necessary construction shall begin as expeditiously as practicable; and

3. the right of the NNAQCP to make periodic inspections of the facilities for which the conditional order is granted.

C. Subject to the provisions of subsection (D), conditional orders shall be valid for no longer than 1 year in the case of a source that is required to obtain a permit pursuant to part H of subchapter 2 of this chapter and title V of the Clean Air Act and no longer than 3 years in the case of any other source. Any fees imposed by the Director in order to obtain a conditional order shall be deposited in the permit fund established under § 1139 of this chapter.

D. Renewals

A holder of a conditional order may petition the Director for a renewal of such order. A petition for renewal may be filed not more than 60 days nor fewer than 30 days prior to the expiration of the order. The Director, within 30 days of receipt of the petition, shall renew the conditional order for 1 year if the petitioner is in compliance with the requirements imposed pursuant to subsection (B). The total term of renewals shall not exceed 3 years from the date of initial issuance of such order, except that if the petitioner is not in compliance with the requirements of the order after this 3-year period and the Director finds that such failure is due to conditions beyond the control of the petitioner,

the Director may renew the order for a total term of 2 additional years. The Director may also renew a conditional order for up to an additional 2-year term if the Director amends or adopts any regulation that requires the installation of additional or different air pollution control equipment on the source in question.

E. Suspension and revocation

If the terms of a conditional order are being or have been violated, the Director may seek to revoke or suspend the conditional order. In such event, the Director shall serve notice of such violation on the holder of the order, specifying the nature of the violation and the date on which a hearing will be held to determine whether the violation occurred and whether the order should be suspended or revoked.

§1154 Judicial Enforcement

A. Civil judicial enforcement

The Director shall request the Attorney General to file an action 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 of not more than $27,500 per day, which amount shall increase automatically whenever the federal maximum civil penalty increases, in any of the following instances:

1. whenever a person has violated, or is in violation of, any provision, requirement or prohibition of this chapter, including, but not limited to, a regulation or plan adopted pursuant to this chapter, a permit or order issued pursuant to this chapter or a fee as under this chapter;

2. whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities;

3. whenever a person is creating an imminent and substantial endangerment to the public health or the environment because of a release of air pollution, in which case the Director shall request the Attorney General to pursue injunctive relief but not the assessment of penalties, unless the endangerment to the public health is caused by a violation, as specified in paragraphs (l) and (2).

B. Criminal penalties

Any person who intentionally:

1. violates any provision, requirement or prohibition of this chapter, including but not limited to a regulation or plan adopted pursuant to this chapter, a permit or order issued pursuant to this chapter, a filing, reporting or notice requirement under this chapter or a

fee assessed under this chapter;

2. makes any false material statement, representation or certification in or omits material information from, or alters, conceals or fails to file or maintain any notice, application, record, report, plan or other document required pursuant to this chapter to be filed or maintained, including required by a permit issued pursuant to this chapter; or

3. falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this chapter, shall, upon conviction, be punished by a fine in a maximum amount of not less than $10,000 per day per violation or, if smaller, the largest amount permissible under applicable law. In any instance where the Navajo Nation lacks jurisdiction over the person charged, or where the Director is limited in the amount of the fine that he/she may impose, the Director may refer the action to the appropriate EPA Regional Administrator pursuant to § 1152 of this chapter. For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in § 1101(a)(49) of this chapter, any responsible corporate officer.

C. Jurisdiction and venue

Any action under this subsection may be brought in the Navajo Nation District Court in Window Rock, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil penalties, collect any fees or noncompliance penalties owed the Navajo Nation under this chapter, and award any other appropriate relief.

D. Calculation of penalties

1. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this section, § 1155 or § 1156, if the Director has notified the source in writing of the violation and the Director or plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Navajo Nation District Court in Window Rock that alleges any violation described in subsection (A) of this section.

2. In determining the amount of a civil penalty assessed under this section, the court shall consider the history, seriousness and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator's full compliance history, including the severity and duration of past violations, if any; the economic impact of

the penalty on the violator; as an aggravating factor only, the economic benefit, if any, resulting from the violation; and any other factors that the court deems relevant. The court shall not assess penalties for noncompliance with administrative subpoenas under § 1161 of this chapter or actions under § 1151 of this chapter where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.

3. All penalties collected pursuant to this section shall be deposited in a special fund in the Navajo Treasury for use by the Director to finance air compliance and enforcement activities. The Director shall report annually to the Navajo Nation Council about the sums deposited into the fund, including the sources and the actual and proposed uses thereof.

E. Security

The court may, if a temporary restraining order or preliminary injunction is sought under this section or § 1156 of this chapter, require the filing of a bond or equivalent security.

§1155 Administrative Assessment of Penalties

A. Basis for penalty

The Director may issue against any person an administrative order assessing a civil administrative penalty of up to $10,000 per day per violation whenever the Director finds that a person has violated, or is in violation of, any provision, requirement or prohibition of this chapter, including, but not limited to, a regulation or plan adopted pursuant to this chapter, a permit or order issued pursuant to this chapter or a fee assessed under this chapter. The Director's authority under this subsection shall be limited to matters where the total penalty sought does not exceed $100,000 and the first alleged date of violation occurred no more than 1 year prior to the initiation of administrative action, except where the director and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a join determination and the method(s) utilized for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify or remit with or without any conditions, any administrative penalty imposed under this section.

B. Hearing requirement

The Director shall assess an administrative penalty under this section by an order made after opportunity for a hearing. The Director shall promulgate rules for discovery and other procedures for hearings under this section. Before issuing such an order, the Director shall give written notice of the proposed order to the person on whom the penalty is to be assessed and provide such person an opportunity to request a hearing within 30 days of receipt of the notice.

C. Field citations

After consultation with the Attorney General, the Director may implement a field citation program through regulations establishing minor violations for which field citations (assessing civil penalties not to exceed $5,000 per day per violation) may be issued by officers or employees designated by the Director, to the extent permissible under applicable law. Any person on whom a field citation is assessed may, pursuant to regulations issued under this section, elect to pay the penalty or request a hearing on the citation. If a timely request for a hearing is not made, the penalty shall be final and the opportunity for judicial review shall be waived. Any hearing shall provide a reasonable opportunity to be heard and to present evidence. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this chapter if the violation continues.

D. Judicial review

Any person subject to a civil penalty under subsections (A) or (C) of this section may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock by filing a petition for review in such court within 30 days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Attorney General. Within 30 days thereafter the Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Director may seek to recover civil penalties ordered or assessed under this section.

E. Failure to pay penalty

If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order after the order or assessment has become final, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who falls to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be 10% of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter.

F. Calculation of penalty

In determining the amount of any penalty to be assessed under this section, the Director or the court, as appropriate, shall take into consideration the factors enumerated in § 1154(D) of this chapter.

§1156 Citizen Suits

A. Authority to bring civil action; jurisdiction

1. Except as provided in subsection (B) of this section, a person may commence a civil action in the Navajo Nation District Court in Window Rock on his own behalf against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises) who is alleged to be in violation of an emission standard or limitation under this chapter, an order issued by the Director or the President with respect to such a standard or limitation, or a permit or requirement to have a permit issued under this chapter.

2. The Navajo Nation courts shall have jurisdiction to enforce such an emission standard or limitation, order or permit requirement and to apply any appropriate civil penalties.

B. Notice

1. An action may not be commenced under subsection (A)(1) of this section fewer than 60 days after the plaintiff has given notice of the alleged violation to the Director, the Navajo Nation and the alleged violator. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting a civil action in court to require compliance with this chapter, except that any person may intervene as a matter of right in such an action.

C. Venue; intervention; service of complaint

1. Any action respecting a violation by a source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the Navajo Nation District Court in Window Rock.

2. The Director, if not already a party, may intervene as of right in any action brought under this section.

3. Whenever any action is brought under this section the plaintiff shall serve a copy of the complaint on the Attorney General and on the Director. No consent judgment may be entered in an action brought under this section in which the Director is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Director, during which time the Attorney General and the Director may submit, on behalf of the Navajo Nation, their comments on the proposed consent judgment to the court and parties or the Director may intervene as a matter of right.

D. Award of costs

The court, in issuing a final order in an action brought under this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such award is appropriate.

E. Penalty fund

Penalties received under this section shall be deposited in a special fund in the Navajo Nation Treasury for use by the Director to finance air compliance and enforcement activities. The Director shall report annually to the Navajo Nation Council about the sums deposited into the fund, including the sources and the actual and proposed uses thereof.

Subchapter 4. Rulemaking and Judicial Review

§1161 Rulemaking and Other Administrative Procedures

A. Rulemaking

1. Notice of any proposed regulation shall be published in a newspaper of general circulation for the areas of the Navajo Nation that are concerned. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall allow any person to submit written comments, data or documentary information; shall in addition give interested persons an opportunity to present orally their views, in the Navajo or English languages, data or arguments; and shall keep the docket open for 20 days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.

2. The final regulation shall be based on the record of the rulemaking proceeding, contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.

B. Administrative subpoenas

1. In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative enforcement proceeding under this chapter, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may administer oaths.

2. Except for emissions data, upon a showing satisfactory to the Director by the owner or operator of a source that it would divulge trade secrets or secret processes to make

public such papers, books, documents or information or any portion thereof, the Director shall consider this information confidential, except that such information may be disclosed to other officers, employees or authorized representatives of the Navajo Nation concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

3. Witnesses summoned shall be paid the same fees and mileage that are paid in the Navajo Nation's courts. In case of contumacy or refusal to obey a subpoena, the tribal court for the district in which such person is found, resides or transacts business shall have jurisdiction to issue an order requiring such person to appear before the Director and give testimony or produce papers, books or documents, or both, and any failure to obey such an order may be punished by the court as contempt.

§1162 Review in Navajo Nation Courts

A. Petitions for review

A petition for review of any final action taken by the Director under this chapter, including but not limited to promulgation of regulations and standards, issuance of orders and issuance and denial of permits (but not including imposition of administrative penalties under § 1155), shall be brought in the Navajo Nation Supreme Court. The petition shall be filed within 90 days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or such other person required to be served under this chapter, except that if the petition is based solely on grounds arising after the ninetieth day, then the petition shall be filed within 90 days after such grounds arise. The Navajo Nation Supreme Court, in reviewing the final action, shall limit its review to the issues and evidence that were before the Director at the time of the final action from which the appeal is taken.

B. Limitations on review

1. If judicial review of a final action of the Director could have been obtained under subsection (A) of this section, that action shall not be subject to judicial review in judicial proceedings for enforcement.

2. With respect to any regulations promulgated under this chapter, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the person raising an objection can demonstrate to the Director that it was impracticable to raise the objection within such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation, the Director shall convene a proceeding for reconsideration of the regulation and provide the same procedural rights as would have been afforded had the information been available at the time the regulation was proposed. If the Director refuses to convene such a proceeding, the person may seek review of such refusal in the Navajo Nation Supreme Court. Such reconsideration shall not postpone the

effectiveness of the regulation, although it may be stayed by the Director or the court for up to 3 months.

3. No interlocutory appeals shall be permitted with regard to procedural determinations made by the Director during rulemakings. In reviewing alleged procedural errors, the court may invalidate the regulation only if the errors were so serious and related to matters of such central relevance to the regulation that there is a substantial likelihood that the regulation would have been significantly changed if such errors had not been made.

C. Standards for review

In reviewing any final action of the Director undertaken pursuant to this chapter, the court may reverse any such action that it finds to be:

1. arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;

2. in excess of statutory jurisdiction, authority, or limitations or short of statutory right;

3. without observance of procedure required by law; or

4. unsupported by substantial evidence.

D. Challenge to any provisions

Any challenge to the lawfulness of any provision of this chapter must be filed in accordance with Navajo law within ninety (90) calendar days after the date of enactment of this chapter in the District Court for the District of Window Rock, naming as defendant the Navajo Nation, and not thereafter or in any other manner. Any challenge to regulations promulgated under this Chapter must be filed within 90 calendar days of their adoption. In any such action, relief shall be limited to declaratory relief. The District Court for the District of Window Rock shall have exclusive jurisdiction and venue over any action challenging any provision of this chapter.