Subtitle K.

Air Quality Ordinance

HUALAPAI ENVIRONMENTAL REVIEW CODE

Subtitle J K
AIR QUALITY ORDINANCE

(Modeled after the Navajo Nation Air Pollution Prevention and Control Act)

November 2, 1999

HUALAPAI TRIBAL COUNCIL
RESOLUTION NO. 86-99
OF THE GOVERNING BODY OF THE
HUALAPAI TRIBE OF THE HUALAPAI RESERVATION

(Hualapai Air Ordinance)

WHEREAS, the Hualapai Tribe is a federally recognized Indian Tribe located on the Hualapai Indian Reservation in northwestern Arizona; and

WHEREAS, the Hualapai Tribal Council finds and declares that development activities within the Hualapai Indian Reservation and other lands within the Tribe's jurisdiction have a direct effect on or may threaten the political integrity, the economic security, and the health, welfare and safety of the Tribe and its members, including the environmental and cultural resources of the Tribe; and

WHEREAS, the Hualapai Tribal Council hereby declares that it is the policy of the Hualapai Tribe to protect the natural environment, including the land, air, water, minerals and all living things, of all Hualapai tribal lands; and

NOW THEREFORE BE IT RESOLVED THAT, the Hualapai Tribal Council, governing body of the Hualapai Tribe pursuant to its constitution hereby enacts the Hualapai Air Ordinance into Law sixty (60) days from the passage of this resolution.

C E R T I F I C A T I O N

I, the undersigned as Chairman of the Hualapai Tribal Council hereby certify that the Hualapai Tribal is composed of nine (9) members of whom _9_ constituting a quorum were present at a **REGULAR COUNCIL MEETING** thereof held on this **04th day of December, 1999**; and that the foregoing resolution was duly adopted by a vote of _6_ for _1_ against, _0_ not voting, and _2_ excused pursuant to authority of Article V, Section (a) of the Constitution of the Hualapai Tribe approved March 13, 1991.

Aaron Mapatis, Vice Chairman
Hualapai Tribal Council

ATTEST

Christine Lee, Secretary
Hualapai Tribal Council

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HUALAPAI ENVIRONMENTAL REVIEW CODE

SUBTITLE J
HUALAPAI AIR QUALITY ORDINANCE

PART 1. GENERAL PROVISIONS

101. Definitions

a. For purposes of this ordinance-

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

2. **"Adverse human health effects"** means, for purposes of subpart F of part 2 of this ordinance, those effects which 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 subpart F of part 2 of this ordinance, 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 subparts G and H of part 2 of this ordinance, a source that includes one or more affected units.

5. **"Air pollutant"** means smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, wind borne matter, radioactive materials, noxious chemicals, or any other material that is emitted into or otherwise enters the ambient air.

6. **"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 subpart of a community, obscures visibility, or in any way degrades the quality of the ambient air.

7. **"Allowance"** means an authorization, allocated to an affected unit by the Administrator under Title IV of the Clean Air Act, to emit, during or after a specified calendar year, one ton of sulfur dioxide.

8. **"Area source"** means, for purposes of subpart F of part 2 of this ordinance, 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.

9. **"Attainment area"** means any area that has been identified in regulations promulgated by the Administrator as being in compliance with national ambient air quality standards (NAAQS).

10. **"Authorized Officer"** means a Peace Officer, a Tribal Ranger, a Tribal Conservation Officer, or any other personnel who have been deputized or commissioned by the Hualapai Tribe to act as a ranger or conservation officer within Hualapai tribal lands.

11. **"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 subpart B of part 2 of this ordinance, based on air quality data available to EPA or the Hualapai Air Quality Program (HAQP) and on such monitoring data as the permit applicant is required to submit.

12. **"Best available control technology"** or **"BACT"** means, with respect to each pollutant subject to regulation under this ordinance, 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 exceed the emissions allowed by any applicable standard established pursuant to sections 111 or 112 of the Clean Air Act or subparts D or F of part 2 of this ordinance.

13. **"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).

14. **"Carcinogenic"** shall have the same meaning, for purposes of subpart F of part 2 of this ordinance, as provided by the Administrator under Guidelines for Carcinogenic Risk Assessment as of the date of enactment of the Clean Air Act Amendments of 1990.

15. **"Chairman"** means the duly elected Chairman or Chairwoman of the Hualapai Tribal Council.

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

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

18. **"Commence"** means, as applied to construction of a source, that the owner or operator has obtained all necessary preconstruction approvals or permits required by federal law and this ordinance and has done either of the following::

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

    B. Entered into binding agreements or contractual obligations, which cannot be canceled 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.

19. **"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.

20. **"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.

21. **"Director"** means the Director of the Hualapai Department of Natural Resources.

22. **"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.

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

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

25. **"Federal land manager"** means the Secretary of the United States Department with authority over the federal class I area at issue.

26. **"Federally listed hazardous air pollutant"** means any air pollutant listed pursuant to section 112 of the Clean Air Act and not deleted from the list pursuant to that section.

27. **"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 section 216 of this ordinance.

28. **"Hualapai Air Quality Program" or "HAQP"** means the program within the Hualapai Department of Natural Resources responsible for implementing and enforcing this ordinance.

29. **"Hualapai Department of Natural Resources"** means the Department within the Hualapai Tribe that manages and protects all Natural Resources for the Hualapai Tribe.

30. **"Hualapai tribal lands"** means all lands over which the Hualapai Tribe has jurisdiction, including all land within the exterior boundaries of the Hualapai Indian Reservation and all other Hualapai Indian country, as that term is defined in 18 U.S.C. § 1151.

31. **"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.

32. **"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.

33. **"Major source"** means any stationary source or group of stationary sources located within a contiguous area and under common control that, in the case of hazardous air pollutants, 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 establishes a lesser quantity or, in the case of radio nuclides, different criteria, as provided in section 112(a)(1) of the Clean Air Act; or, in the case of all other air pollutants, 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 as provided in section 302(j) of the Clean Air Act), or that is defined in regulations under part D of Title I of the Clean Air Act or in regulations of the HAQP as a major source.

34. **"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 ordinance, 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 section 112(h) of the Clean Air Act; or

E. Are a combination of the above.

35. **"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.

36. **"Modification"** means, for purposes of subparts B, D, E and F of part 2 of this ordinance, 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 subpart 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.

37. **"Modified solid waste incineration unit"** means a solid waste incineration unit at which modifications have occurred after the effective date of a standard under section 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 sections 111 or 129 of the Clean Air Act.

38. **"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 sections 111 and 129 of the Clean Air Act and section 211 of this ordinance if it combusts a fuel feed stream 30% or less of the weight of which is comprised, in aggregate, of municipal waste.

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

40. **"New solid waste incineration unit"** means a solid waste incineration unit the construction of which is commenced after the Administrator proposes requirements under section 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.

41. **"New source"** means, for purposes of section 211 of this ordinance, 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 section 111 of the Clean Air Act that will be applicable to such source. For purposes of subpart F of part 2 of this ordinance, "new source" means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under section 112 of the Clean Air Act establishing an emission standard applicable to such source.

42. **"New unit"** means, for purposes of subpart G of part 2 of this ordinance, a unit that commences commercial operation on or after November 15, 1990.

43. **"Nonattainment area"** means any area that is designated pursuant to section 107 of the Clean Air Act and where violations of NAAQS have been measured.

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

45. **"Person"** means any individual, public or private corporation, company, partnership, firm, association or society of persons, the federal, state or local governments or any of their programs, agencies or departments, or any Indian tribe, including the Hualapai Tribe, or any of its agencies, programs, departments, enterprises or companies.

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

47. **"Reasonable further progress"** means, for purposes of subpart E of part 2 of this ordinance, such annual incremental reductions in emissions of the relevant air pollutant as are required by subpart E or may reasonably be required by the Director or the Administrator in order to ensure attainment of the applicable NAAQS by the applicable date.

48. **"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.

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

50. **"Schedule of compliance"** means, for purposes of subpart H of part 2 of this ordinance, 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.

51. **"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 pursuant to § 507(c)(3)(A) of the Clean Air Act or as modified by the Director pursuant to section 228(a) of this ordinance.

52. **"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 section 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 opacity limitations established by rule by the Administrator.

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

54. **"Standard of performance"** means a standard for emissions of air pollutants that 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 determines has been adequately demonstrated.

55. **"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.

56. **"TERC"** means the Tribal Environmental Review Commission established pursuant to subtitle A of the Hualapai Environmental Review Code.

57. **"Tribal implementation plan"** means the accumulated record of enforceable air pollution control measures, programs and plans adopted by the Director and submitted to the Administrator pursuant to sections 110(o) and 301(d) of the Clean Air Act and subpart A of part 2 of this ordinance.

58. **"Unclassifiable area"** means an area of Hualapai tribal lands for which inadequate ambient air quality data exist to determine compliance with the national ambient air quality standards.

59. **"Unit"** means, for purposes of subpart G of part 2 of this ordinance, a fossil fuel-fired combustion device.

60. **"Utility unit"** means, for purposes of subpart G of part 2 of this ordinance,

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 subpart G.

C. A unit that cogenerates steam and electricity is not a "utility unit" for purposes of subpart 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.

61. **"Visibility Transport Region"** means the region established by the Administrator pursuant to Clean Air Act § 169B whenever, upon the Administrator's motion or by petition from the Governors or tribal leaders of at least two affected states or tribes, the Administrator has reason to believe that the current or projected interstate transport of air pollutants from one or more states or tribes contributes significantly to visibility impairment in Class I areas located in the affected states or tribal lands.

102. Declaration of Policy

a. Legislative findings and purposes

1. The Hualapai Tribal Council finds and declares that air pollution exists with varying degrees of severity within Hualapai tribal lands; is an increasing danger to the health and welfare of residents of the Tribe; 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 Tribe's resources; and impairs visibility.

2. The Hualapai Tribal Council, by enacting this ordinance, is creating a coordinated program to control present and future sources of air pollution within Hualapai tribal lands. This ordinance provides for the regulation of air pollution activities in a manner that ensures the health, safety and general welfare of all the residents of Hualapai tribal lands, protects property values and protects plant and animal life. The Council further is placing primary responsibility for air pollution control and abatement in the Hualapai Air Quality Program (HAQP), a program of the Hualapai Department of Natural Resources.

b. Maintenance of air quality

It is declared to be the policy of the Hualapai Tribe that no further significant degradation of the air on Hualapai tribal lands 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 adopted by the Director 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 ordinance, the conditions of which require that operation of the source will not cause pollution in excess of the standards set by the Director.

c. Incremental approach to air quality control programs

The Hualapai Tribe is committed to providing for an air quality program to ensure clean air for residents of Hualapai tribal lands. Pursuant to section 301(d) of the Clean Air Act and the regulations thereunder, however, it is discretionary with the Tribe 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 Hualapai tribal lands, 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 those severable portions, as provided in the regulations under section 301(d) of the Clean Air Act. The Director shall not be required to develop any of the programs described in this ordinance 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 HAQP must comply with all of the relevant statutory and regulatory requirements for that program or portion of a program.

103. Administration

a. Regulations

The Director is authorized to prescribe such regulations as are necessary to carry out his/her functions under this ordinance, pursuant to the provisions of section 401 of this ordinance. This shall include setting air quality standards, emission limitations and standards of performance for the prevention, control and abatement of air pollution on Hualapai tribal lands. 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 ordinance shall be subject to approval by the Hualapai Tribal Council with recommendation from the TERC.

b. Authority of Director

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

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

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. Consult with the TERC to prepare and develop a comprehensive plan or plans for the abatement and control of air pollution within Hualapai tribal lands;

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

5. 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 various areas of Hualapai tribal lands, the economic effect of remedial measures on various areas of Hualapai tribal lands, 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;

6. Consistent with Hualapai tribal law, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any purposes of this ordinance, provided that all monies resulting therefrom shall be deposited in the Hualapai Treasury to the account of the air quality program, as authorized under Hualapai law.

7. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, to carry out the purposes of this ordinance;

8. Compile and publish from time to time reports, data and statistics with respect to matters studied or investigated by the Director or at his direction;

9. Require, as specified in section 301 of this ordinance, 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

10. Perform such other activities as the Director may find necessary to carry out his/her functions under this ordinance.

c. Delegation of powers and duties

The Director may delegate to any officer or employee of the Hualapai Department of Natural Resources such power and duties under this ordinance, except the making of regulations, as he/she may deem necessary or expedient.

104. Applicability

The provisions of this subtitle and of regulations issued under this subtitle shall apply to all persons residing or doing business within Hualapai tribal lands and to all property located within Hualapai tribal lands.

105. Severability and Preservation of Rights

a. Severability

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

b. Preservation of rights

It is the purpose of this ordinance to provide additional and cumulative remedies to prevent, abate and control air pollution on Hualapai tribal lands. Nothing contained in this ordinance 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 ordinance or any act done by virtue thereof be construed as preventing the Tribe or individuals from the exercise of their rights under the common law or statutory law to suppress nuisances or to abate pollution.

PART 2. AIR QUALITY CONTROL PROGRAMS

Subpart A. Tribal Implementation Plans

201. Designation of Air Quality Control Regions

a. Designations

The Director, in consultation with the TERC, may request the Chairman to submit to the Administrator a list of all areas on Hualapai tribal lands, 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 Chairman has submitted designations to the Administrator pursuant to subsection (a) of this section, and the Administrator promulgates a new or revised NAAQS pursuant to section 109 of the Clean Air Act, the Chairman may, and in the case of a revised NAAQS for which the Chairman has submitted designations pursuant to subsection (a) shall, submit to the Administrator a new list of designations not later than one year after promulgation of the new or revised NAAQS.

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

3. The Director, in consultation with the TERC, may request the Chairman to submit to the Administrator for approval, pursuant to section 107 of the Clean Air Act, a redesignation of any area within Hualapai tribal lands if air quality changes within such area. In the case of an area within Hualapai tribal lands which the Administrator 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 determines may be significantly affected.

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

c. Regulations

If the Chairman decides to submit designations to the Administrator 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 Hualapai tribal lands 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.

202. Tribal 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 a tribal implementation plan for any pollutant for which a national ambient air quality standard exists. The plan shall provide for implementation, maintenance and enforcement of such standard and protection of visibility in each air quality control region within Hualapai tribal lands. The plan shall be adopted by the Director according to the provisions of section 401 of this ordinance and shall contain the following provisions:

1. 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 be necessary or appropriate to meet the applicable requirements of this ordinance and the Clean Air Act;

2. Requirements 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;

3. Programs to enforce the measures described in paragraph (1) 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 subparts B and E of this part;

4. Prohibitions, consistent with the provisions of this ordinance, of any source within Hualapai tribal lands 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 Subpart C of title I of the Clean Air Act to prevent significant deterioration of air quality or to protect visibility;

5. Assurances of compliance with the applicable requirements of subsection (C) of this section (relating to interstate pollution abatement);

6. Assurances that:

   A. The Tribe will have adequate personnel, funding, and authority under Hualapai law to carry out such implementation plan (and that the HAQP is not prohibited by any provision of federal or tribal law from carrying out such implementation plan or portion thereof), and

   B. Where the Tribe has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the Tribe has responsibility for ensuring adequate implementation of such plan provision;

7. Requirements, as may be prescribed by the Administrator, for:

   A. 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;

   B. Periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

C. Correlation of such reports by the HAQP with any emission limitations or standards established pursuant to this ordinance, which reports shall be available at reasonable times for public inspection;

8. Authority comparable to that in section 303(b) of this ordinance (emergency powers) and adequate contingency plans to implement such authority;

9. Requirements to revise such plan:

A. 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

B. Whenever the Administrator finds, on the basis of information available to the Administrator and pursuant to the requirements of section 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 ordinance.

10. In the case of a plan or plan revision for an area designated as a nonattainment area, requirements to meet the applicable provisions of subpart E of this part (relating to nonattainment areas);

11. Requirements to meet the applicable provisions of subsection (d) of this section (relating to public notification) and subparts B and C of this part (relating to prevention of significant deterioration of air quality and visibility protection);

12. Requirements for:

A. The performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

B. The submission upon request of data related to such air quality modeling to the Administrator;

13. Requirements for the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this ordinance, a fee sufficient to cover:

A. The reasonable costs of reviewing and acting upon any application for such a permit, and

B. 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 EPA Administrator's approval of a fee program under Title V of the Clean Air Act;

14. Consultation and participation by the Department of Cultural Resources of the Hualapai Tribe when affected by the plan; and

15. In the case of any source which uses a supplemental or intermittent control system for purposes of meeting the requirements of an order under section 113(d) of the Clean Air Act, a requirement that 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 implementation plans as needed from time to time and as required by the Administrator, 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 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 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.

4. The Director may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 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 subpart B of this ordinance or that may significantly contribute to levels of air pollution in excess of the NAAQS in any air quality control region outside Hualapai tribal lands 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 Hualapai tribal lands 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 standard is or was exceeded, to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures that can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality. Provisions shall be made to notify the public in both the Hualapai and English languages.

e. Prohibition against modification of plan requirements

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 ordinance and the Clean Air Act.

203. Regulation of Fuels and Motor Vehicles

The provisions of sections 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 Tribe.

Subpart B. Prevention of Significant Deterioration of Air Quality

204. 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 subpart, to prevent significant deterioration of air quality in each area designated pursuant to section 201 of this ordinance and section 107 of the Clean Air Act as attainment or unclassifiable. The provisions of this subpart do not apply to hazardous air pollutants listed under Subpart F of this part.

205. Initial Classification

All areas on Hualapai tribal lands that are designated as attainment or unclassifiable pursuant to section 201 of this ordinance and section 107 of the Clean Air Act shall be class II areas, as defined under Subpart C of Title I of the Clean Air Act, unless reclassified under section 207 of this ordinance.

206. Increments and Ceilings

a. Sulfur oxide and particulate matter

Each applicable implementation plan shall contain measures ensuring that maximum allowable increases over baseline concentrations of, and maximum allowable concentrations of, sulfur dioxide and particulate matter shall not be exceeded. The maximum allowable increases and concentrations and provisions affecting those increases and concentrations are specified in sections 163 and 165(d) of the Clean Air Act and the regulations 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

Tribe and submitted for the Administrator's approval or promulgated by the Administrator under section 110(c) of the Clean Air Act contains other provisions that, when considered as a whole, the Administrator finds will carry out the purposes in section 110 of the Clean Air Act at least as effectively as an area classification plan for such pollutant. 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.

207. Area Reclassification

a. Authority to reclassify areas

The Chairman may reclassify, upon approval of the Hualapai Tribal Council, such areas as he deems appropriate as class I areas. An area may be reclassified as class III if :

1. Such reclassification will not cause or contribute to concentrations of any air pollutant which exceed any maximum allowable increase or maximum allowable concentration permitted under the classification of any other area; and

2. Such reclassification otherwise meets the requirements of this subpart.

b. Notice and hearing; disapproval of Administrator

1. Prior to reclassification of any area under this subpart, 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 Hualapai Tribal Council.

2. Prior to the issuance of notice under paragraph (1) respecting the reclassification of any area under this section, if such area includes any federal lands, the Chairman 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 Chairman 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 Chairman 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 pursuant to section 164(b)(2) of the Clean Air Act.

c. Resolution of disputes between the Hualapai Tribe and other Indian tribes or states

If any state or tribe is affected by the reclassification of an area by the Tribe and if such state or tribe disagrees with such reclassification, or if a permit is proposed to be issued for any new major emitting facility proposed for construction on Hualapai tribal lands 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 Indian governing body to attempt to resolve such dispute. If the parties are unable to reach an agreement, the Director shall request the Administrator's involvement pursuant to section 164(e) of the Clean Air Act.

208. 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 subpart applies unless:

1. A development permit has been issued for such proposed facility by the TERC, in accordance with subtitle A of the Hualapai Environmental Review Code, whenever the construction is also "development" as that term is defined under section 201 of subtitle A;

2. In addition, a PSD permit has been issued for such proposed facility in accordance with this subpart (and subpart **H** of this part) setting forth emission limitations for such facility which conform to the requirements of this subpart;

3. The proposed PSD 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, and a public hearing has been held with opportunity for interested persons including representatives of the Administrator 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;

4. The owner or operator of such facility demonstrates, as required pursuant to section 110(j) of the Clean Air Act, that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any

   A. Maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this subpart applies more than one time per year,

   B. National ambient air quality standard in any air quality control region, or

   C. Any other applicable emission standard or standard of performance under this ordinance;

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

6. The proposed facility has complied with the provisions of subsection (d) of this section with respect to protection of class I areas, where applicable;

7. There has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility;

8. The person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this subpart 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

9. 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 section 111 of the Clean Air Act has been promulgated subsequent to August 7, 1977 for such source category, the Administrator 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)(4) 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 PSD permit application under this subpart and the regulations hereunder for a major emitting facility in any area to which this subpart 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 a copy of each PSD permit application relating to a major emitting facility that he/she receives and provide notice to the Administrator of every action related to the consideration of such permit. The Administrator 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.

2. 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, or the Governor of an adjacent state or the 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.

3. 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 increases for a class I area, a permit shall not be issued.

4. 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 HAQP may issue a permit.

5. In the case of a permit issued pursuant to paragraph (4), the facility shall comply with such emission limitations under the permit as may be necessary to assure that emissions of sulfur oxides and particulates from the facility will not cause or contribute to concentrations of such pollutant which exceed the maximum allowable increases over the baseline concentration for such pollutants as prescribed in section 165(d)(2)(C)(iv) of the Clean Air Act and the regulations thereunder.

6. In any case where the owner or operator of a proposed major emitting facility who has been denied a certification under paragraph (4) demonstrates to the satisfaction of the Chairman, after notice and public hearing, and the Chairman 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 Chairman, 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.

7. In any case in which the Chairman recommends a variance under this subsection in which the federal land manager does not concur, the recommendations of the Chairman and the federal land manager shall be transmitted to the President of the United States, according to the provisions of section 165(d)(2)(D)(ii) of the Clean Air Act.

8. In the case of a permit issued pursuant to paragraphs (6) and (7), 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 18 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, promulgated under section 165 of the Clean Air Act, which shall be conducted by the major emitting facility applying for such permit, of the ambient air quality at the proposed site and in areas which may be affected by emissions from the proposed facility for each pollutant subject to regulations under this ordinance which will be emitted from such facility.

2. The analysis required by this subsection shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from the proposed facility will exceed the maximum allowable increases or the maximum allowable concentration permitted under this subpart. Such data shall be gathered over a period of one calendar year preceding the date of application for a permit under this subpart unless the HAQP, in accordance with regulations promulgated by the Administrator, 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.

Subpart C. Protection of Visibility

209. Visibility Protection for Federal Class I Areas

a. Plan requirements

In the case of an area listed by the Administrator under § 169A(a)(2) of the Clean Air Act that is located within Hualapai tribal lands or that could reasonably be anticipated to have impaired visibility due in part or in whole to emissions coming from within Hualapai tribal lands, each applicable tribal implementation plan under subpart A of this part 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 CAA § 169A(c), 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 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, 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 pursuant to Clean Air Act § 169A. In the case of a fossil fuel-fired generating 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 under section 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.

210. Visibility Transport Regions and Commissions

a. Visibility transport regions

The Chairman, in conjunction with at least one other tribe or state, may petition the Administrator for a determination that current or projected transport of air pollutants from Hualapai tribal lands or from one or more other tribes or states contributes significantly to visibility impairment in class I areas located within Hualapai tribal lands or in the other affected tribes or states and that a transport region for such pollutants that includes Hualapai tribal lands and such other tribes or states should be established. The Chairman may also petition the Administrator to add or remove any state or tribe or portion thereof to or from a visibility transport region.

b. Visibility transport commissions

The Chairman or his designee may be a member of a visibility transport commission established by the Administrator pursuant to § 169B of the Clean Air Act and as such shall participate in all activities required under that section.

Subpart D. New Source Performance Standards

211. Implementation and Enforcement of Standards of Performance

a. Implementation and enforcement by Director

The Director may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located on Hualapai tribal lands. The Director is authorized under the Clean Air Act to implement and enforce such standards upon delegation of such authority from the Administrator

b. Standards of performance for existing sources

The Director may submit to the Administrator a plan that:

1. establishes standards of performance for any existing source for any air pollutant 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 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. 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 under section 129(d) of the Clean Air Act and has been authorized to do so by the Administrator.

2. Each solid waste incineration unit on Hualapai tribal lands in a category for which the Administrator has promulgated performance standards under sections 111 or 129 of the Clean Air Act shall operate pursuant to a permit issued under this subsection and subpart H of this part, if the Tribe has an approved permit program for such source. Such permits may be renewed according to the provisions of subpart H of this part. Notwithstanding any other provision of this ordinance, 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.

3. 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 sections 111 and 129 of the Clean Air Act shall be subject to standards under § 218 of this ordinance.

4. A solid waste incineration unit is not a utility unit for purposes of CAA Title IV, 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, is from a fuel (including any waste burned as a fuel) other than a fossil fuel.

5. No requirement of an applicable implementation plan under sections 208 or 212 of this ordinance 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 pursuant to sections 111 or 129 of the Clean Air Act and the regulations hereunder and by the Director pursuant to this section and the regulations hereunder.

e. Revision of regulations

The Director, with the approval of the Chairman, may submit an application to the Administrator for revision of the regulations promulgated under section 111(f)(1) of the Clean Air Act. The application shall demonstrate that:

1. the Administrator has failed to specify in regulations under section 111(f)(1) of the Clean Air Act any category of major stationary sources required to be specified under such regulations;

2. the Administrator has failed to include in the list under section 111(b)(1)(A) of the Clean Air Act any category of stationary sources that contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (notwithstanding that such category is not a category of major stationary sources);

3. the Administrator has failed to apply properly the criteria required to be considered under section 111(f)(2) of the Clean Air Act; or

4. a new, innovative or improved technology or process that achieves greater continuous emission reduction has been adequately demonstrated for any category of stationary sources and, as a result, the new source standard of performance in effect for such category no longer reflects the greatest degree of emission limitation achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) has been adequately demonstrated.

Subpart E. Provisions for Nonattainment Areas and New Source Review

212. Nonattainment Plan Provisions

a. Plan submissions

With respect to any area within Hualapai tribal lands that the Administrator designates as nonattainment for any NAAQS, pursuant to section 107 of the Clean Air Act, the Director may submit a plan or plan revision meeting the applicable requirements prescribed in sections 110(a)(2) and 172(c) of the Clean Air Act and in section 202(a) of this ordinance and in the regulations promulgated thereunder.

b. Interstate transport commissions

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

213. Additional Provisions for Nonattainment Areas for Specific Pollutants

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

214. Permit Requirements

a. General requirements

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

1. The Director determines, in accordance with regulations issued under section 173 of the Clean Air Act and under this section, that:

   A. By the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained such that total allowable emissions from existing sources in the region, from new or modified sources that are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources prior to the application for such Permit to construct or modify so as to represent, when considered together with the plan provisions required under section 212 of this ordinance, reasonable further progress; or

   B. In the case of a new or modified major stationary source that is located in a zone (within the nonattainment area) identified by the Administrator of the EPA 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 section 212 of this ordinance and section 172(c) of the Clean Air Act;

2. The proposed source is required to comply with the lowest rate;

3. The owner or operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) on Hualapai tribal lands are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this ordinance;

4. The Administrator 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;

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; and

6. A development permit has been issued for such proposed source by the TERC, in accordance with subtitle A of the Hualapai Environmental Review Code, whenever the construction of the proposed source is also "development" as that term is defined under section 201 of subtitle A.

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

b. Offsets

1. The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this subpart and Subpart 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 ordinance or by the Clean Air Act shall not be creditable as emission reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by this ordinance shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of paragraph (1).

c. Control technology information

The Director shall provide that control technology information from permits issued under this section will be promptly submitted to the Administrator for purposes of making such information available through the RACT/BACT/LAER clearinghouse to other tribes and states and to the general public.

Subpart F. Control of Hazardous Air Pollutants

215. Control of Hazardous Air Pollutants

a. In general

The Director may develop and submit to the Administrator for approval a program for the implementation and enforcement of emission standards and other requirements for hazardous air pollutants pursuant to section 112 of the Clean Air Act or requirements for the prevention and mitigation of accidental releases pursuant to section 112(r) of the Clean Air Act, or both. The program may provide for partial or complete delegation of the Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements.

b. Hualapai 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 section 112 of the Clean Air Act or that apply to a substance that is not subject to section 112 of the Clean Air Act, pursuant to sections 216, 217 and 218 of this ordinance. Any standards set by the Director shall be at least as stringent as those promulgated by the Administrator.

c. Grants

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

216. List of Hazardous Air Pollutants

a. Contents of list

The hazardous air pollutants that are subject to regulation under this subpart shall consist of:

1. The federally listed hazardous air pollutants, as defined in section 101 of this ordinance;

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 section 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 section 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 section 108(a) or to any pollutant in a class of pollutants listed under that section. An adequate and reliable methodology must exist for quantifying emissions and ambient concentrations of a pollutant before that pollutant may be listed under this subsection. The 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 HAQP 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 section 401 of this ordinance within 6 months of receipt of the petition.

217. List of Source Categories

a. Contents of list

The categories and subcategories of major sources and area sources of hazardous air pollutants listed under section 216 of this ordinance shall consist of:

1. Source categories listed by the Administrator pursuant to section 112(c) of the Clean Air Act; and

2. Categories and subcategories of sources that emit the hazardous air pollutants designated by the Director pursuant to section 216(b) of this ordinance.

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 section 401 of this ordinance, that emissions of hazardous air pollutants from that category present a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section. The 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 section 401 of this ordinance within 6 months of receipt of the petition to add or delete the source category from the list under subsection (a).

218. Emission Standards

a. In general

The Director shall adopt the standards promulgated by the Administrator pursuant to section 112(d), (e)(5), (f) and (n) of the Clean Air Act and, in addition, shall promulgate regulations establishing emissions standards for each category or subcategory listed by the Director pursuant to section 217(a)(2) of this ordinance. 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, except in the case of emissions of radio nuclides from facilities licensed by the U.S. Nuclear Regulatory Commission. The Director shall comply with section 112(n)(4) of the Clean Air Act with respect to the nonaggregation of emissions from oil and natural gas facilities and pipelines.

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 subpart (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 section 112(h) of the Clean Air Act, or

5. Are a combination of the above.

c. New and existing sources

The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the 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 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 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 section 217, 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 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 section 219(d) of this ordinance.

219. Hazardous Air Pollutant Permit Program

a. In general

Permits issued to sources of hazardous air pollutants covered under section 217 of this ordinance shall be issued pursuant to the provisions of Subpart H of this ordinance and subject to the requirements and conditions contained within this section.

b. Construction, reconstruction and modifications

After the effective date of the permit program under subpart H of this part, 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 section 217 of this ordinance unless the Director determines that the appropriate maximum achievable control technology emission limitation under this subpart 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 section 218(c) of this subpart. In both cases, where the Administrator 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 under section 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 Tribe has an approved permit program under Subpart H of this part:

1. After the effective date of any emission standard, limitation, or regulation under section 112(d), (f) or (h) of the Clean Air Act or under section 218 of this ordinance, no person may construct any new major source or area source or reconstruct any existing major source or area source subject to such emission standard, regulation or limitation unless the 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 section 112(d), (f) or (h) of the Clean Air Act or under section 218 of this ordinance and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the source shall comply with the emissions standard, limitation or regulation by the date set by the Administrator, pursuant to section 112(i) of the Clean Air Act, or by the Director, pursuant to this section and section 218 of this ordinance, 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 section 112(d) of the Clean Air Act or section 218 of this ordinance 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 section 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 section 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 section 112(d) of the Clean Air Act or section 218 of this ordinance 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 section 112(d) of the Clean Air Act or section 218 of this ordinance. 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 section 112(i)(5)(C) of the Clean Air Act and the regulations hereunder.

6. The reduction in paragraph (5) shall be determined with respect to verifiable and actual emissions in a base year not earlier than calendar year 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 section 112(f) of the Clean Air Act.

e. Equivalent emission limitation by permit

Once the Tribe has an approved permit program under Subpart H of this ordinance:

1. If the Administrator fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to section 112(e)(1) and (3) of the Clean Air Act, then beginning 18 months after that date (but not prior to the effective date of the Hualapai 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 under section 112(j) of the Clean Air Act. If the owner or operator has submitted a timely and complete application for a permit, any failure to have a permit shall not be a violation of this requirement, unless the delay in final action is due to the failure of the applicant to timely submit information required or requested to process the application.

2. Permit applications submitted under this subsection shall be reviewed and approved or disapproved according to the provisions of Subpart H of this ordinance. 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 section 112(d) of the Clean Air Act. In the alternative, if the applicable criteria are met, the permit may contain an emissions limitation established according to the provisions of 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 section 112(d) of the Clean Air Act. No such

pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and as expeditiously as practicable but no later than 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 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 EPA promulgates a standard under section 112(d) of the Clean Air Act that would be applicable to the source in lieu of the emission limitation established by permit under this subsection after the date on which the permit has been issued, the Director shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator, 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.

220. Research Program on Hazardous Air Pollutants

a. Research program

The HAQP may, in cooperation with the EPA 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 on Hualapai tribal lands;

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 Hualapai tribal lands 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 HAQP conducts any such research program, it shall submit a report of its findings and recommendations to the Chairman and shall make such report available to the public.

Subpart G. Acid Deposition Control

221. Acid Deposition Permit Program

a. Permit Program

The Director may submit a permit program for approval in accordance with title V of the Clean Air Act and subpart H of this part to provide for permits for new utility units required under section 403(e) of the Clean Air Act to have allowances.

b. Prohibitions

Any permit issued by the Director shall prohibit:

1. 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;

2. Violations of applicable emissions rates;

3. The use of any allowance prior to the year for which it was allocated;

4. Contravention any other provision of the permit.

c. Term

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 subpart H of this part and title V of the Clean Air Act and the regulations thereunder.

d. Special Provisions Related to Nitrogen Oxides

The Director may provide by regulation for the issuance of alternative emission limitations for nitrogen oxides and may allow emissions averaging consistent with section 407 of the Clean Air Act and the regulations promulgated thereunder. In such event, the permits issued pursuant to this section shall reflect these provisions.

Subpart H. Permits

222. Permit Programs

a. Submission and approval

1. The Director may develop and submit to the Administrator 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 a legal opinion from the tribal Attorney that the laws of the Tribe provide adequate authority to carry out the program.

2. If the Administrator 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 section 502 of the Clean Air Act.

b. Requirements

The permit program shall contain the elements required by the Administrator by regulation pursuant to title V of the Clean Air 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 Hualapai Tribal 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 participated in the public comment process provided according to section 225(d) of this subpart, and any other person who could obtain judicial review under Hualapai 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 subpart with each applicable standard, regulation or requirement under this ordinance; 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 subpart; assure that no permit will be issued if the Administrator objects to its issuance in a timely manner under this subpart; 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 ordinance 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 subpart 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 subpart G of this part 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 section 223(d) of this ordinance or section 503(d) of the Clean Air Act without requiring a permit revision, if the changes are not modifications under any provision of title I of the Clean Air Act and the changes do not exceed the emissions allowable under the permit (whether expressed as a rate of emissions or as total emissions), and if the facility provides the Director and the Administrator with written notification a minimum of 7 days in advance of the proposed changes according to the requirements of the regulations promulgated under section 502(b)(10) of the Clean Air Act and under this section;

9. A requirement that the owner or operator of a source required to obtain a permit under this subpart pay a fee pursuant to a system of fees established by the Director under this subpart and designed solely to cover all reasonable direct and indirect costs required to develop and administer the permit program under this subpart and the small business assistance program under section 228 of this subpart (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 subpart and the regulations hereunder (if such program is developed by the Director);

10. 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 section 502(b)(3)(B) of the Clean Air Act and the regulations thereunder, unless a lesser amount will meet the requirements of the preceding paragraph; and that the HAQP 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 section 502(b)(3)(B) of the Clean Air Act, and provide that any fees collected shall be deposited in the fund established by section 227 of this ordinance and used solely to cover the reasonable costs of the permit program; and

11. 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 section 223(e) of this ordinance, subject to the provisions of section 301(d) of this ordinance.

c. Effective date

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

d. Interim approval

If a program, including a partial permit program, submitted under subsection (a) of this section receives interim approval from the Administrator, 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 subpart, it shall be unlawful for any person to violate any requirement of a permit issued under this subpart or to operate an affected source or a major source, as those terms are defined under section 101 of this ordinance, or any other source (including an area source) subject to regulation under subparts D and F of this part, any other source required to have a permit under subparts B or E of this part, or any other stationary source in a category designated in whole or in part by the Administrator or the Director as requiring a permit, except in compliance with a permit issued by the Director under this subpart. 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 exempts a source category from the requirements of section 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 ordinance that a permit be obtained before construction or modification, or the requirements of subtitle A that a permit be obtained before undertaking any development, as that term is defined in section 201 of subtitle A.

f. Permits, implementing acid deposition provisions

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

g. Minor source permits

Notwithstanding any other provisions under this subpart, the Director may 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 subpart 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.

223. Permit Applications

a. Applicable date

Any source specified in section 222(e) of this subpart shall become subject to a permit program under this subpart 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 section 222(e) of this ordinance.

b. Deadline

Any person required to have a permit shall, not later than one year after the date on which the source becomes subject to a permit program under this subpart (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 ordinance 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 ordinance.

c. Permit Applications

The applicant shall submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this ordinance. The compliance plan shall include a schedule of compliance and a schedule under which the permittee will submit progress reports to the 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 subpart.

d. Timely and complete applications

Except for sources required to have a permit before construction or modification under this ordinance, if an applicant has submitted a timely and complete application for a permit required by this subpart (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 ordinance, 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 subpart shall be in violation of section 222(e) of this ordinance before the date on which the source is required to submit an application under subsection (b) of this section.

e. 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 subpart, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under section 301(d) of this ordinance, the applicant or permittee may submit such information separately. The requirements of section 301(d) shall apply to such information. The contents of a permit shall not be entitled to protection under section 301(d) of this ordinance.

224. Permit Requirements and Conditions

a. In general

Permits shall be issued under this subpart for fixed terms, not to exceed 5 years, except that affected sources under subpart G of this part must have 5-year fixed terms and solid waste incineration units under subpart D of this part may have up to12-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 ordinance and the regulations hereunder, including the requirements of the applicable implementation plan.

b. Inspection, entry, monitoring, certification and reporting

Each permit issued under this subpart shall set forth inspection, entry, monitoring, compliance certification and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation promulgated under section 504(b) of the Clean Air Act. Any report required to be submitted by a permit issued to a corporation under this subpart 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 part. No source covered by a general permit shall thereby be relieved from the obligation to file an application under section 223 of this ordinance.

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 ordinance at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under subparts B and C of this part. 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 subpart shall be deemed compliance with section 222(e) of this ordinance. Except as otherwise provided by the Administrator by regulation, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of this ordinance 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.

Nothing in the preceding sentence shall alter or affect the provisions of sections 302(a)(2) or 303(b) of this ordinance, including the authority of the Director under that section.

225. Notification to Administrator and Contiguous Tribes and States; Notification to Public

a. Notice

Unless the following notification requirements are waived by the Administrator for a particular category of sources (other than major sources), pursuant to section 505(d) of the Clean Air Act, the Director shall:

1. a. transmit to the Administrator 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 may require to effectively review the application and otherwise carry out the Administrator's responsibilities under the Clean Air Act;

2. Provide to the Administrator a copy of each permit proposed to be issued and issued as a final permit; and

3. Notify all states and tribes whose air quality may be affected and that are contiguous to Hualapai tribal lands, or that are within 50 miles of the source, of each permit application or proposed permit forwarded to the Administrator under this section, and 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 in writing of his/her refusal to accept those recommendations and the reasons therefor.

b. Objection by EPA

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

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

2. Upon receipt of an objection by the Administrator under section 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 under section 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.

c. **Issuance or denial**

1. The Director shall, within 90 days after the date of an objection under section 505(b) of the Clean Air Act, submit a permit revised to meet the objection.

2. If the Administrator 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 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 Section 505(e) of the Clean Air Act.

d. **Notification to general public**

The HAQP shall give notice of permit applications and proposed permits to the public, according to regulations promulgated by the Director under this subpart, providing an opportunity for public hearing and comment. Any person may petition the Administrator to veto a permit, pursuant to section 505(b) of the Clean Air Act, if the Administrator 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.

226. 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 HAQP 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 HAQP 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 subpart and the regulations hereunder.

227. Permit Fund

There is hereby established a Permit Fund in the Hualapai Treasury, consisting of fees, penalties and interest collected pursuant to this subpart. 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 subpart, as described in section 222 of this subpart. The Permit

Fund shall not be utilized for any purpose not authorized by this ordinance or the Clean Air Act. The Director may invest money from the fund and money earned from investment shall be credited to the fund.

228. 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 section 101 of this ordinance, 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)-(e) of section 101(a)(51) 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 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 ordinance 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 as part of the tribal implementation plan or as a revision to the tribal 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 ordinance 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 Hualapai Department of Natural Resources to serve as ombudsman for small business stationary sources in connection with the implementation of this ordinance 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 ordinance 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 ordinance 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 ordinance or the Clean Air Act;

6. Adequate mechanisms for informing small business stationary sources of their obligations under this ordinance 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 ordinance 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 ordinance 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 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) - (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 Chairman to represent the general public;

B. Two members selected by the Hualapai Tribal Council who are owners or who represent owners of small business stationary sources; and

C. one member selected by the Director to represent Hualapai Desubpartment of Natural Resources.

d. Fees

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

Part 3. ENFORCEMENT

301. 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 ordinance, 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 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 quantification 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 has not already done so pursuant to section 114(a)(3) of the Clean Air Act. Compliance certifications shall be subject to the same requirements as those prescribed under section 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 ordinance. Submission of a compliance certification shall not limit the Director's authority to investigate or otherwise implement this ordinance.

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 ordinance or of any regulation hereunder or any requirement of a permit issued pursuant to this ordinance, 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 Hualapai Tribe and of the United States concerned with carrying out this ordinance or when relevant to any proceeding under this ordinance.

302. Enforcement Authorities

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 ordinance, the regulations promulgated under this ordinance, or permits or orders issued under this ordinance, the Director may:

1. issue and serve on such person an order requiring the person to comply with such requirement or prohibition, pursuant to the provisions of section 303;

2. bring a civil action, including an action for injunctive relief, in accordance with section 304(a); and/or

3. bring a criminal action in accordance with section 304(b) of this ordinance.

b. Continual Violations

When a person has continually violated any requirements or prohibitions of this ordinance, the regulations promulgated under this ordinance, or permits or orders issued pursuant to this ordinance, such person may be prohibited from conducting business within Hualapai tribal lands, upon a hearing in Hualapai Tribal Court.

303. Orders to Comply

a. Requirements for Orders to Comply

The Director may order any person subject to the requirements of this ordinance or the regulations promulgated hereunder to comply with such requirements. An order to comply 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 section 305, 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. If the order is issued to a corporation, it shall be issued to the appropriate corporate officers. No order to comply shall prevent the Director from assessing any penalties nor otherwise affect or limit the Director's authority to enforce under other provisions of this ordinance, nor affect any person's obligations to comply with any section of this ordinance except as specifically stated in the order.

b. Emergency Compliance Orders

Notwithstanding any other provision of this section, if the Director determines that there is an imminent and substantial threat to the public health, welfare or environment and determines, after consultation with the Tribal Attorney where feasible, that it is not possible to assure prompt protection of the public health, welfare or environment by commencement of an action under section 304, the Director may issue such orders as may be necessary to protect the public health, welfare or and environment. Prior to taking such action, the Director shall confirm the accuracy of the information on which the proposed order is based. Such order shall be effective upon issuance and shall remain in effect for not more than 60 days.

c. Enforcement of Compliance Orders

Orders of the Director shall be enforced by the Department of Natural Resources, other authorized officers, and the TERC. Those authorized to enforce the orders may take reasonable steps to assure compliance, including but not limited to entering upon any property or establishment believed to be violating the order and demanding compliance, and terminating some or all of the operations at a solid waste management facility that is out of compliance. The Director also may enter into a memorandum of agreement with EPA for assistance in undertaking enforcement actions.

d. Field Citations

The Director may implement a field citation program through regulations establishing minor violations for which field citations assessing civil penalties, not to exceed $1,000 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. 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 Act if the violation continues.

304. Judicial Enforcement

a. Civil Judicial Enforcement

The Director may request the Chairman to authorize the Tribal Attorney 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 in a maximum amount of $10,000.00 per violation, in any of the following instances:

1. whenever a person has violated, or is in violation of, any provision of this ordinance, including, but not limited to, a regulation adopted pursuant to this ordinance or a permit or order issued pursuant to this ordinance;

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

3. whenever a person is creating an imminent and substantial endangerment to the public health, welfare or the environment, in which case the Director shall request the Tribal Attorney to pursue injunctive relief, but not the assessment of penalties, unless the endangerment is caused by a violation, as specified in paragraphs (1) and (2).

b. Criminal Penalties

Any person who intentionally:

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

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 ordinance to be filed or maintained, or

3. falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this ordinance;

shall, upon conviction, be punished by a fine in a maximum amount of not less $500, but not to exceed $5,000 per day per violation or imprisonment for not more than one hundred and eighty (180) days per day per violation or both or be subject to any other penalty imposed by the court available under Hualapai law. In any instance where the Tribe lacks jurisdiction over the person charged, or where the Director is limited in the amount of the fine that he may impose, the Director may refer the action to the EPA Regional Administrator for Region 9. For purposes of this subsection, the term "person" includes, in addition to the entities referred to in section 101(a)(45), any responsible corporate officer.

c. Jurisdiction

Any action under this subsection may be brought in Hualapai Tribal Court in Peach Springs, Arizona, and such court shall have jurisdiction to restrain such violation, require compliance, assess and collect penalties and fees, and award any other appropriate relief.

d. Calculation of Penalties; Notice

1. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this section, if the Director has notified the source in writing of the violation and a prima facie showing can be made 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, each day of violation prior to 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 Hualapai Tribal Court 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.

3. In lieu of or in addition to a monetary penalty, the Director may impose or may request the Tribal Attorney to seek from the court a requirement to