

**NAVAJO NATION CLEAN AIR ACT**  
**MINOR SOURCE PROGRAM REGULATIONS**

**Navajo Nation**  
**Environmental Protection Agency**

**Proposed Rule**  
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Navajo Nation Air Quality Control Program  
P.O. Box 529  
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Navajo Nation EPA Regulations  
Title 4-Environment  
Chapter 11-Air Pollution Prevention and Control

**Minor Source Program Regulations**

[Note: Citations in section headings to corresponding federal regulations are for reference only and do not denote any incorporation of those regulations.]

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## **Part I – General Provisions**

### **§ 101. Purpose, Scope, Effective Date, and Transition from Federal Permitting to Tribal Permitting [40 C.F.R. §§ 49.151(b), 49.161(d)]**

#### **A. Purpose**

The purpose of these regulations is to:

1. establish a unitary operating and preconstruction review permitting program for new minor sources, certain modifications at existing minor sources, minor modifications at major sources, and synthetic minor sources located on the Navajo Nation, as authorized by the Navajo Nation Clean Air Act, 4 N.N.C. §§ 1103, 1112(A)(1)(c), and 1134(G);
2. establish a registration system for sources emitting below the Minor Permit Threshold that will allow the Navajo Nation EPA to maintain an inventory of minor source emissions on the Navajo Nation and evaluate the air quality impacts from such sources;
3. provide a mechanism for an otherwise major source, including a major source for hazardous air pollutants (“HAPs”), to voluntarily accept practically enforceable restrictions on its potential to emit in order to become a synthetic minor source; and
4. set forth the substantive provisions and procedures that the Navajo Nation EPA will use to administer this minor source program.

#### **B. Scope**

These regulations apply to the sources specified in Part II (Applicability) of these regulations. Permits issued pursuant to these regulations shall be consistent with regulations implementing Subchapter 2, Parts B, D, F & G of the Navajo Nation Clean Air Act, as applicable. Permits may be issued containing both Navajo and federal program requirements. This situation may arise, for example, when a permittee is subject to a program under the federal Clean Air Act that the Navajo Nation is not currently implementing.

#### **C. Effective Date**

These regulations shall become effective immediately upon approval by the Navajo Nation Resources and Development Committee.

#### **D. Revision**

Pursuant to the rulemaking procedures of the Navajo Nation Clean Air Act, 4 N.N.C. § 1161(A), and the Uniform Rules, the Navajo Nation EPA shall revise these regulations as necessary and appropriate to accommodate changes in relevant Navajo and federal law.

## **E. Transition from Federal Permits to Navajo Permits**

An existing federal permit issued under the Tribal NSR Rule to a source that is required to obtain a minor source permit under this program shall continue in force and effect until USEPA has approved these regulations as satisfying the minor NSR permit requirements in the Tribal NSR Rule and the Navajo Nation EPA has issued a permit to the source pursuant to these regulations.

### **§ 102. Definitions [40 C.F.R. § 49.152]**

**A.** Except as specifically provided in this section, terms used in these regulations retain the meaning accorded them under the CAA and its implementing regulations and under the Navajo Nation Clean Air Act and its implementing regulations. If the definition under the two statutes differs, the definition under the Navajo Nation Clean Air Act shall control.

**B.** The terms used in these regulations shall have the following meanings:

1. **“Actual emissions”** means the amount of emissions, including fugitive emissions, from a source that is calculated by using:

a. the actual rate of emissions in TPY of any fee pollutant emitted from a minor source over the preceding calendar year or any other period determined by the Director to be more representative of normal operation and consistent with the fee schedule adopted by the Director; and

b. the unit’s actual operating hours, production rates, and in-place control equipment, types of materials processed, stored, or combusted during the preceding calendar year or other period used for this calculation; and

c. the calculation of actual emissions shall not include any emissions that come from insignificant activities.

2. **“Administrative permit revision”** means a permit revision that:

a. corrects typographical errors;

b. provides for a minor administrative change at the source, such as a change in the physical address, e-mail address, or phone number of any person identified in the permit;

c. requires more frequent monitoring or reporting by the permittee;

d. indicates a change in ownership or operational control of a source, provided that:

i. a written agreement, containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee, has been submitted to the Director, and the Director has determined that no other change in the permit is necessary;

ii. the new owners have submitted the application information required in § 301(D)(2) of these regulations; and

iii. no grounds exist for permit reopening, revocation and reissuance, or termination, pursuant to § 404 of these regulations; or

e. constitutes any other type of change that has been determined by the Director to be similar to those in this definition.

3. “**Administrator**” means the Administrator of USEPA or the Administrator’s duly authorized representative.

4. “**Affected emissions units**” means all the emissions units at a proposed new minor source or all the new, modified, and replacement emissions units that comprise a proposed modification.

5. “**Allowable emissions**” means the emissions rate of a source calculated using the maximum rated capacity of the source, as reduced by any practically enforceable emission limitations.

6. “**Clean Air Act**” means the federal Clean Air Act, 42 U.S.C. §§ 7401-7671, as amended.

7. “**Commence construction**” means, as applied to a new minor stationary source or minor modification at an existing stationary source subject to these regulations, that the owner or operator has all necessary preconstruction approvals or permits and either has:

a. begun on-site activities including, but not limited to, installing building supports and foundations, laying underground piping or erecting/installing permanent storage structures. The following preparatory activities are excluded: Engineering and design planning, geotechnical investigation (surface and subsurface explorations), clearing, grading, surveying, ordering of equipment and materials, storing of equipment or setting up temporary trailers to house construction management or staff and contractor personnel; or

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

8. “**Consumer Price Index**” means the average of the Consumer Price Index for all-urban consumers for all items, as periodically revised and published by the U.S. Department of Labor at <https://www.bls.gov/cpi/>.

9. “**Director**” means the Executive Director of the Navajo Nation Environmental Protection Agency, or the Director’s duly authorized representative.

10. “**Emergency**” means, for purposes of § 304 of these regulations, any situation arising from sudden and reasonably unforeseeable events beyond the control of the permittee,

including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed an emission limitation under its permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

11. **“Emission limitation”** means a requirement established by the Director that limits the quantity, rate, or concentration, or combination thereof, of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emissions reduction and any design standard, equipment standard, work practice, operational standard, or pollution prevention technique.

12. **“Emissions unit”** means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any air pollutant regulated under the Navajo Nation Clean Air Act as provided in 4 N.N.C. § 1126 (HAPs). This term is not meant to alter or affect the definition of the term “unit” for purposes of Subchapter 2, Part G of the Navajo Nation Clean Air Act.

13. **“Enforceable as a practical matter”** or **“practically enforceable”** means that an emission limitation or other standard is both legally and practicably enforceable as follows:

a. An emission limitation or other standard is legally enforceable if the Director has the right to enforce it.

b. Practical enforceability for an emission limitation or for other standards in a permit is achieved if the permit specifies:

i. a limitation or standard and the emissions units or activities at the source subject to the limitation or standard;

ii. the relevant period for the limitation or standard (*e.g.*, hourly, daily, monthly and/or annual limits such as rolling annual limits); and

iii. the method to determine compliance, including appropriate monitoring, recordkeeping, reporting, and testing.

c. For general permits, practical enforceability additionally requires that the provisions:

i. identify the types or categories of sources that are covered by the general permit; and

ii. specify the enforcement consequences relevant to the general permit.

14. **“Existing source”** means any stationary source that is not a new source.

15. **“Fugitive emissions”** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. For purposes of these regulations, fugitive emissions are considered only if the source belongs to one of the source categories listed in 40 C.F.R. part 51, Appendix S, paragraph II.A.4(iii) or 40 C.F.R. §

52.21(b)(1)(iii), as applicable. If the Director determines, by rulemaking or upon request by an applicant or a permittee, that certain fugitive emissions are not quantifiable, they need not be considered for purposes of these regulations.

16. **“General permit”** means a permit that may be applied to a number of similar emissions units or sources and that meets the requirements of § 303 of these regulations. A general permit simplifies the permit issuance process for certain categories of facilities.

17. **“Hazardous air pollutant”** or **“HAP”** means any air pollutant subject to a standard promulgated or any other requirement established under CAA § 112 or listed as a hazardous air pollutant by the Director pursuant to 4 N.N.C. § 1126(B).

18. **“Insignificant activities”** means those activities which the Director determines are insignificant on the basis of size, emissions, or production rate.

19. **“Major source”** has the same definition as applied in § 102(31) of the Navajo Nation major source operating permit regulations (“NNOPR”). For the purposes of this definition, a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant-emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the current Standard Industrial Classification System published online at [https://www.osha.gov/pls/imis/sic\\_manual.html](https://www.osha.gov/pls/imis/sic_manual.html) by the Occupational Safety and Health Administration of the United States Department of Labor.

20. **“Minor modification at a major source”** means a modification at a major source that does not qualify as a major modification under 40 C.F.R. § 49.167 or 40 C.F.R. § 52.21, as applicable, is not covered by the administrative or minor permit revision provisions of the NNOPR, and meets the Minor Permit Threshold.

21. **“Minor permit revision”** means a permit revision that:

- a. does not violate any applicable requirement;
- b. does not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
- c. does not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- d. does not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject, including any practically enforceable emission limitation adopted to avoid classification as a modification under the Navajo Nation Clean Air Act and any alternative emissions limitation approved pursuant to regulations promulgated under 4 N.N.C. § 1129(D)(5);

e. is not a CAA Title I modification; and

f. is not required by the Director to be processed as a significant permit revision pursuant to § 403(c) of these regulations.

Notwithstanding the criteria listed in paragraphs (a)-(f), a minor permit revision may include permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches to the extent that such minor permit revision procedures are provided in the implementation plans promulgated pursuant to Subchapter 2, Part A of the Navajo Nation Clean Air Act or in applicable requirements promulgated by the Administrator.

22. “**Minor Permit Threshold**” means any of the applicability cutoffs listed in Table 1.

23. “**Minor source**” means a source, not including the exempt emissions units and activities listed in § 201(C) of these regulations, that has the potential to emit regulated pollutants in amounts that are less than the major source thresholds defined in 40 C.F.R. § 49.167 or § 52.21, as applicable, but equal to or greater than the Minor Permit Thresholds listed in Table 1 of these regulations. The potential to emit includes fugitive emissions only if the source belongs to one of the source categories listed in 40 C.F.R. part 51, Appendix S, paragraph II.A.4(iii) or 40 C.F.R. § 52.21(b)(1)(iii), as applicable. For a source to be considered a minor source, the potential to emit of all regulated NSR pollutants must be less than the corresponding major source threshold. Minor sources consist of true minor sources and synthetic minor sources.

24. “**Minor source permit**” means a permit issued pursuant to these regulations for a minor source or for a minor modification at a major source (a site-specific permit) or for a category of sources (a general permit). It is a unitary permit but may consist solely of the operating component of such permit if preconstruction review is not required.

25. “**Modification**” means any physical or operational change at a source that would require an increase in the allowable emissions of a minor source for any regulated air pollutant or that would cause the emission of any regulated air pollutant not previously emitted. The following exemptions apply:

a. a physical or operational change does not include routine maintenance, repair or replacement;

b. an increase in the hours of operation or in the production rate is not considered an operational change unless such change is prohibited under any permit condition that is enforceable as a practical matter;

c. a change in ownership at a stationary source; and

d. the exempted emissions units and activities listed in § 201(C) of these regulations.

26. **“Navajo Nation” or “Nation”** means, when referring to territory, all areas of Navajo Indian country, as defined in 7 N.N.C. § 254.

27. **“Navajo Nation Clean Air Act”** means the Navajo Nation Air Pollution Prevention and Control Act, 4 N.N.C. §§ 1101-62, as amended.

28. **“Navajo Nation EPA”** means the Navajo Nation Environmental Protection Agency.

29. **“New source”** means any stationary source, the construction or modification of which is commenced after the effective date of these regulations.

30. **“NNAQCP”** means the Navajo Nation Air Quality Control Program, which is the program within the Navajo Nation EPA responsible for implementing these regulations and other requirements pertaining to air quality on the Navajo Nation.

31. **“NNOPR”** means the Navajo Nation major source operating permit regulations, promulgated pursuant to 4 N.N.C. § 1134.

32. **“NSR”** means new source review.

33. **“Operator”** means any person who operates, controls, or supervises the overall operation of a source. For a corporation, the operator includes any person who performs policy or decision-making functions for the corporation.

34. **“Owner”** means any holder of any portion of the legal or equitable title to a source, and any holder of a leasehold interest in a source. The Navajo Nation shall not be deemed an owner and shall not be required to take any action under these regulations by virtue of holding the legal or equitable title to the land underlying the source if another person holds a leasehold interest in the source or is the operator of the source. For a corporation, the owner is the president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function. For a partnership or sole proprietorship, the owner is a general partner or the proprietor, respectively.

35. **“Part 71”** means 40 C.F.R. Part 71, which contains the major source operating permit regulations promulgated pursuant to CAA Title V.

36. **“Permit program costs”** means all reasonable direct and indirect costs related to developing and implementing the minor source permit program established under these regulations, including, but not limited to, costs of the following activities:

a. preparing generally applicable regulations, general permits, or guidance regarding the permit program and its implementation or enforcement;

b. reviewing and acting on any application for a permit issuance, revision, or renewal, including the development of applicable requirements as part of the processing of such applications;

c. general administrative costs of running the permit program, including the supporting and tracking of permit applications, inspections, compliance certification, and related data entry;

d. implementing and enforcing the terms of any permit, including adequate resources to determine which sources are subject to the program, but not including any court costs or other costs associated with an enforcement action;

e. emissions and ambient air monitoring;

f. modeling, analyses, or demonstrations;

g. preparing inventories and tracking emissions; and

h. providing direct and indirect support to small business stationary sources under 4 N.N.C. § 1140 (Technical and Environmental Compliance Assistance for Small Businesses) to assist them in meeting their obligations under these regulations.

37. **“Permit revision”** means a significant permit revision, a minor permit revision, or an administrative permit revision, as defined in this section.

38. **“Permittee”** means the owner or operator of a permitted source, as identified in any permit application or revision or as observed and confirmed onsite.

39. **“Person”** means any public or private corporation, company, partnership, firm, association, or society of persons; federal, state, or local government and any of their programs or agencies; the Navajo Nation or any other tribe and any of its agencies, programs, enterprises, companies, or political subdivisions; and natural persons.

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

41. **“Potential to emit”** means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable as a practical matter. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen. Secondary emissions do not count in determining the potential to emit of a stationary source. The potential to emit includes fugitive emissions.

42. **“Regulated air pollutant”** means any of the pollutants listed on Table 1.

43. **“Secondary emissions”** means emissions which occur as a result of the construction and operation or modification of a source, but do not come from the source or modification itself. Secondary emissions must be specific, well-defined, quantifiable and impact the same general areas as the source modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the source or modification. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel, that is regulated under Title II of the Clean Air Act.

44. **“Shutdown”** means the cessation of operation of any air pollution control equipment, process equipment, or process, for any purpose.

45. **“Significant permit revision”** to a minor source permit means:

a. any revision that does not meet the definition for an administrative permit revision or a minor permit revision, including a change in ownership that does not meet the criteria in paragraph (d) of the definition of an administrative permit revision;

b. any revision that would result in any significant change to existing monitoring permit terms or conditions and any relaxation to existing recordkeeping or reporting permit terms or conditions;

c. any revision for which action on the application would, in the judgment of the Director, require decisions to be made on significant or complex issues; and

d. any revision that would be required if the existing permit specifically prohibits the proposed change.

46. **“Startup”** means the setting into operation of any air pollution control equipment, process equipment, or process, for any purpose.

47. **“Stationary source”** or **“source”** means any building, structure, facility, or installation that emits or may emit any regulated air pollutant and that is not a nonroad engine under Title II of the Clean Air Act.

48. **“Synthetic minor source”** means both synthetic minor sources of regulated air pollutants and synthetic minor HAP sources. A synthetic minor source of regulated air pollutants is a source that would have the potential to emit regulated pollutants in amounts that are at or above those for major sources in 40 C.F.R. § 49.167, § 52.21 or § 71.2, as applicable, but has taken a restriction so that its potential to emit is less than such amounts. A synthetic minor HAP source is a source that would have the potential to emit HAPs in amounts that are at or above those for major sources of HAPs in 40 C.F.R. § 63.2, but has taken a restriction so that its potential to emit is less than such amounts. In either case the restriction must be enforceable as a practical matter.

49. **“Temporary source”** means any source that is situated in one location for less than a year, after which it will be dismantled and removed from its current site or relocated to a new site. A temporary source may be semi-permanent, unlike a portable source. Temporary sources may include wellhead compressors that meet the criteria of this definition.

50. **“TPY”** means tons per year.

51. **“Tribal NSR Rule”** means the Federal Minor New Source Review Rule in Indian Country (40 C.F.R. §§ 49.151-161).

52. **“True minor source”** means a source, not including the exempt emissions units and activities listed in § 201(C) of these regulations, that emits or has the potential to emit regulated pollutants in amounts that are less than those of a major source as defined in this section but equal to or greater than the Minor Permit Thresholds listed in Table 1 of this Part, without the need to take an enforceable restriction to reduce its potential to emit to such levels. That is, a true minor source is a minor source that is not a synthetic minor source.

53. **“Uniform Rules”** means the Navajo Nation EPA Uniform Regulations for Permit Review, Administrative Enforcement Orders, Hearings, and Rulemakings under Navajo Nation Environmental Acts.

54. **“Unitary Permit”** means a permit composed of two parts: one part that regulates the construction of a minor source or qualifying modification of a minor or major source and the other part that regulates the continuing operation of a minor source. Permits issued under these regulations are unitary permits, except that if the source existed or was permitted by the USEPA under its Tribal NSR Rule before the effective date of these regulations, no immediate preconstruction review or related permitting provisions will be imposed through the unitary permit. However, a unitary permittee consents to undergoing preconstruction review when a triggering event occurs as described in these regulations.

### **§ 103. Certification [40 C.F.R. § 70.5(d)]**

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

### **§ 104. Confidentiality [40 C.F.R. Part 2, Subpart B]**

A. An applicant or permittee who submits material to the Director under a claim of confidentiality:

1. may submit the material claimed to be confidential separately from the remainder of the submittal;

2. shall precisely identify the material for which the confidentiality claim is asserted; and

3. shall provide sufficient supporting information to allow evaluation of that claim.

B. All confidentiality claims made regarding material submitted to the Director under these regulations shall be evaluated under 4 N.N.C. § 1151(D). Information that is emission data, a standard or limitation, or is collected pursuant to CAA § 211(b)(2)(A) (tests of health and environmental effects of fuel and fuel additives), 42 U.S.C. § 7545(b)(2)(A), is not eligible for confidential treatment, as provided in 40 C.F.R. § 2.301(e).

C. All materials submitted to the Director under these regulations, except to the extent determined confidential pursuant to subsection (B), and all minor source permits are public records and not entitled to protection under the Navajo Privacy Act, 2 N.N.C. Subchapter 4, §§ 81-91.

### **§ 105. Severability of Provisions**

The provisions contained in these regulations and their various applications are distinct and severable. If any provision of these regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of such provision to other persons or circumstances which can be given effect without the invalid provision or application.

## **Part II – Applicability**

### **§ 201. Sources Subject to Permit or Registration Requirements [40 C.F.R. § 49.153]**

#### **A. Applicability**

These regulations apply to all non-major sources that are not exempt under subsection C of this section and to minor modifications at major sources. True minor sources are required to obtain site-specific minor source permits or coverage under a general permit (if they are included within a category of general permits issued under § 303(A) of these regulations), while synthetic minor sources are required to obtain site-specific minor source permits. All other non-exempt non-major sources are required only to register. Permit requirements for minor modifications at major sources are determined pursuant to § 202(A) of these regulations.

#### **B. Components of Minor Source Permits**

The minor source permits issued under these regulations are unitary permits and consist of two components: an operating permit component and a preconstruction review (NSR) component. If preconstruction review requirements are not triggered, a permit may be issued that contains only an operating permit component; if preconstruction review requirements are triggered, the permit will contain both components.

### **C. Exemptions from Minor Source Program**

This program does not apply to the emissions units and activities listed in paragraphs (C)(1) through (13):

1. motor vehicles, nonroad engines and nonroad vehicles, as defined in the Clean Air Act at 42 U.S.C. § 7550 and at 40 C.F.R. § 51.50;
2. ventilating units for comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial processes;
3. noncommercial food preparation, including individuals selling cooked food from a stall, vehicle, door-to-door, or by similar methods;
4. consumer use of office equipment and products;
5. janitorial services and consumer use of janitorial products;
6. internal combustion engines used for landscaping purposes;
7. bench scale laboratory activities, except for laboratory fume hoods or vents.
8. single family residences and residential buildings with four or fewer dwelling units;
9. emergency generators used solely for providing electrical power during power outages (in attainment areas, the total maximum manufacturer's site-rated horsepower of all units shall be below 1,000);
10. stationary internal combustion engines with a manufacturer's site-rated horsepower of less than 50;
11. furnaces or boilers used for space heating that use only gaseous fuel, with a total maximum heat input of 10 MMBtu/hr or less;
12. air conditioning units used for human comfort that do not exhaust air pollutants in the atmosphere from any manufacturing or other industrial processes; and
13. other insignificant emissions, as determined by the Director, provided they are below the thresholds on Table 1.

### **D. Other limitations**

Sources that are minor for regulated pollutants but major for HAPs are not covered by these regulations and must undergo permitting under the appropriate program.

TABLE 1—MINOR PERMIT THRESHOLDS <sup>a</sup>

Regulated pollutant	nonattainment area (tpy)	attainment area (tpy)
Carbon monoxide (CO).....	5	10
Nitrogen oxides (NOX).....	5 <sup>b</sup>	10
Sulfur dioxide (SO <sub>2</sub> ).....	5	10
Volatile Organic Compounds (VOC).....	2 <sup>b</sup>	5
PM.....	5	10
PM <sub>10</sub> .....	1	5
PM <sub>2.5</sub> .....	0.6	3
Lead.....	0.1	0.1
Fluorides.....	NA	1
Sulfuric acid mist.....	NA	2
Hydrogen sulfide (H <sub>2</sub> S).....	NA	2
Total reduced sulfur (including H <sub>2</sub> S).....	NA	2
Reduced sulfur compounds (including H <sub>2</sub> S).....	NA	2
Municipal waste combustor emissions.....	NA	2
Municipal solid waste landfill emissions (measured as nonmethane organic compounds).....	NA	10

<sup>a</sup> The Navajo Nation is an unclassified/attainment area for all regulated pollutants. However, if part of the Navajo Nation becomes designated as nonattainment, the applicable threshold for a proposed source or modification is determined based on the designation where the source is or would be located. If the source straddles the two areas, the more stringent thresholds apply.

<sup>b</sup> In extreme nonattainment areas, which do not currently exist within the Navajo Nation, CAA § 182(e)(2) requires any change at a major source that results in any increase in emissions to be subject to major NSR permitting. In other words, any changes to existing major sources in extreme ozone nonattainment areas are subject to a “0” tpy threshold, but that threshold does not apply to minor sources.

**§ 202. Permit-Triggering Events. [40 C.F.R. § 49.153]**

**A. Preconstruction review**

1. Requirement for preconstruction review. Whether preconstruction review is required is determined individually for each regulated air pollutant that would be emitted by a new or modified source. Fugitive emissions must be included. For each regulated air pollutant, applicability is determined as set out in paragraph (A)(1)(a) or (b) of this section.

a. *New sources.*

i. If the proposed source’s potential to emit makes it subject to review under a major source NSR program (that is, its potential to emit a pollutant is greater than the threshold for that pollutant under 40 C.F.R. §§ 52.21 or 49.166-175, or any corresponding Navajo Nation program), it is subject to preconstruction review under the major source program.

ii. If the proposed source’s potential to emit the pollutant being evaluated is less than the major source thresholds but is equal to or greater than the corresponding

Minor Permit Threshold in Table 1, then the source is subject to the minor source permitting requirements of these regulations. If such potential to emit is less than the Minor Permit Threshold, the source is subject instead to the registration program described in § 205, unless exempted.

b. *Modification at an existing source.*

i. *Existing Major Sources.* For the pollutant being evaluated, determine whether the proposed modification is subject to review under the applicable major NSR program. If the modification at the existing major source does not qualify as a major modification under that program based on the actual-to-projected-actual emissions test, then it will be considered a minor modification subject to the preconstruction review requirements of these regulations, if the net emissions increase from the actual-to-projected-actual test is equal to or exceeds the Minor Permit Threshold listed in Table 1.

ii. *Existing Minor Sources.* For the pollutant being evaluated, determine whether the increase in allowable emissions from the proposed modification would be equal to or greater than the Minor Permit Threshold in Table 1. If it is, the source is subject to the preconstruction review requirements of this program for that pollutant.

2. Increase in an emissions unit's annual allowable emissions limit not triggering preconstruction review. A proposed physical or operational change at a minor or major source that would increase an emissions unit's allowable emissions of a regulated pollutant above its existing annual allowable emissions limit but would not trigger the requirement for a preconstruction review permit must obtain a revision to the operating permit component of its permit to reflect the increase in the limit prior to making the change.

**B. Synthetic minor source permits [40 C.F.R. § 49.158]**

1. Owners or operators of a source that would, without enforceable limits on emissions as applied by these regulations, be considered a major source, may submit a synthetic minor source permit application under these regulations.

2. If the source is an existing synthetic minor source permitted under a Part 71 permit, the source may continue to operate under that permit and the permittee shall apply for a new permit under these regulations whenever it would have been required to apply for a renewal permit under Part 71.

3. If an owner or operator seeks to commence construction of a new synthetic minor source or a modification at an existing synthetic minor source on or after the effective date of these regulations, the owner or operator must obtain a unitary permit for the affected emissions units pursuant to these regulations prior to commencing construction.

4. Any source that becomes a synthetic minor source for NSR and CAA Title V purposes but has other applicable requirements not covered by these regulations, or becomes a synthetic minor source for NSR but is major for the purposes of CAA Title V or NNCAA Subchapter 2, Part H, or is a minor source for NSR but major for HAPs, remains subject to the applicable CAA Title V and NNCAA Subchapter 2, Part H programs.

### **C. Requirement to have an operating permit**

1. Any source that requires preconstruction review under these regulations requires a unitary permit that includes both NSR and operating permit provisions.

2. A source that has the potential to emit at or above the Minor Permit Threshold for any regulated air pollutant must obtain a site-specific permit or a general permit (the latter by requesting coverage pursuant to § 303(D) of these regulations) containing operating permit requirements for all of its emissions units, unless the source is exempted pursuant to § 201(C) of these regulations or is permitted under Part 71 or the NNOPR.

3. An existing source that is required to have an operating permit under paragraph 2 of this subsection and that has a federal permit issued under the Tribal NSR Rule may have NSR provisions added to its operating permit as soon as USEPA approves these regulations as satisfying the minor NSR permit requirements in the Tribal NSR Rule, at which point the operating permit will become a unitary permit and the federal permit will no longer be valid.

4. The applicability of the minor source operating permit requirements in these regulations is determined individually for each regulated air pollutant emitted by a new, modified, or existing source.

### **D. General permits**

As provided in § 303(D)(1) of these regulations, unless this requirement is waived in a general permit or the source is exempt, all sources in the category covered by a general permit issued by the Director are required to apply for coverage under the general permit or apply for a site-specific permit, regardless of whether the source's potential to emit exceeds the Minor Permit Thresholds listed in Table 1.

### **§ 203. Method of Calculating Increases in Allowable Emissions from a Modification [40 C.F.R. § 49.153(b)]**

**A.** An increase in allowable emissions resulting from a modification at a source is rendered in TPY of each regulated air pollutant after considering all increases from a physical or operational change at a source. A physical or operational change may involve one or more emissions units.

**B.** The total increase in allowable emissions resulting from a proposed modification (including fugitive emissions) is the sum of the following:

1. For each new emissions unit that is to be added, the emissions increase is the potential to emit of the emissions unit.

2. For each emissions unit with an allowable emissions limit that is to be changed or replaced, the emissions increase is the allowable emissions of the emissions unit after the change or replacement minus the allowable emissions prior to the change or replacement. However, this may not be a negative value. If the allowable emissions of an emissions unit would be reduced as a result of the change or replacement, zero must be used in the calculation.

3. For each unpermitted emissions unit (a unit without any enforceable permit conditions) that is to be changed or replaced, the emissions increase is the allowable emissions of the emissions unit after the change or replacement minus the potential to emit prior to the change or replacement. However, this may not be a negative value. If an emissions unit's post-change allowable emissions would be less than its pre-change potential to emit, zero must be used in the calculation.

## **§ 204. Exemptions from Permit Requirement**

### **A. Exemption due to existing permit, permit application, or exempt category**

No true minor source, synthetic minor source, or minor modification at a major source for which a permit is required under these regulations, as provided in § 202 of these regulations, may be constructed or may operate after the effective date of these regulations without a valid permit issued under these regulations unless:

1. the source is in compliance with the terms and conditions of a permit issued by the Director or the Administrator under the Tribal NSR Rule and is in compliance with paragraph (2) below;

2. the source has submitted a timely and complete application for permit issuance or renewal consistent with § 301 of these regulations and the Director has not yet issued the permit or disapproved the application. In that case, the terms and conditions of the prior permit shall remain in effect until the new permit or renewal permit has been issued or the application has been disapproved.

a. The ability to operate under § 204(A)(2) of these regulations shall cease if:

- i. the Director takes final action on the application; or
- ii. the applicant fails to submit by the deadline specified in writing by the Director any additional information necessary to process the application.

### **B. Voluntary termination**

Upon request by the permittee, the Director shall permanently terminate a site-specific minor source permit. The Director will confirm the permit termination by certified letter to the permittee.

### **C. Preconstruction limitation**

Nothing in this section shall be construed to alter any applicable preconstruction requirements under either CAA § 165 (42 U.S.C. § 7475), or 4 N.N.C. § 1118(C).

**§ 205. Registration Program for Sources below the Minor Permit Threshold [40 C.F.R. § 49.160]**

New and existing sources that are not major sources (that is, they emit or have the potential to emit regulated air pollutants in amounts that are less than those of a major source), that are not required to be permitted under these regulations (that is, they are not minor sources), that are not covered by general permits, and that are not exempt pursuant to subsection B of this section shall register with the Navajo Nation EPA pursuant to this section.

**A. Requirements for registration**

1. Due date. Existing non-exempt non-major sources that are not minor sources nor covered by general permits must register within six (6) months after the effective date of these regulations. New non-exempt non-major sources that are not minor sources nor covered by general permits must register at least ninety (90) days prior to commencing construction.

2. Content. Each registration must include the following information, as applicable:

- a. Identifying information, including location of the source and the name, telephone number, and e-mail address of the source manager/contact;
- b. A description of the source's processes and products;
- c. A list of all emissions units (with the exception of the exempt emissions units and activities listed in § 201(C) of these regulations);
- d. For each emissions unit that is listed, the potential to emit of each regulated air pollutant in TPY (including fugitive emissions) with supporting documentation;
- e. Information concerning fuels, fuel use, raw materials, production rates, and operating schedules;
- f. Identification and description of any existing air pollution control equipment and compliance monitoring devices or activities, including dust management plans, if any, and general best management practices;
- g. Any existing limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source;
- h. Any schools, daycares, nursing homes, or residential areas within a quarter mile of the source; and
- i. Any other information specifically requested by the Director.

## **B. Exemptions from registration**

The following sources are exempt from the registration requirement:

1. sources that have been issued a site-specific minor source permit (including a synthetic minor source permit), obtained coverage under a general permit, or for which an application for a site-specific minor source permit or request for coverage for a general permit is required; and
2. exempted sources listed in § 201(C) of these regulations.

## **C. Duty to obtain a permit**

Submitting a registration does not relieve the owner or operator of the requirement to obtain any required permit.

## **D. Additional reports**

Registered sources must submit the following additional reports in writing to the Director.

1. Report of relocation. Any relocation of the source must be reported no later than thirty (30) days prior to the relocation. However, a report need not be submitted if a minor source permit was obtained for the relocation.
2. Report of change of owner or operator. The new owner or operator must report any change of owner or operator within ninety (90) days after the change is effective.
3. Report of closure. Except for regular seasonal closures, a report of closure must be submitted within ninety (90) days after the cessation of all operations.

## **E. Confirmation**

The Director shall provide registrants with confirmation in writing after receiving the information required by this section.

## **Part III – Permit Requirements**

### **§ 301. Site-Specific Permit Application Requirements [40 C.F.R. § 49.154]**

#### **A. Duty to apply**

For each source required or choosing to obtain a site-specific permit under these regulations, the owner or operator shall submit a timely and complete written permit application to the Director in accordance with this section and § 202 of the Uniform Rules.

1. New true minor sources (unless they are covered by a general permit under § 303 of these regulations), new synthetic minor sources, and sources undergoing a modification triggering preconstruction review under § 202 of these regulations must apply for the unitary permit required by these regulations, covering both preconstruction review and operation of the affected emissions units.

2. Existing true minor sources (unless they are covered by a general permit under § 303 of these regulations) and existing synthetic minor sources that are not undergoing modification triggering preconstruction review must apply for and obtain the operating permit component of a site-specific minor source permit but do not require preconstruction review unless and until a triggering event occurs as defined in § 202 of these regulations.

## **B. Timely application**

A timely application for permitting required by these regulations is:

1. For new sources, an application received by the Director at least ninety (90) days prior to the requested commencement of construction.
2. For existing sources that do not have a federal permit under the Tribal NSR Rule, an application received by the Director within nine (9) months after the effective date of these regulations.
3. For existing true minor sources that have a federal permit under the Tribal NSR Rule, an application received by the Director within six (6) months after the effective date of these regulations.
4. For existing synthetic minor sources permitted under a Part 71 permit, the permittee shall apply for a new permit under these regulations whenever it would be required to apply for a renewal permit under Part 71.
5. For renewal of permits issued under these regulations, an application received at least six (6) months but no more than eighteen (18) months prior to the expiration of the current permit.

## **C. Completeness determination [40 C.F.R. § 49.154(b)]**

To be determined complete by the Director, an application must provide all information required pursuant to § 301(D) of these regulations and § 202 of the Uniform Rules, except that an application for a permit revision need supply only such information as is related to the proposed change.

1. An application for a permit under these regulations will be reviewed to determine whether the application contains all the information necessary for processing the application.

a. If the Director determines that the application is incomplete, the Director will request additional information as necessary to process the application. If the Director determines that the application is complete, the Director will notify the applicant of such determination in writing.

b. If, while processing an application that has been determined to be complete, the Director determines that additional information is necessary to evaluate or take final action on the application, the Director may request additional information and require responses within a reasonable time period.

2. A source's ability to operate without a permit pursuant to § 204(A)(3) of these regulations shall be in effect from the date a timely and complete application is submitted until final action is taken on the application. The application must be determined or deemed to be complete under § 401(A) of these regulations, including the requirement for the applicant to submit any requested additional information by the deadlines specified by the Director.

#### **D. Permit application content [40 C.F.R. §§ 49.154, 49.158]**

1. General provisions for permit applications. The following provisions apply to all permit applications under these regulations:

a. The permit application need not contain information on the exempt emissions units and activities listed in § 201(C) of these regulations.

b. The permit application for a modification need only include information on the affected emissions units.

c. NNEPA may develop permit application forms to assist applicants with ensuring that all necessary information is provided.

2. Required permit application content. The following information must be included in all permit applications under these regulations:

a. the date of the application;

b. identifying information, including the responsible party's name, address (and source name and address if different), and e-mail address, and the name and telephone number of the source manager or other point of contact;

c. if available, the exact location of the source identified by latitude and longitude, or by UTM coordinates, and on a map, such as the 7.5 minute Topographic Quadrangle map published by the United States Geological Survey or the most detailed map available;

d. a description of the source's processes and products (by Standard Industrial Classification Code);

e. a list of all affected emissions units (with the exception of the exempt emissions units listed in § 201(C) of these regulations);

f. to the extent needed to determine or regulate emissions, information on the source's fuels, fuel use, raw materials, production rates and operating schedules;

g. identification and description of any existing air pollution control technology and compliance monitoring devices or activities;

h. any existing limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the source;

i. for each emission point associated with an affected emissions unit, stack or vent dimensions and flow information;

j. a description of any proposed or existing pollution prevention techniques, air pollution control devices, design standards, equipment standards, work practices, operational standards, or a combination thereof;

k. for permits covering coal and uranium mines, an enforceable best management practices plan for reducing fugitive emissions from the mine;

l. if the source was issued a preconstruction review permit under the Tribal NSR Rule, a copy of that permit; and

m. other information as the Director may reasonably require or which is required by any other applicable requirements.

3. Preconstruction review application requirements. The following additional information must be included in applications for preconstruction review for new minor or synthetic minor sources and for qualifying modifications at existing sources.

a. a list of all affected emissions units (with the exception of the exempt emissions units and activities listed in § 201(C) of these regulations);

b. for each new emissions unit that is listed, the potential to emit of each regulated pollutant in TPY (including fugitive emissions), with supporting documentation. In calculating the potential to emit for an emissions unit, applicants must account for any proposed emissions limitations;

c. for each modified emissions unit and replacement unit that is listed, the allowable emissions of each regulated pollutant in TPY both before and after the modification (including fugitive emissions), with supporting documentation. For emissions units that do not have an allowable emissions limit prior to the modification, report the potential to emit. In calculating annual allowable emissions for an emissions unit after the modification, applicants must account for any proposed emission limitations;

d. The applicant's proposed control technology for regulated air pollutants, as applicable; and

e. if the Director believes that the construction or modification of the source would cause or contribute to a NAAQS or PSD increment violation, the Director may require the permit application to include an air quality impacts analysis ("AQIA"), performed using the dispersion models and procedures of 40 C.F.R. part 51, Appendix W, or other equivalent methods approved by the Director.

f. *Demolition and renovation activities.* Applications involving demolition and renovation activities shall include a dust control plan and also shall specify how close such activities will be to a home, school, daycare facility, or other area where vulnerable or at-risk populations may be located.

4. Synthetic minor source application requirements. The following additional information must be provided for a synthetic minor source permit application:

a. proposed emissions limitations for each regulated air pollutant and HAP for all affected emissions units, and a description of their effect on actual emissions or the potential to emit. Proposed emissions limitations must have a reasonably short averaging period, taking into consideration the operation of the source and the methods to be used for demonstrating compliance;

b. proposed testing, monitoring, recordkeeping and reporting requirements to be used to demonstrate and assure compliance with the proposed limitation;

c. a description of the production processes;

d. a description and estimated efficiency of air pollution control equipment under present or anticipated operating conditions;

e. estimates of the current actual emissions and current potential to emit, including all calculations for the estimates. Estimates of actual emissions must be based upon actual test data or, in the absence of such data, upon procedures acceptable to the Director. Any emission estimates submitted to the Director must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

i. source-specific emission tests;

ii. mass balance calculations;

iii. published, verifiable emission factors that are applicable to the source; or

iv. other procedures to estimate emissions specifically approved by the Director; and

f. estimates of the allowable emissions and/or potential to emit that would result from compliance with the proposed limitations, including all calculations for the estimates.

g. *Demolition and renovation activities.* Applications involving demolition and renovation activities shall include a dust control plan and also shall specify how close such activities will be to a home, school, daycare facility, or other area where vulnerable or at-risk populations may be located.

5. Operating permit application requirements. The following information must be included in permit applications for any source required pursuant to § 202(C) of these regulations to have a permit containing operating requirements:

a. all emissions of regulated air pollutants in TPY and the calculations and computations on which such information is based (including fugitive emissions);

b. the maximum and standard operating schedules of the source; and

c. a compliance plan and schedule that contain:

i. a description of the compliance status of the source with respect to all applicable requirements;

ii. for applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements, and for requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements; and

iii. a compliance schedule for sources that are not in compliance with all applicable requirements at the time of permit issuance, including a schedule of remedial measures, with an enforceable sequence of actions with milestones, leading to compliance with such applicable requirements, provided that the compliance schedule shall be at least as stringent as that contained in any consent decree or administrative order to which the source is subject and the obligations of any consent decree or administrative order shall not be in any way diminished by the compliance schedule, and that any such compliance schedule shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

#### **E. Duty to supplement and correct**

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application or in a supplemental submittal shall, upon becoming aware of such failure or incorrect submittal, promptly submit supplementary facts or corrected information. In addition, an applicant shall provide further information as necessary to address any requirements that become applicable to the source after the date the applicant filed a complete application but prior to release of a draft permit pursuant to Part IV of these regulations.

## § 302. Permit Content [40 C.F.R. § 49.155]

### A. Standard provisions

The following standard provisions will be included in all permits issued under these regulations:

1. Effective date. The permit will include its effective date and expiration date. All permits shall expire five (5) years from issuance.

2. Emissions limitations. The permit will list the emissions units subject to the permit and numerical limitations on emissions for each regulated air pollutant emitted by each affected emissions unit at the source. These limitations may consist of numerical limits on the quantity, rate, or concentration of emissions, pollution prevention techniques, design standards, equipment standards, work practices (including best management practices for limiting fugitive emissions), operational standards, and requirements relating to the operation or maintenance of the source, or any combination thereof. The limitations must be technically and economically feasible. The permit will include an annual allowable emissions limitation for each affected emissions unit and for each regulated air pollutant emitted by the unit in TPY.

a. *Hazardous air pollutants*. The emissions limitations required by the permit must assure that each affected emissions unit will comply with all applicable requirements of the Navajo Nation Clean Air Act §§ 1126-1129, the regulations implementing those requirements, and any federal hazardous air pollutant regulations that apply to the unit.

b. *Stack height*. The emissions limitations required by the Director must not be affected in a manner by so much of a stack's height as exceeds good engineering practice or by any other dispersion technique, except as provided in 40 C.F.R. § 51.118(b). If the Director proposes to issue a permit to a source based on a good engineering practice stack height that exceeds the height allowed by 40 C.F.R. § 51.100(ii)(1) or (2), the Director must notify the public of the availability of the demonstration study and must provide opportunity for a public hearing.

3. Required statements. Each permit shall include provisions stating the following:

a. The permittee shall comply with all terms and conditions of the permit. Noncompliance with permit conditions is a violation of the Navajo Nation Clean Air Act and constitutes grounds for enforcement action, permit termination, revocation and reissuance, reopening and modification, or denial of a permit renewal application.

b. The permitted source must not cause or contribute to a NAAQS violation or Prevention of Significant Deterioration increment violation.

c. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

d. The permit may be modified, reopened, revised, revoked and reissued, or terminated for cause in accordance with § 404 of these regulations.

e. The filing by the permittee of a request for a permit revision, reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay any permit condition.

f. The permit does not convey any property rights of any sort, or any exclusive privilege.

g. The issuance of a permit, or the filing or approval of a compliance plan, does not relieve any person from civil or criminal liability for failure to comply with the provisions of the Navajo Nation Clean Air Act and the CAA, applicable regulations thereunder, and any other applicable law or regulation.

h. The permittee shall furnish to the Director, within a reasonable time, any information that the Director requests in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit.

i. Upon presentation of proper credentials, the permittee must allow representatives of the Director to:

i. enter upon the premises where a source is located or emissions-related activity is conducted or where records are required to be kept under the conditions of the permit;

ii. have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;

iii. inspect, during normal business hours or while the source is in operation, any facilities, equipment (including monitoring and air pollution control equipment), practices or operations regulated or required under the permit;

iv. sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or other applicable requirements; and

v. record any inspection by any media.

j. The provisions of the permit are distinct and severable. If any provision of the permit is held invalid, such invalidity shall not affect other provisions or the application of such provisions which can be given effect without the invalid provision or application.

4. Monitoring Requirements. The permit will include monitoring requirements sufficient to assure compliance with all emissions limitations that apply to the affected emissions units at the source. The Director may require, as appropriate, any emissions monitoring, including analysis procedures, test methods, periodic testing, instrumental monitoring, and non-instrumental monitoring. Such monitoring requirements shall assure use of test methods, units, averaging periods, and other statistical conventions consistent with the required emissions limitations. As necessary, the Director may impose requirements concerning the use, maintenance and installation of monitoring equipment or methods.

5. Reporting Requirements. The permit shall require reporting sufficient to assure and verify compliance with the terms and conditions of the permit, including, but not limited to:

a. Annual submittal of summary reports of the required monitoring, including the type and frequency of monitoring and a summary of results obtained from monitoring.

b. Prompt reporting of deviations from permit requirements (including emergencies), including the date, time, duration, and probable cause of such deviations, the quantity of excess emissions resulting from the deviation, and any preventive, mitigating, or corrective actions or measures taken. When the underlying applicable requirement contains a definition of “prompt” or otherwise specifies a time frame for reporting deviations, that definition or time frame shall govern. When the underlying applicable requirement fails to address the time frame for reporting deviations, reports of deviations shall be submitted based on the following schedule:

i. for emissions of a hazardous air pollutant or a toxic air pollutant (as identified in an applicable regulation) that continue for more than an hour in excess of permit requirements, the report must be made by telephone, verbal, or facsimile communication within twenty-four (24) hours of the occurrence and in writing within ten (10) working days from the occurrence;

ii. for emissions of any regulated air pollutant that continue for more than two (2) hours in excess of permit requirements, the report must be made by telephone, verbal, or facsimile communication within forty-eight (48) hours of the occurrence and in writing within ten (10) working days from the occurrence;

iii. for all other deviations from permit requirements, the deviation shall be described in the annual report submitted to the Director as required by paragraph (A)(5)(a) of this section.

c. A permit may contain more stringent reporting requirements than those described in this section.

d. For purposes of this section, the term “deviation” shall have the meaning prescribed in 40 C.F.R. § 71.6(a)(3)(C).

e. When requested by the Director in writing and within the period specified by the Director, the permittee shall furnish to the Director copies of records required by the permit to be maintained, and any information that the Director may deem necessary to determine whether cause exists for reopening and revising, revoking and reissuing, or terminating the permit or to determine compliance with the permit.

6. Recordkeeping requirements.

a. The permit will require recordkeeping sufficient to assure and verify compliance with the emissions limitations and monitoring requirements in the permit, and will require, where applicable, recordkeeping of:

i. the location, date, and time of sampling or measurements;

- ii. the date(s) analyses were performed;
- iii. the company or entity that performed the analyses;
- iv. the analytical techniques or methods used;
- v. the results of such analyses; and
- vi. the operating conditions existing at the time of sampling or measurement.

b. Records of all monitoring data and support information shall be retained for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information may include all calibration and maintenance records, all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

c. Records must be maintained on site and must be provided upon request by the Director.

7. Fee provisions.

a. The permit shall include provisions to ensure that the permittee pays fees to the Director consistent with the fee schedule in § 602 of these regulations.

b. In addition to the fees described in subparagraph (a) of this section, the permit shall include provisions requiring the permittee to reimburse NNAQCP for the response costs that NNAQCP incurs due to the permittee experiencing an emergency or other noncompliance (including but not limited to explosions and equipment failure) with its permit. NNAQCP response costs may include but are not limited to: staff time; travel; assessment and monitoring, including the costs of renting, calibrating, powering, and maintaining equipment for these purposes; laboratory or other analytical costs; preparation of reports; and mailing.

8. Waiver of preconstruction review. If the permitted source was existing on the effective date of these regulations, any unitary permit issued to that source will include a waiver of the preconstruction review component of the permit, subject to the provisions of § 202(C)(3) of these regulations. The permit will, however, contain an acknowledgement of the requirement to undergo preconstruction review upon a triggering event.

**B. Preconstruction review provisions**

The following additional provisions will be included in the preconstruction review component of a unitary permit issued under these regulations.

1. Control technology. New or modified sources permitted under these regulations may be required to adopt pollution control technology, considering local air quality conditions, typical control technology or other emissions reduction measures used by similar sources in surrounding areas, anticipated economic growth in the area, cost-effective emission reduction alternatives, and the air quality attainment status of the area. The Director will conduct a case-by-case control technology review to determine the appropriate level of control, if any, necessary to

assure that the NAAQS are achieved on the Navajo Nation, as well as the corresponding emission limitations for the affected emissions units at the source.

2. Compliance with applicable requirements. The emission limitations required by the Director must assure that each affected emissions unit will comply with all requirements of 40 C.F.R. Parts 60 (NSPS), 61 (NESHAPs) and 63 (NESHAPs for source categories), as well as any federal or tribal implementation plans that apply to the unit.

3. Air quality impacts analysis. If the Director has reason to be concerned that the construction of a minor source or modification would cause or contribute to a NAAQS or PSD increment violation, the Director may require an applicant to conduct and submit an AQIA, using the dispersion models and procedures of 40 C.F.R. Part 51, Appendix W. If the AQIA reveals that construction of the source or modification would cause or contribute to a NAAQS or PSD increment violation, the Director must require the applicant to reduce or mitigate such impacts before issuing the permit.

4. Invalidation through nonaction. The preconstruction review component of a permit becomes invalid if construction is not commenced within eighteen (18) months after the effective date of the permit, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The Director may extend these periods upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; construction must commence within eighteen (18) months of the projected and approved commencement date.

### **C. Operating permit provisions**

The following provisions apply to the operating permit component of a unitary permit issued under these regulations:

1. Operational Flexibility Provisions. Each operating permit shall include the following operational flexibility provisions:

a. a provision stating that no permit revision shall be required for operating changes that are provided for in the permit under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes;

b. terms and conditions for all reasonably anticipated alternative operating scenarios identified in the application and approved by the Director, provided that such terms and conditions shall:

i. require the permittee to maintain, contemporaneously with any change from one operating scenario to another, a log at the permitted facility which documents the scenario under which the facility is operating; and

ii. ensure that each such alternative scenario meets all applicable requirements and the requirements of these regulations.

2. Compliance status. Each operating permit shall include a statement of the compliance status of the source, whether compliance was continuous or intermittent, and the method(s) used for determining the compliance status of the source, currently and during the reporting period identified in the permit. Such methods shall include an identification of each deviation over the life of the permit and any other facts the Director may require to determine the compliance status of the source.

3. Compliance plan. Consistent with § 301(D)(5)(c)(iii) of these regulations, for sources to which that provision applies, an operating permit shall include:

a. a compliance plan and schedule;

b. a requirement that the source submit a progress report at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Director, which progress report shall contain:

i. dates for achieving the activities, milestones, or compliance required in the compliance schedule, and dates when such activities, milestones, or compliance were achieved; and

ii. an explanation of why any dates in the compliance schedule were not or will not be met, and any preventive or corrective measures adopted; and

c. any additional compliance requirements that the Director may specify.

4. Acknowledgement of preconstruction review requirement. Permits granted to existing sources shall include a statement that the preconstruction review component of the unitary permit issued under these regulations is currently waived, but will be required when and if a triggering event occurs as defined in § 202 of these regulations.

### **§ 303. General Permits [40 C.F.R. § 49.156]**

#### **A. Issuance**

1. The Director may, after following the public notice and participation requirements for permit issuance in § 402 of these regulations, issue general permits covering the preconstruction review and operating requirements for categories of emissions units or sources that are similar in nature, have substantially similar emissions and would be subject to the same or substantially similar requirements governing operations, emissions, monitoring, reporting and recordkeeping. “Similar in nature” refers to size, processes and operating conditions.

2. Draft and final general permits will be posted on the NNAQCP website. A final general permit will become effective sixty (60) days after it is posted on the website.

3. The Director’s control technology review and setting of emissions limitations will occur prior to issuance of the general permit and will cover all sources subject to the general permit. A site-specific control technology review and emissions limitation will not be required for sources applying for and obtaining coverage under a general permit.

4. Synthetic minor sources may not be covered under a general permit.

5. For purposes of judicial review, issuance of a general permit is considered final agency action with respect to all aspects of the general permit except its applicability to an individual source applying for coverage under the general permit.

#### **B. Categories covered by general permits**

1. The Director will determine, in his or her unreviewable discretion, which categories of emissions units, groups of similar emissions units, or sources are appropriate for general permits.

2. The Director has determined, as of the effective date of these regulations, that general permits will be issued, pursuant to the provisions of subsection A of this section, covering true minor sources in the following categories and sectors. The Director has the unreviewable discretion to add to this list in the future:

a. the oil and natural gas production and natural gas processing segments of the oil and natural gas sector, as defined in 40 C.F.R. § 49.102; and

b. gasoline-dispensing facilities.

#### **C. Contents of general permits [40 C.F.R. § 49.156(d)]**

1. A general permit shall comply with all requirements applicable to other permits issued under this Part III, including the permit content requirements in § 302 and the requirements for final permit issuance and judicial review in § 402, except as provided in this section.

2. A general permit shall identify the specific category of emissions units or sources to which the general permit applies, the criteria that the emissions units or sources must meet to qualify for coverage under the general permit, and information regarding how to request coverage under the general permit, including but not limited to:

a. The name and mailing address for submitting the request for coverage;

b. The procedure to obtain any standard application forms that NNEPA may have developed;

c. The information that must be provided to NNEPA in the request for coverage to demonstrate eligibility for coverage under the general permit; and

d. Any other application requirements that NNEPA deems necessary.

3. When general permits cover existing sources, the standard permitting requirements and operational permit requirements in § 302(A) & (C) of these regulations apply to

the existing source, but not the preconstruction review requirements in § 302(B) of these regulations.

4. The Director may, in the general permit, provide for applications which deviate from the requirements of § 301 of these regulations, provided that such applications meet the requirements of the Navajo Nation Clean Air Act and include all information necessary to determine qualification for, and to assure compliance with, the general permit.

5. Unless this provision is waived in a general permit or the source is exempt, all sources in a category covered by a general permit issued by the Director are required to request coverage under the general permit or apply for a site-specific permit, as provided in paragraph D(1) of this section, regardless of whether the source's potential to emit exceeds a Minor Permit Threshold.

#### **D. Requesting coverage [40 C.F.R. § 49.156(e)]**

1. Owners and operators of a source that qualifies for coverage under a general permit may submit a request for coverage under the terms of the general permit or may instead submit a site-specific permit application as described in § 301, in which case the source will be excluded from coverage under the general permit. The time frame for submitting a request for coverage will be specified in the general permit.

2. The Director will act on a request for coverage under a general permit as expeditiously as possible and will notify the applicant of the final decision on coverage within ninety (90) days of receipt of the coverage request. In addition, there is a forty-five (45)-day completeness review period for the Director to determine if a request for coverage is complete.

3. Within thirty (30) days after the receipt of a request for coverage, the Director must make an initial request for any additional information necessary to process the request and the applicant must submit such information within fifteen (15) days. If the applicant fails to do so and this results in a delay that is beyond the forty-five (45)-day completeness review period, the ninety (90)-day permit issuance period for a general permit will be extended by the additional days taken to submit the requested information beyond the forty-five (45)-day period. If the Director fails to notify the applicant within a thirty (30)-day period of any additional information necessary to process the coverage request, the applicant will still have fifteen (15) days to submit such information and the Director must still grant or deny the request for coverage within the ninety (90)-day general permit issuance period and without any time extension.

4. If the Director determines that the request for coverage has all the relevant information and is complete, the Director will notify the applicant in writing, by mail or email, as soon as that determination is made and will post it on the NNAQCP website. If the applicant does not receive a request for additional information or a notice of completeness within the forty-five (45)-day completeness review period described in paragraph 2 of this subsection, the request will be deemed complete.

5. If the request for coverage is approved, the permittee must post, prominently, a

copy of the letter granting such request at the site where the source is located or will be locating.

6. If the Director approves the request for coverage, the permittee must comply with all conditions and terms of the general permit. The permittee will be subject to enforcement action for failure to obtain a permit if the source is later determined not to qualify for the conditions and terms of the general permit.

7. The preconstruction review component of a general permit becomes invalid if the permittee does not commence construction within eighteen (18) months after the effective date of the request for coverage, if the permittee discontinues construction for a period of eighteen (18) months or more or if the permittee does not complete construction within a reasonable time. The Director may extend the eighteen (18)-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the period between construction of the approved phases of a phased construction project; the permittee must commence construction of each such phase within eighteen (18) months of the projected and approved commencement date.

#### **E. Decision on coverage**

1. After review of a request for coverage under a general permit, the Director shall provide to the applicant a letter, sent by mail or email, with notice of coverage or denial of coverage. The Director also will post decisions on coverage on the NNAQCP website. The Director may grant or deny requests for coverage under a general permit without conducting the public participation procedures required under § 402 of these regulations or § 207 of the Uniform Rules.

2. Judicial review. Notices of coverage and denials of coverage under a general permit are subject to judicial review only as to the issue of whether the source qualifies for coverage under the general permit.

#### **§ 304. Emergency situations**

**A.** An emergency, as defined in § 102(B) of these regulations, constitutes an affirmative defense to an action brought for noncompliance with relevant technology-based emissions limitations if the permittee demonstrates through properly signed, contemporaneous operating logs or other relevant evidence that:

1. an emergency occurred and the permittee can identify the cause(s) of the emergency;

2. the permitted facility was properly operated at the time;

3. during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and

4. the permittee reported the emergency to the Director in compliance with § 302(A)(5) of these regulations.

## **Part IV – Permit Processing**

### **§ 401. Action on Permit Applications**

#### **A. Completeness determinations [40 C.F.R. § 49.154(b)]**

1. Completeness review timelines. Notwithstanding any provision to the contrary in § 202 of the Uniform Rules, the Director shall review permit applications for completeness within ninety (90) days after receipt for minor sources seeking a site-specific permit, modifications triggering permitting under these regulations, and synthetic minor sources, and within forty-five (45) days after receipt of requests for coverage under a general permit.

2. Notification of completeness determination. The Director shall notify the applicant of the completeness determination in writing, postmarked or, if sent by email, sent on a date within the timeframes specified in paragraph (A)(1) of this section. Any notice of incompleteness shall be provided within the same timeframes and shall state what additional information or points of clarification are necessary to complete the application.

3. Applications deemed complete. If the Director takes no action within the timelines described in § 401(A)(1), the application will be deemed complete.

4. Timeline inapplicable for incomplete applications or where additional information is requested. If the Director determines that an application is incomplete or otherwise requests additional information from the applicant, the deemed complete provisions of this section shall not apply.

#### **B. Draft permits**

The Director shall prepare draft permits and notices of intent to deny as required by §§ 205 and 206 of the Uniform Rules. No draft permits shall be required for a request for coverage under a general permit, which is addressed in § 303 of these regulations.

#### **C. Final permitting decision, notification, and effective date [40 C.F.R. § 49.159]**

1. After the applicable public notice and participation requirements described in § 402 of these regulations and § 207 of the Uniform Rules are complete, the Director will make a decision on the permit application based on the administrative record, which shall consist of:

- a. the application and any supporting data furnished by the permit applicant;
- b. the draft permit or notice of intent to deny the application;

c. any other documents in the supporting files for the draft permit that were relied upon in the decision-making;

d. all comments received during the public comment period, including any extension or reopening;

e. the recordings of any hearing(s) held;

f. any written material submitted at such a hearing;

g. any new materials placed in the record as a result of the reviewing authority's evaluation of public comments; and

h. the final permit.

2. Any additional documents required under paragraph (C)(1) of this section should be added to the record as soon as possible after their receipt or preparation by the reviewing authority. The record must be complete on the date the final permit is issued.

3. Material readily available or published materials that are generally available and that are included in the administrative record under the standards of paragraph (C)(1) of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in that file.

4. After making a decision on a permit, the Director will provide the final permit to the applicant or, if the permit is denied, notify the applicant in writing of the reasons for such denial and the procedures for appeal.

5. A final permit becomes effective thirty (30) days after service of notice of the final permit decision, unless:

a. a later effective date is specified in the permit; or

b. if no commenter requested a change to the draft permit or denial of the permit, the Director may make the permit effective immediately upon issuance.

#### **D. Recordkeeping**

The administrative record will be kept by the Director for no fewer than 5 years and will be available to the public for inspection.

#### **E. Renewal**

Permits being renewed are subject to the same procedures as apply to initial permit issuance.

## **F. Nonaction**

No permit, revision, or renewal shall be issued by failure of the Director to act on an application.

## **§ 402. Public Notice and Participation [40 C.F.R. § 49.157]**

### **A. Applicability**

Proceedings for all initial permit issuances (including general permits), significant permit revisions, renewals, reopenings, revocations, and terminations shall include public notice and provide an opportunity for public comment as provided for in the Uniform Rules, modified by inclusion of the additional information and by the e-notice and e-access procedures described in this section. The Director may hold a public hearing for draft permits, proposals to suspend, reopen, revoke, or terminate a permit, or for any reason the Director deems appropriate, and shall hold such a hearing if the Director finds there is significant public interest.

### **B. Timing**

The Director shall provide thirty (30) days for public comment and shall give notice of any public hearing at least thirty (30) days in advance of the hearing, pursuant to § 207(b) of the Uniform Rules.

### **C. Method of notice**

1. The Director shall provide notice pursuant to § 207 of the Uniform Rules, except that the Director adopts e-notice and e-access as the consistent noticing method for this Minor Source Permit program and the mailing provisions of Uniform Rules § 207 may be accomplished through e-mail. Therefore, notwithstanding the provisions of the Uniform Rules, public notice for all permitting actions under this program shall be accomplished by mailing or e-mailing the persons listed in § 402(C)(1) of these regulations and by posting the following information, for the duration of the public comment period, on a publicly accessible website identified by the Director:

- a. a notice of availability of the draft permit for public comment;
- b. the draft permit;
- c. information on how to access the administrative record for the draft permit and/or attend a public hearing on the draft permit; and
- d. all other information required by Uniform Rules § 207(d).

2. Newspaper and radio notice shall not be required under this program.

3. The Director shall also provide notice to the USEPA Regional Administrator and any tribal, state, or local air pollution authorities having jurisdiction adjacent to the area of the Navajo Nation potentially impacted by the air pollution source.

4. The Director may charge the actual costs of notice as a permit fee to the applicant, except for the initial notice of the Director's establishment of a general permit.

#### **D. Content of notice [40 C.F.R. § 49.157(a)]**

The public notice shall include the information listed in § 207(d) of the Uniform Rules and the additional information required by paragraphs (D)(1)-(7) of this subsection. Information deemed confidential pursuant to § 104 of these regulations shall not be provided for public inspection. The following additional information is required when applicable:

1. The Director's analysis of the application and any additional information submitted by the applicant, including (for preconstruction permits and the initial issuance of general permits) the control technology review.

2. For site-specific minor source permits and the initial issuance of general permits, the Director's analysis of the effect of the construction of the minor source or modification on ambient air quality.

3. For coverage of a particular source under a general permit, the Director's analysis of whether the particular emissions unit or source is within the category of emissions units or sources to which the general permit applies, including whether the emissions unit or source meets any criteria to be eligible for coverage under the general permit.

4. For permit revisions, a list of the emissions change(s) involved in any permit revision.

5. For site-specific minor source permits, the initial issuance of general permits, and coverage of a particular source under a general permit, the regulated pollutants to be emitted, the affected emissions units, the emission limitations for each affected emissions unit, and the emissions change involved in the permit action.

6. For synthetic minor source permits, a description of the proposed limitation and its effect on the potential to emit of the source.

7. A statement that any person may submit written comments, a written request for a public hearing, or both.

#### **E. Hearings**

A public hearing may be requested pursuant to § 208 of the Uniform Rules and shall be conducted pursuant to § 209 of the Uniform Rules.

## **F. Response to comments**

1. At the same time as a final permit decision is issued, the Director shall issue a response to public comments, pursuant to § 213 of the Uniform Rules.

2. Any documents cited in the response to comments shall be included in the administrative record for the final permit decision pursuant to § 401(C) of these regulations and § 213(b) of the Uniform Rules. If new points are raised or new material supplied during the public comment period, the Director may document the response to those matters by adding new materials to the administrative record.

## **G. Judicial Review**

Any person adversely affected by a final action of the Director under these regulations may appeal to the Navajo Nation Supreme Court in accordance with 4 N.N.C. § 1162 and § 214 of the Uniform Rules.

## **§ 403. Permit Revisions**

### **A. Administrative permit revisions [40 C.F.R. § 49.159(f)]**

Notwithstanding any provisions to the contrary in the Uniform Rules, an administrative permit revision, as defined in § 102(B) of these regulations, is not subject to the permit application, issuance, public participation, or judicial review requirements of these regulations, provided that the Director designates any such permit revision as having been made pursuant to this subsection. A permittee may implement its administrative permit revision immediately upon submittal of a request for administrative revision to the Director, other than administrative permit revisions under § 102(B)(2)(d)-(e) of these regulations, which require determinations by the Director.

### **B. Minor permit revisions**

1. Application. A permittee may apply to the Director for a minor permit revision, as defined in § 102(B) of these regulations, in compliance with § 301(D) of these regulations, provided that such application shall include:

- a. a request for a minor permit revision;
- b. a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
- c. the permittee's proposed draft permit;
- d. certification by a responsible official, consistent with § 103 of these regulations, that the proposed revision meets the criteria for use of minor permit revision procedures; and

e. if the requested permit revision would affect existing compliance plans or schedules, any related progress reports, or certification of compliance requirements, and an outline of such effects.

2. Limitation. A permittee shall not submit multiple minor permit revision applications that may conceal a larger revision that would not constitute a minor permit revision. The Director may require that multiple related minor permit revision applications be submitted as a single significant permit revision application.

3. Completeness. The provisions applicable to initial permit applications under § 301(C) of these regulations also shall apply to minor permit revision applications.

4. Permittee's ability to change operations. The permittee may make the change proposed in its minor permit revision application immediately after submittal of such application. After the permittee makes the change allowed by the preceding sentence, and until the Director takes any of the actions specified in the following subsection, the permittee must comply with both the applicable requirements governing the change and the permittee's proposed permit terms and conditions. During this period, the permittee need not comply with the existing permit terms and conditions it seeks to modify. If the permittee fails to comply with its proposed permit terms and conditions during this period, however, the existing permit terms and conditions it seeks to modify may be enforced against it.

### **C. Significant permit revisions**

Significant permit revisions shall be treated in the same manner and subject to the same provisions as initial permit applications and renewals.

## **§ 404. Permit Reopening and Modification, Revocation and Reissuance, and Termination [40 C.F.R. §§ 49.159(e); 49.172(e)]**

### **A. Reopening and modification, and revocation and reissuance standards**

The Director shall reopen and modify, pursuant to § 204 of the Uniform Rules (except as provided otherwise in this section), permits issued under these regulations for any of the reasons listed in paragraphs (1) through (3) of this subsection. Alternatively, the Director may revoke and reissue permits for the reasons listed in paragraphs (2) and (3) of this subsection:

1. additional requirements under the Navajo Nation Clean Air Act or the CAA become applicable to a source with a remaining permit term of three (3) or more years, provided that the Director shall modify such permits to incorporate such additional requirements no later than eighteen (18) months after promulgation of such requirements, and no such reopening is required if the effective date of the requirement is later than the permit expiration date unless the original permit or any of its terms or conditions have been extended past the permit expiration date pursuant to § 204(A)(3) of these regulations;

2. the Director determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit; or

3. the Director determines that the permit must be modified or revoked and reissued to assure compliance with applicable requirements.

#### **B. Reopening and modification, or revocation and reissuance limitations**

1. Proceedings to reopen and modify, or revoke and reissue, a permit shall comply with the procedural requirements for initial permit issuance and shall affect only those parts of the permit for which cause to reopen or revoke exists, notwithstanding § 204(c)(2) of the Uniform Rules.

2. Notwithstanding § 204(a) of the Uniform Rules, only the permittee or persons who commented on the draft permit may request that the Director reopen and modify, revoke and reissue, or terminate a permit.

3. Units for which permit conditions have been revoked shall not be operated until permit reissuance.

4. Reopenings shall be made as expeditiously as practicable.

#### **C. Termination**

A permit, or an authorization to operate under a general permit, may be terminated when:

1. the permittee fails to meet the requirements of an approved compliance plan;

2. the permittee has been in significant or repetitive noncompliance with the operating permit terms or conditions;

3. the permittee has exhibited a history of willful disregard for environmental laws of the Navajo Nation, any other tribal or state authority, or of the United States;

4. the permittee has knowingly misrepresented a material fact in any application, record, report, plan, or other document filed or required to be maintained under the permit;

5. the permittee falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the permit;

6. the permittee fails to pay fees required under Part VI of these regulations; or

7. the Director has otherwise found that cause exists to terminate the permit.

## **D. Notification**

In addition to providing notice of intent to terminate a permit pursuant to § 204(d) of the Uniform Rules, the Director shall provide a notice of intent to a permittee to reopen or revoke and reissue a permit. Notice shall be provided by certified mail at least thirty (30) days before the date on which the permit is to be reopened, revoked, or terminated, except that the Director may provide less advance notice in the case of an emergency. The notice shall state that the permittee may, within thirty (30) days of receipt, or in less time in the case of an emergency, submit comments or request a hearing on the proposed permit action.

## **E. Revocation; termination**

Revocation or termination of a permit by the Director terminates the permittee's right to operate.

## **Part V—Enforcement**

### **§ 501. Generally**

All terms and conditions in a permit shall be enforceable by the Director pursuant to this Part, Subpart 3 of the Uniform Rules, and Subchapter 3 of the Navajo Nation Clean Air Act, 4 N.N.C. §§ 1151-56, and by any person pursuant to 4 N.N.C. § 1156.

### **§ 502. Enforcement Authority**

Pursuant to the enforcement authority enumerated in Subchapter 3 of the Navajo Nation Clean Air Act, the Director has the following authority to prevent and address violations of these regulations:

**A.** To restrain or enjoin immediately and effectively, by order or by suit in court, any person from engaging in any activity in violation of a permit when that activity is presenting an imminent and substantial endangerment to the public health or welfare, or the environment;

**B.** To seek injunctive relief in court to enjoin any violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit; and

**C.** To assess civil penalties or recover civil damages according to the following:

1. civil penalties or damages assessed, sought, or agreed upon by the Director under this subsection shall be appropriate to the violation;

2. civil penalties or damages shall be separately recoverable in maximum amounts of \$1,000 per day per violation; and

3. civil penalties or damages shall be recoverable for the violation of any applicable requirement, any permit condition, any fee or filing requirement, any duty to allow or carry out

inspection, entry, recordkeeping, or monitoring activities, or any regulation or orders issued by the Director, provided that Navajo law shall not include mental state as an element of proof for civil violations.

**D.** To sue to recover in court criminal remedies, including fines, according to the following:

1. a criminal fine sought by the Director under this subsection shall be appropriate to the violation;

2. these fines shall be separately recoverable in maximum amounts of \$5,000 per day per violation;

3. criminal fines shall be recoverable against any person who knowingly violates any applicable requirement, any permit condition, or any fee or filing requirement; and

4. criminal fines shall be recoverable against any person who knowingly makes any false material statement, representation, or certification in any form, in any notes or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method.

### **§ 503. Enforcement Evidence**

The burden of proof and degree of knowledge or intent required for establishing violations of these regulations shall be no greater than the burden of proof or degree of knowledge or intent required under the Navajo Nation Clean Air Act, regardless of any contrary provisions of Navajo law.

## **Part VI—Permit Fees**

### **§ 601. Application Fee Requirements for Site-Specific Permits**

#### **A. Application fee**

Applicants for a site-specific permit under these regulations must pay an application fee based on the source's PTE up to a maximum of \$2500. For each TPY of emissions in a source's PTE, the applicant shall pay \$100. For example, a source with a PTE of 10 TPY of regulated emissions must pay \$1000. A source with a PTE of 28 TPY of regulated emissions must pay \$2500.

#### **B. Renewals**

Applicants seeking a renewal of an existing permit without modifications must pay an application fee equal to 50% of the cost of a new permit as described in subsection (A) of this section.

### **C. Revisions**

1. Applicants for a minor revision to an existing permit as described in § 403 of these regulations shall pay a \$200 fee to the Director.

2. Applicants for a significant revision to an existing permit shall pay the same fees as an initial permit applicant under § 601(A).

### **D. Costs of notice**

The actual costs of notice required under these regulations and the Uniform Rules shall be paid by the applicant.

## **§ 602. Annual Fee Schedule for Site-Specific Permits**

### **A. Emission fees**

Annual fees shall be paid for each pollutant emitted from a source permitted under these regulations. If a source is subject to permitting because its emissions of one or more pollutants exceed the Minor Permit Threshold, fees are due for emissions of all regulated pollutants produced by that source even if allowable emissions of other regulated pollutants are less than the Minor Permit Thresholds.

1. Amount of fee. Unless provided otherwise in this section, annual emission fees for all sources required to have a unitary permit under these regulations shall be \$51.56 per ton of allowable emissions for all regulated pollutants. The fee is also owed for fractions of a ton. For instance, annual emissions of .5 ton would result in a fee of \$25.78, and annual emissions of 1.7 tons would result in a fee of \$87.65.

2. Emission fees for minor modifications at major sources. Major sources subject to these regulations due to a minor modification must pay the emission fees required under the NNOPR.

### **B. Fee calculation**

1. Subtotal annual fees shall be calculated by multiplying the applicable emission fee set pursuant to Subsection A of this section times the total tons of annual allowable emissions for each fee pollutant.

2. The total annual fee due under this section shall be the sum of the subtotal annual fees for all fee pollutants emitted from the source.

## **§ 603. Annual Fee Payment Procedures**

### **A. Payment schedule**

The annual emissions fee due under § 602 of these regulations shall be due each year on the date specified in the permit and shall cover emissions from the previous calendar year.

### **B. Payment form, processing, and use**

1. Fees due under this section shall be remitted in the form of a certified check or money order made payable to the Navajo Nation Environmental Protection Agency and submitted to the Air Quality Control Program.

2. Upon receipt of fee payments due under this section, such payments shall be deposited in the Permit Fund established pursuant to 4 N.N.C. § 1139. Fee payments received under this part shall be held in an account within the Permit Fund separate from fees received pursuant to the NNOPR.

3. Fee payments collected under this section shall be used to support the NNAQP in its administration, implementation and enforcement of air quality programs on the Navajo Nation.

### **C. Nonpayment**

Failure to remit the full fee required by the due dates specified in this section constitutes a violation of the permit and these regulations and may subject the owner or operator to enforcement under Subchapter 3 of the Navajo Nation Clean Air Act and Part V of these regulations, including, but not limited to, civil penalties for each day of noncompliance pursuant to 4 N.N.C. § 1155 and § 502 of these regulations.

## **§ 604. General Permit Fees**

### **A. Application fee**

Applicants requesting confirmation of coverage under a general permit shall pay \$100 to the Director at the same time as submitting the request for coverage.

### **B. Annual fee**

In lieu of an annual emission fee, each source covered under a general permit shall pay \$1000 per year to the Director. Payment shall be due each year on the anniversary of the effective date of the notice of coverage.

### **C. Payment procedures**

Payment shall be made to the Navajo Nation EPA, pursuant to § 603(B)(1) of these regulations and subject to the provisions of § 603(B)(2)-(3) and (C) of these regulations.

#### **§ 605. Registration Fee**

Sources below the Minor Permit Threshold that register pursuant to § 205 of these regulations shall pay to the Director a registration fee of \$100, pursuant to § 603(B)(1) of these regulations and subject to the provisions of § 603(B)(2)-(3) and (C) of these regulations.

#### **§ 606. Indexing**

The fees prescribed in this section are set based on November 2017 Consumer Price Index information and shall increase automatically at the beginning of each calendar year thereafter to reflect any percentage increase by which the Consumer Price Index for November of the most recent year exceeds the Consumer Price Index for November 2017.