



SOUTHERN UTE INDIAN TRIBE



Enforcement Procedures and Penalty Manual

11/29/2022

Enforcement Procedures and Penalty Manual

Table of Contents

I. Definitions	3
II. Introduction	6
III. Goals	6
IV. Authority	7
1. Inspection and Information Collection	7
2. Enforcement Actions	7
3. Penalties	7
V. Enforcement Screening	7
1. Enforcement Evaluation	7
2. Enforcement Responses	8
VI. Enforcement Pathways	9
1. Informal Process	9
a. No Further Action Letter	9
b. Area of Concern	9
c. Written Warnings	9
d. Compliance Advisory	10
e. Compliance Advisory Meeting	10
f. Settlement Agreement	10
2. Formal Process	11
a. Notice of Violation	11
b. Notice of Violation Conference	11
c. Settlement Agreement	11
d. Notice of Non-Compliance	11
e. Compliance Order	12
f. Civil Court Enforcement Actions	12
g. Criminal Enforcement Actions	12
VII. Violation Categorization	13
1. Minor Violations	13
2. Moderate Violations	14
3. Major Violations	15
VIII. Federally-Reportable Violations	16
IX. High Priority Violations	16
1. HPV Applicability Determination	16
2. HPV Resolution Timelines	19
3. Penalties	19
X. Penalty Assessment Criteria	20
1. Calculating the Gravity Component	20
a. Actual or Potential Harm	20
b. Importance to the Regulatory Scheme	21
c. Additional Considerations	21
d. Other Factors that Justice May Require	22
e. Mitigating Factors	23
2. Calculating the Economic Benefit Component	24

Enforcement Procedures and Penalty Manual

a.	Economic Benefit from Delayed and/or Avoided Costs.....	25
b.	Economic Benefit from Illegal Competitive Advantage.....	26
c.	Considerations for Adjusting the Economic Benefit Penalty.....	26
3.	Voluntary Discovery, Disclosure, and Remediation of Violations.....	27
a.	Interim Approach to Applying the Audit Policy to New Owners.....	27
XI.	SUIT/CO Environmental Commission.....	28
1.	Notice of Enforcement Action.....	28
2.	Annual Update.....	28
3.	Administrative Appeal Procedures.....	28
a.	Appealable Administrative Actions and Request for Hearing.....	28
b.	Judicial Review.....	28
XII.	Records Retention and Case Resolution Timelines.....	28
a.	Enforcement Records Retention.....	28
b.	Case Resolution Timeline.....	29
XIII.	Supplemental Environmental Project.....	29
1.	SEP Basic Guidelines.....	30
2.	Categories of SEPs.....	31
a.	Pollution Prevention Projects.....	31
b.	Pollution Reduction Projects.....	32
c.	Environmental Restoration and Protection Projects.....	32
d.	Environmental Assessments.....	32
e.	Environmental Education and Training.....	33
f.	Public Health.....	34
g.	Other Types of Projects.....	34
3.	Extent to Which a SEP Can Mitigate a Penalty.....	34
4.	Legal Guidelines for Negotiating SEPs.....	35
5.	Drafting Enforceable SEPs.....	36
6.	Measurement.....	36
7.	Failure to Complete a SEP and Penalties.....	37
XIV.	Attachments.....	39
Attachment 1 – Enforcement Process Flow.....	39	
Attachment 2 - Violation Categorization Matrix.....	40	
Attachment 3 – Clean Air Act Penalty Basis.....	42	
Attachment 4 – Clean Air Act Civil Penalty Policy.....	46	
Attachment 5 – FRV and HPV Policy.....	47	
Attachment 6 – Example Area of Concern.....	48	
Attachment 7 – Example Request for Information.....	50	
Attachment 8 – Example Written Warning.....	51	
Attachment 9 – Example Compliance Advisory.....	53	
Attachment 10 – Example Notice of Violation.....	56	
Attachment 11 – Example No Further Action Letter.....	59	
Attachment 12 – Example Settlement Agreement.....	61	
Attachment 13 – Example Compliance Order.....	68	
Attachment 14 – Example Notice of Non-Compliance.....	72	
XV.	History and Amendments.....	75

Enforcement Procedures and Penalty Manual

I. Definitions

As used in this manual, the terms below shall have the following meanings:

- 1) **ACOMP** – Annual compliance certification.
- 2) **AQP** - the Air Quality Program of the Southern Ute Indian Tribe.
- 3) **Area of Concern** – issues having the potential to lead to non-compliance with the CAA if left unaddressed by a source.
- 4) **BACT** – Best Available Control Technology.
- 5) **BEN** - the EPA’s financial model that assesses the economic benefit a source may have gained from a violation.
- 6) **CAA** - Clean Air Act.
- 7) **Case** - the facts involved and parties responsible for violation(s) charged in a Compliance Advisory or a Notice of Violation.
- 8) **Compliance Advisory** – an informal enforcement pathway to notify a source of alleged violations, request submittals and actions of the source, and may propose a compliance schedule.
- 9) **Compliance Order** - the formal Settlement Agreement between the recipient of a Compliance Advisory or Notice of Violation and the Tribe, resolving the instance of noncompliance.
- 10) **Consent Decree** – an agreement or settlement to resolve a dispute between two parties to ensure adherence to regulatory laws.
- 11) **CMS** – Compliance Monitoring Strategy.
- 12) **Economic Benefit** – cost savings associated with delayed or avoided environmental expenditures.
- 13) **Environmental Commission** - the Southern Ute Indian Tribe/State of Colorado Environmental Commission established under the IGA through Federal, State and Tribal law which is empowered to establish rules and regulations for the Reservation Air Program and to review appealable administrative actions taken by the Tribe.
- 14) **EPA or U.S. EPA** - the United States Environmental Protection Agency.
- 15) **FRV** – EPA Federal Reportable Violations.

Enforcement Procedures and Penalty Manual

- 16) **Gravity Component** – in penalty calculations the actual or possible harm a violation caused, the importance to regulatory schemes, and the size of the violator.
- 17) **HAP** – Hazardous Air Pollutants also known as toxic air pollutants.
- 18) **HPV** – EPA High Priority Violations.
- 19) **ICA** – Illegal Competitive Advantage.
- 20) **ICIS** – EPA’s Integrated Compliance Information System.
- 21) **IGA** - the Intergovernmental Agreement Between the Southern Ute Indian Tribe and the State of Colorado Concerning Air Quality Control on the Southern Ute Indian Reservation.
- 22) **Inspector** - a duly authorized representative, formally entitled Air Quality Compliance Specialist, of the Tribe charged with conducting inspections and determining the compliance status of sources. The inspector may also provide compliance assistance to a source in appropriate situations.
- 23) **LAER** – Lowest Available Emissions Reduction.
- 24) **MACT** – Maximum Achievable Control Technology is a pollution control standard.
- 25) **Manual** - this Environmental Procedures and Penalty Manual.
- 26) **MDRs** – Minimum Data Requirements for reporting compliance and enforcement actions for CAA stationary sources in the EPA’s ICIS database.
- 27) **Notice of Non-Compliance** – Notice of Non-Compliance is a notice issued by the Tribe to a source to initiate a formal enforcement action for non-compliance with the terms of a settlement agreement and stipulated final compliance order.
- 28) **NOV** - Notice of Violation is a formal enforcement pathway.
- 29) **NSPS** - New Source Performance Standards are uniform emission standards, as outlined in 40 CFR Subpart 60.
- 30) **NSR** – New Source Review is a permit process that applies to the construction and operation of new and modified stationary.
- 31) **Penalty** - the dollar value of an assessment calculated for a violation.
- 32) **Pollution Prevention** - a practice which reduces any of the following: the use of any hazardous substance; the amount of any pollutant; a pollutant or contaminant prior to

Enforcement Procedures and Penalty Manual

recycling, treatment, or disposal, or; the hazards to public health and the environment associated with the use.

- 33) **PSD** - Prevention of Significant Deterioration is an EPA permitting program to restrict emissions from new or modified major sources of air emissions in places where air quality meets or exceeds primary and secondary National Ambient Air Quality Standards.
- 34) **Regulations** - those regulations duly adopted by the Commission as part of the Reservation Air Program.
- 35) **Reservation Air Code (RAC)** - the Southern Ute Indian Tribe/State of Colorado Environmental Commission's Reservation Air Code.
- 36) **Reservation Air Program** - the Commission-adopted air quality programs that are applicable to all lands within the exterior boundaries of the Southern Ute Indian Reservation.
- 37) **Request for Information** – a formal written request for information related to activities subject to the Clean Air Act under Chapter 114 of the Act.
- 38) **SEP** - Supplemental Environmental Project, an environmentally beneficial expenditure or activity undertaken by a source to mitigate some or all of a civil penalty in accordance with guidelines in this manual.
- 39) **Settlement Agreement** - the Settlement Agreement or express terms, mutually agreed upon in writing, between the recipient of a Compliance Advisory or Notice of Violation and the Tribe, resolving the instance of noncompliance.
- 40) **Settlement Agreement Proposal** - the written initial offer by the Tribe proposing terms and conditions for resolution of alleged Clean Air Act violations.
- 41) **Source** - any building, structure, facility or installation which emits or may emit any regulated air pollutant.
- 42) **Tribe** - the Southern Ute Indian Tribe.
- 43) **Violation** - any event of noncompliance by a source with the RAC or regulation enforced by the Tribe.
- 44) **Written Warning** - a written notification to the source that a violation was documented, and that further recurrence could result in an enforcement action.

Enforcement Procedures and Penalty Manual

II. Introduction

The Southern Ute Indian Tribe Environmental Programs Division Air Quality Program (AQP) is responsible for administering the air quality programs that encompass the Reservation Air Program as part of the Southern Ute Indian Tribal Council-delegated responsibility to carry out the Tribe's obligations under the *Intergovernmental Agreement Between the Southern Ute Indian Tribe and the State of Colorado Concerning Air Quality Control on the Southern Ute Indian Reservation*, dated December 13, 1999.

The AQP strives to protect and improve air quality through a comprehensive air quality program for the benefit of the health and welfare of Southern Ute Indian Reservation residents. The Reservation Air Program is intended to reflect the environmental, economic, geographic and cultural interests of the Tribe in a manner that is compatible with Colorado air quality goals.

The AQP enforces the Reservation Air Code (RAC) fairly and consistently, initiating enforcement actions against tribal-permitted sources commensurate with the magnitude of noncompliance. The traditional tools of administrative, civil, or criminal (through referrals to EPA) enforcement actions and penalties will be combined with approaches which emphasize problem-solving and creative settlements to achieve positive environmental outcomes.

The AQP will use a full range of enforcement options to achieve prompt compliance and deter noncompliance or regulatory avoidance. Where a source in noncompliance has achieved a distinct economic advantage from noncompliance, the AQP will calculate penalties sufficient to offset the economic benefit gained by the source.

This manual is for information purposes and internal tribal guidance. It does not create any enforceable rights or obligations. Although it does not expect to or plan on doing so, the Tribe, in its sole discretion, reserves the right to take actions that may be inconsistent with this manual. Also, the Tribe may choose, at its discretion, not to pursue an enforcement action if the litigation risk outweighs the benefit of taking such action. Examples of litigation risk include evidentiary problems, adverse legal precedent, or an indication an arbitrator is prepared to recommend a lower penalty.

III. Goals

The goals of this Enforcement Procedures and Penalty Manual are to:

- Assure public health of the Reservation residents and environmental protection by ensuring the regulated community's compliance with the RAC.
- Protect ecosystems and continually strive to improve the Tribal air shed.
- Provide fair, equitable, and consistent enforcement responses to all tribal-permitted sources in noncompliance.
- Provide timely resolution of enforcement actions.

Enforcement Procedures and Penalty Manual

- Promote environmental stewardship and deter noncompliance.
- Encourage settlement negotiations and minimize litigation and prosecution of sources in noncompliance.
- Ensure uniform evaluation of enforcement cases and application of the U.S. EPA's High Priority Violator (HPV) policy.

IV. Authority

The Tribe conducts compliance inspections and initiates enforcement actions under several authorities outlined in the RAC including:

1. Inspection and Information Collection

The authority for a Tribal Air Quality Compliance Specialist (inspector) or other authorized representative of the Tribe to enter a facility to inspect equipment and supporting compliance demonstration records, collect data, and sample for the purposes of assuring compliance with applicable requirements are contained in RAC § 1-105 and § 2-110(9)(b).

2. Enforcement Actions

The authorities for civil enforcement, compromise, and settlement of violations are contained in RAC § 1-104 and RAC § 2-121. The EPA will exercise criminal enforcement jurisdiction on all lands within the Reservation boundaries for violations of the RAC in accordance with the *Memorandum of Agreement between the Southern Ute Indian Tribe and the United States Environmental Protection Agency Region 8 Concerning Criminal Enforcement Procedures for Clean Air Act Violations on the Southern Ute Indian Reservation* (RAC § 2-121(4)).

3. Penalties

The authority for assessing civil penalties or filing suit to recover damages for RAC violations is RAC § 2-121(2).

V. Enforcement Screening

Enforcement screening is the process whereby potential violations identified by the Tribe during a compliance evaluation are reviewed to determine: 1) if an enforcement response is needed, 2) if a violation has occurred, identification of the factors affecting the severity of the violation, and 3) the appropriate response and enforcement pathway. The Tribe's AQP staff, and when appropriate, the Tribe's legal counsel, will review all documentation to determine whether there is a sufficient basis to conclude a violation has occurred and whether further investigation of an alleged violation is necessary.

1. Enforcement Evaluation

In determining the appropriate response, consideration is given to:

- The nature of the alleged violation(s):

Enforcement Procedures and Penalty Manual

- a) Emission Standards – Did any exceedances of an emission standard result in potential or actual emissions to the atmosphere?
 - b) Pollutant type – Did potential or actual emissions to atmosphere include a hazardous air pollutant?
 - c) Monitoring – Was required monitoring of an emission unit or source not performed?
 - d) Recordkeeping and Reporting – Are records inadequate to demonstrate compliance or is a report late or deficient?
 - e) Pollution Control Equipment – Was any pollution control device required by a tribal or federal regulation or permit not installed, not used during normal operations, bypassed, or rendered inoperable?
 - f) Compliance Orders, Consent Decrees or other Enforceable Compliance Schedules – Is there an alleged violation(s) of an existing, enforceable order, decree or schedule?
 - g) The Size of the Source – Is the source considered a large facility or operator?
 - h) Other – Are there any additional extenuating circumstances relating to the alleged violation(s)?
- The duration of the alleged violation(s):
 - a) Frequency – Is the alleged violation(s) an isolated or recurring event?
 - b) Impact on Public Health and the Environment - Did the alleged violation(s) pose a potential or actual threat to public health or the environment?
 - c) Cooperation – Is the source responsive, cooperative, and taking immediate remedial steps to correct the alleged violation(s)?
 - d) Compliance History – Is the source in chronic noncompliance?

2. Enforcement Responses

If, after review and any additional investigation or subsequent information requests from the source, the Tribe determines that no violation has occurred, no further action will be taken and the source will be notified in writing (reference attachment 11). However, if after review and additional investigation, the Tribe determines a violation has occurred, the Tribe will take one of the following actions:

- Issue a Written Warning (reference attachment 8), if appropriate, to the source with documentation of the warning placed in the case file with no additional enforcement action taken;
- Issue a Compliance Advisory (reference attachment 9) identifying the alleged violations and initiating the informal enforcement process, with penalties and a Settlement Agreement Proposal, in consultation with the AQ Program Manager and the Tribe's legal counsel;
- Issue a Notice of Violation (reference attachment 10) summarizing the alleged violations and initiating the formal enforcement process in consultation with the AQ Program Manager and the Tribe's legal counsel; or

Enforcement Procedures and Penalty Manual

- Refer the case to the EPA for criminal enforcement in accordance with the *Intergovernmental Agreement Between the Southern Ute Indian Tribe and the State of Colorado Concerning Air Quality Control on the Southern Ute Indian Reservation* and the *Memorandum of Agreement Between the Southern Ute Indian Tribe and the U.S. Environmental Protection Agency Region 8 Regarding Criminal Enforcement of the Clean Air Act within The Exterior Boundaries of the Southern Ute Indian Reservation* (RAC § 2-121(4)).

VI. Enforcement Pathways

The Tribe will use a variety of enforcement pathways to achieve a maximum degree of compliance with the RAC. Based on the findings of a compliance evaluation and any subsequent communications with a source, the Tribe may determine it is appropriate to resolve the violations through either the informal settlement process or through formal enforcement action. The Tribe will attempt to resolve the majority of enforcement actions informally.

The Tribe's actions will be guided by this manual and the *Memorandum of Agreement between the Southern Ute Indian Tribe and the U.S. Environmental Protection Agency Region 8 Regarding Criminal Enforcement of the Clean Air Act within The Exterior Boundaries of the Southern Ute Indian Reservation*.

1. Informal Process

The Tribe's informal resolution process is more expeditious than the formal process and may result in the assessment of lower penalties. The Tribe provides an opportunity for the informal resolution of enforcement actions through the following steps and procedures:

a. No Further Action Letter

During the course of an inspection or investigation, additional information provided by a source or further review of compliance records may show that while initially a particular issue may have been evaluated for non-compliance, it was determined that no violation occurred and no further action is necessary by the Tribe. The Tribe may issue a written No Further Action determination in such instances advising the source that the issue has been resolved.

b. Area of Concern

The Tribe may issue an Area of Concern to provide the source notification of potential compliance issues identified during an inspection. An Area of Concern is appropriate for insignificant administrative permit issues, inconsequential issues that can be resolved quickly by the source, and issues that are not violations but have the potential to become violations if left unaddressed by the source. An Area of Concern is not considered a violation.

c. Written Warnings

The Tribe has the discretion to consider issuing a Written Warning to noncompliant sources for situations involving minor violations that have been resolved by a source. A Written Warning may not be appropriate when the source has a history of similar noncompliance or has demonstrated a pattern of noncompliance. A Written Warning may only be issued when there are three or less minor violations associated with the current inspection or investigation.

Enforcement Procedures and Penalty Manual

d. Compliance Advisory

The Tribe issues a Compliance Advisory to provide notice of alleged minor and moderate, but not major, violations to a source. A Compliance Advisory lists the specific alleged violations and includes a summary of findings. A Compliance Advisory may also notify a source that additional investigation may be required, outline any submittals or actions required of the source, and may propose a compliance schedule for correction of the violations.

A Compliance Advisory invites the source to submit counter-positions to alleged violations or information supporting the source's conclusion to the AQP. The Tribe will issue a No Further Action Letter, after internal review, for any issues documented during a compliance evaluation that are not deemed violations. A Compliance Advisory is also used to schedule a Compliance Advisory Meeting to discuss the alleged violations.

Finally, a monetary penalty and Settlement Agreement for alleged violations described in a Compliance Advisory may or may not be pursued by the Tribe. At any point, the Tribe may seek formal enforcement action, depending on the type of violation and the response by the source to the Compliance Advisory.

e. Compliance Advisory Meeting

A Compliance Advisory Meeting provides an opportunity for the source to discuss both disputed and non-disputed alleged violations, pathways to resolve alleged violations, and any other relevant matters. The source may present information not previously available to the Tribe and discuss appropriate ways to correct the deficiencies. The meeting may also serve as a forum for establishing mutually agreed-upon compliance schedules and may include discussion of the administrative process to be used to resolve the Compliance Advisory, including informal enforcement settlement discussions or formal enforcement action initiation.

Although this meeting is informal, source representatives may include consultants and legal counsel, at the source's election. The Tribe will be represented by the Enforcement Coordinator and Air Quality Compliance Specialist(s) and in appropriate cases, by the AQP Manager and legal counsel. If a source has questions regarding the Tribe's anticipated representation at a Compliance Advisory Meeting, or otherwise in relation to the meeting, those questions may be directed to the Enforcement Coordinator.

f. Settlement Agreement

The Tribe may use a Settlement Agreement, which is a written mutual agreement between the Tribe and a source, to resolve informal enforcement actions. The Tribe, however, will only enter into a Settlement Agreement when the agreement enables the Tribe to achieve its enforcement objectives. The terms of a Settlement Agreement are mutually agreed upon between the Tribe and a source and may require: (1) corrective actions to resolve an alleged violation(s); (2) amendment of the source's air permit authorizations; (3) compliance schedules; (4) negotiated monetary penalty settlements; (5) stipulated penalties for violations of any compliance requirements in a Settlement Agreement; and (6) remedial actions or requirements that go beyond the nature of the violations to mitigate any environmental damage caused by the violations.

Enforcement Procedures and Penalty Manual

2. Formal Process

The decision to resolve an alleged violation through the formal enforcement process will usually be based on: (1) an inability of the Tribe and source to resolve the matter through the informal process; (2) the seriousness or repetitive or continuing nature of the noncompliance; or (3) failure or refusal by a recipient to return to compliance after entering into a Settlement Agreement. The decision whether to initiate a formal enforcement process will be made by the Tribe, in its sole discretion.

Formal enforcement actions may include any of the following:

a. Notice of Violation (NOV)

The Tribe issues an NOV letter to communicate alleged violations to a source. As with the Compliance Advisory, the NOV includes a summary of findings and lists the specific alleged violations at issue. The NOV letter will also establish the date and time for the NOV conference, described below.

b. Notice of Violation (NOV) Conference

At the NOV conference, the Tribe meets with the source to discuss the supporting information, merits and arguments relating to the alleged violations. The source may, at its election, also provide certain data, information, and its arguments to the Tribe in advance of the NOV conference. If after internal review, any issues that are not deemed violations, the Tribe will issue a No Further Action letter.

The Tribe is typically represented at an NOV conference by the Air Quality Compliance Specialist(s), the Enforcement Coordinator, the AQP Manager, and the Tribe's legal counsel. Questions regarding the Tribe's anticipated representation at an NOV conference, or otherwise in relation to the conference, may be directed to the Enforcement Coordinator.

c. Settlement Agreement

The Tribe may use a Settlement Agreement, a written mutual agreement between the Tribe and a source, to resolve formal enforcement actions. The Tribe, however, will only enter into a Settlement Agreement when the agreement enables the Tribe to achieve its enforcement objectives. The terms of a Settlement Agreement are mutually agreed upon between the Tribe and a source and may require: (1) corrective or remedial actions to resolve an alleged violation(s); (2) amendment of the source's air permit authorizations; (3) compliance schedules; (4) negotiated monetary penalty settlements; (5) stipulated penalties for violations of any compliance requirements in a Settlement Agreement; and (6) remedial actions or requirements that go beyond the nature of the violations to mitigate any environmental damage caused by the violations.

A Settlement Agreement can serve as a resolution to an enforcement action. A Settlement Agreement is the minimum level enforcement action required to resolve an HPV enforcement case.

d. Notice of Non-Compliance

The Tribe issues a Notice of Non-Compliance to sources who are not in compliance with their executed Settlement Agreement after a follow-up investigation report is completed and

Enforcement Procedures and Penalty Manual

signed. The Notice of Non-Compliance includes a summary of the enforcement case and lists the specific compliance requirements with which the source failed to comply. A Notice of Non-Compliance may include a monetary penalty depending on the severity of the non-compliance.

e. Compliance Order

In addition to the Settlement Agreement pathway, the Tribe may use a Compliance Order to resolve formal enforcement actions. A Compliance Order is a unilateral written directive from the Tribe that may require the source to take one or more of the following actions: (1) to immediately cease and desist any non-compliant activity under RAC § 1-106; (2) take corrective or remedial actions to resolve the alleged violation(s); (3) comply with applicable statutory or regulatory requirements by a specified deadline; (4) revise the source's air permit authorizations; and (5) pay penalties for violations that have occurred and specify penalty amounts to be assessed for failure to comply with a mandatory compliance schedule.

The Compliance Order will describe the alleged violation(s), as determined by the Tribe, provide the corresponding monetary penalty and any compliance requirements, and remind the source of its RAC § 1-107 appeal rights. The Tribe's legal counsel will review the Compliance Order for legal and factual adequacy before its issuance. It should be noted that the penalty assessment reflected in the Compliance Order will likely exceed any penalty assessment contained in a Settlement Agreement proposal and a documented violation of a Compliance Order carries the potential for civil or criminal enforcement.

f. Civil Court Enforcement Actions

The Tribe may refer a case to the Tribe's legal counsel for civil enforcement action after evaluating a potential enforcement case as outlined in Section IV. of this manual. Such referrals normally will be based on a determination that the case is especially complex or that it is otherwise beyond the resources of the AQP. If the Tribe's legal counsel determines the case is appropriate for filing in federal district court, the legal counsel will seek approval from Tribal Council to initiate the action. Under the IGA, Public Law No. 108-336 and RAC § 1-107, the Tribe and the Southern Ute Indian Tribe/State of Colorado Environmental Commission (Commission) may enforce compliance with the Reservation Air Code including, if necessary, through a civil action for declaratory or injunctive relief, or for other orders in aid of enforcement, in the United States District Court for the District of Colorado. Once a case is filed in court, the Enforcement Coordinator and Air Quality Compliance Specialist(s) will assist the Tribe's legal counsel as requested.

g. Criminal Enforcement Actions

The EPA will exercise criminal enforcement jurisdiction over any persons on all lands within the Reservation boundaries for violations of the RAC in accordance with the *Memorandum of Agreement between the Southern Ute Indian Tribe and the United States Environmental Protection Agency Region 8 Concerning Criminal Enforcement Procedures for Clean Air Act Violations on the Southern Ute Indian Reservation* (RAC § 2-121(4)).

Enforcement Procedures and Penalty Manual

VII. Violation Categorization

The Tribe will evaluate the significance of alleged violations during the screening process as outlined in Section V. and the Violation Categorization Matrix in Attachment 2 of this manual. Each alleged violation will be categorized:

1. Minor Violations

Minor violations are generally administrative or clerical in nature and a source will be given an opportunity to come into compliance. Minor violations, at a minimum, will result in the issuance of either a Written Warning or Compliance Advisory and Compliance Advisory Meeting as described in Section VI.(1) of this manual. In some cases, minor violations may require further enforcement action beyond issuance of a Written Warning or Compliance Advisory without monetary penalty. For instance, further action may be required if a source receives a Written Warning or Compliance Advisory for the same violation three times within the most recent five-year period, including any current notification for an alleged violation, or if a source fails to address or correct the minor alleged violation. Decisions about whether to initiate formal enforcement action for initial or repeat minor violations remain at the discretion of the Tribe. A partial list of violations the Tribe considers to be minor violations is included in Attachment 2 of this manual.

If the Tribe determines a Settlement Agreement is necessary to resolve an informal or formal enforcement action for one or more minor violations, a Settlement Agreement Proposal will be sent to the source along with the Compliance Advisory Meeting or the Notice of Violation Conference, including a monetary penalty. The Settlement Agreement Proposal will outline the Tribe's authority to assess monetary civil and economic benefit penalties under the RAC and the Settlement Agreement will propose the terms upon which the Tribe would be willing to resolve the violations. The final terms contained in the Settlement Agreement Proposal will be mutually agreed upon between the Tribe and the source during the Compliance Advisory Meeting or the Notice of Violation Conference.

The Settlement Agreement Proposal will specify the deadline for the source to consider and either accept or reject the Settlement Agreement Proposal. In the event the source accepts the Tribe's Settlement Agreement Proposal, the Settlement Agreement will not be resolved until the source signs and returns the Settlement Agreement Proposal, pays the civil and economic benefit penalty amounts to the Tribe, and fulfills all of the technical terms and conditions of the Settlement Agreement. Resolution of an informal or formal enforcement action through a Settlement Agreement will not be deemed an admission of liability by the source, but will be considered a part of the source's compliance history for any purpose for which such history is relevant under the RAC.

If, as part of an informal enforcement action, no response is received from the source after the deadline specified in the Settlement Agreement Proposal, or a Settlement Agreement cannot be reached, the Tribe shall deem the Settlement Agreement offer rejected and may initiate formal enforcement action. An NOV will be issued after the end of the period specified in the Settlement Agreement Proposal and will establish a date and time for a required NOV conference. Any resulting Compliance Order will not contain a reduced civil penalty in consideration of early settlement or cooperation.

Enforcement Procedures and Penalty Manual

The Tribe may amend the initial proposed settlement if additional information or considerations are provided by the source. The amended settlement proposal will specify the time period and subsequent deadline which the source has to consider and either accept or reject the proposed settlement. If no response is received from the source within the specified time frame, the proposed settlement will be deemed rejected. If the source rejects the settlement proposal, or the Tribe deems that the source has rejected the settlement proposal, the Tribe will initiate formal enforcement action.

2. Moderate Violations

Moderate violations are violations that are not considered minor violations and which have the potential to cause harm to public health, safety or welfare, or to the environment and constitute more than a small deviation from the requirements of the RAC, a permit, or order. Moderate violations, at a minimum, will result in the issuance of either a Compliance Advisory or a Notice of Violation and scheduling of either a Compliance Advisory Meeting or NOV conference as described in Section VI. of this manual. A partial list of violations that the Tribe considers to be moderate violations are included in Attachment 2 of this manual. Moderate violations must not meet the criteria for enforcement under the EPA's HPV policy.

If the Tribe determines a Settlement Agreement is necessary to resolve an informal or formal enforcement action for a moderate violation, a Settlement Agreement Proposal with the date for a Compliance Advisory Meeting or NOV Conference will be sent to the source. The letter will outline the Tribe's authority to assess monetary civil and economic benefit penalties under the RAC and the Settlement Agreement Proposal will propose the terms upon which the Tribe would be willing to resolve the violation. The final terms contained in the Settlement Agreement Proposal will be mutually agreed upon between the Tribe and the source during the Compliance Advisory Meeting or NOV Conference.

The Settlement Agreement Proposal will specify the deadline for the source to consider and either accept or reject the Settlement Agreement Proposal. In the event the source accepts the Tribe's Settlement Agreement Proposal, the Settlement Agreement will not be resolved until the source signs and returns the Settlement Agreement Proposal, pays the civil and economic benefit penalty amounts to the Tribe, and fulfills all of the technical terms and conditions of the Settlement Agreement. Resolution of an informal or formal enforcement action through a Settlement Agreement will not be deemed an admission of liability by the source, but will be considered a part of the source's compliance history for any purpose for which such history is relevant under the RAC.

If, as part of an informal enforcement action, no response is received from the source after the deadline specified in the Settlement Agreement Proposal, or a Settlement Agreement cannot be reached, the Tribe will deem the settlement offer rejected and may initiate formal enforcement action. An NOV will be issued after the end of the period specified in the Settlement Agreement Proposal and will establish a date and time for a required NOV conference. Any resulting Compliance Order will not contain a reduced civil penalty in consideration of early settlement or cooperation.

Enforcement Procedures and Penalty Manual

The Tribe may amend the initial proposed settlement if additional information or considerations are provided by the source. The amended Settlement Agreement Proposal will specify 10 business days during which the source may consider and either accept or reject the proposed settlement, and if no response is received from the source within that time, the proposed settlement will be deemed rejected. If the source rejects the Settlement Agreement Proposal, or the Tribe deems that the source has rejected the Settlement Agreement Proposal, the Tribe will initiate formal enforcement action.

3. Major Violations

Major violations are those violations that are continuing in nature, repeat violations, or that are otherwise deemed to be a substantial threat, result in actual harm to the public or the environment, or both. The Tribe will consider all violations meeting the criteria for enforcement under the EPA's HPV policy to be major violations. Major violations, at a minimum, will result in the issuance of a NOV and scheduling of an NOV Conference. A partial list of violations the Tribe considers to be major violations are included in Attachment 2.

The Tribe will send the source a NOV and a Settlement Agreement Proposal. The NOV will outline the Tribe's authority to assess monetary civil and economic benefit penalties under the RAC. The Settlement Agreement Proposal will propose the terms upon which the Tribe would be willing to resolve the violation. The Settlement Agreement Proposal will specify the deadline for the source to consider and either accept or reject the settlement proposal.

In the event the Tribe and the source reach a settlement, the terms will be transcribed in a final Settlement Agreement and signed by the source and the appropriate tribal representatives. The Settlement Agreement will become binding only after both parties have signed it. Once the terms have been met, compliance demonstrated, and penalties paid, the agreement may then be considered concluded. In addition, resolution of a violation through the Settlement Agreement process is not deemed an admission of liability by the source, except where otherwise agreed to during the negotiation process, but will constitute a part of the source's compliance history for any purpose for which compliance history is relevant under the RAC.

In the event that the source rejects either the NOV Conference or settlement offer, or if the Settlement Agreement process does not result in prompt resolution of the violations, the Tribe will proceed with the formal enforcement process including the issuance of a unilateral directive from the Tribe in the form of a Compliance Order or referral to the Tribe's legal counsel for civil court enforcement action. Any resulting Compliance Order will not contain a reduced civil penalty in consideration of early settlement or cooperation. All criminal matters will be referred to the EPA in accordance with the *Memorandum of Agreement between the Southern Ute Indian Tribe and the United States Environmental Protection Agency Region 8 Concerning Criminal Enforcement Procedures for Clean Air Act Violations on the Southern Ute Indian Reservation*.

Enforcement Procedures and Penalty Manual

VIII. Federally-Reportable Violations (FRV)

The FRV policy outlines the types of violations that enforcement agencies are to report to the EPA. The FRV are limited to those Clean Air Act programs with federally enforceable requirements including NSPS, NESHAP, MACT, NSR, PSD, EPA approved SIP, specific to:

- Title V Major Sources: Major sources as defined in CAA 501(2);
- SM-80 Sources: Minor sources that have taken an enforceable limit to remain minor sources, called synthetic minor sources, that emit or have the potential to emit (PTE) at or above 80 percent of the Title V major source threshold;
- Sources included in an alternative CAA Stationary Source Compliance Monitoring Strategy (CMS) plan;
- Any source at which a HPV has been identified.

Examples of source FRV include the following:

- Violations of any emission limitation, emission standard, or surrogate parameter
- Failure to maintain reports and records as required by the permit such as
 - Continuous emissions monitoring
 - Malfunctions
 - Excess emissions
 - Semi-annual and periodic monitoring
- Failure to timely test (performance test)
- Failure to timely report ACOMP
- Failure to construct/operate equipment in accordance with permit conditions
- Failure to obtain or maintain permit (e.g. expired)

A FRV is to be reported within 60 days of the determination and linked to a Case File in ICIS-Air. The Tribe may elect to identify the Case File as “enforcement sensitive” regarding legal constraints or enforcement strategies. In addition, a formal notice of violation is a Minimum Data Requirement (MDR) that is to be reported in the Enforcement Action Module of ICIS-Air.

IX. High Priority Violations (HPV)

The Tribe adopts and incorporates by reference the U.S. Environmental Protection Agency’s *Timely and Appropriate Enforcement Response to High Priority Violations – Revised 2014*. In 2014, the EPA revised enforcement response policy guidance for HPV, which are significant to human health, the environment, and for the maintenance of strong CAA programs. As a subset of FRV, the policy applies to major sources, or minor sources subject to a CMS plan. The Policy is at: <https://www.epa.gov/sites/production/files/2015-01/documents/hvpolicy2014.pdf>

1. HPV Applicability Determination

If the Tribe identifies a violation during an inspection (or as the result of self-reporting), the Tribe will examine the facts to determine if it fits one of the following six general criteria:

Enforcement Procedures and Penalty Manual

Criterion 1 – Failure to obtain a NSR permit

Criterion 2 – A violation of any federally enforceable emission limitation, standard, or operating parameter pursuant to CAA Title I or equivalent FIP or TIP provisions

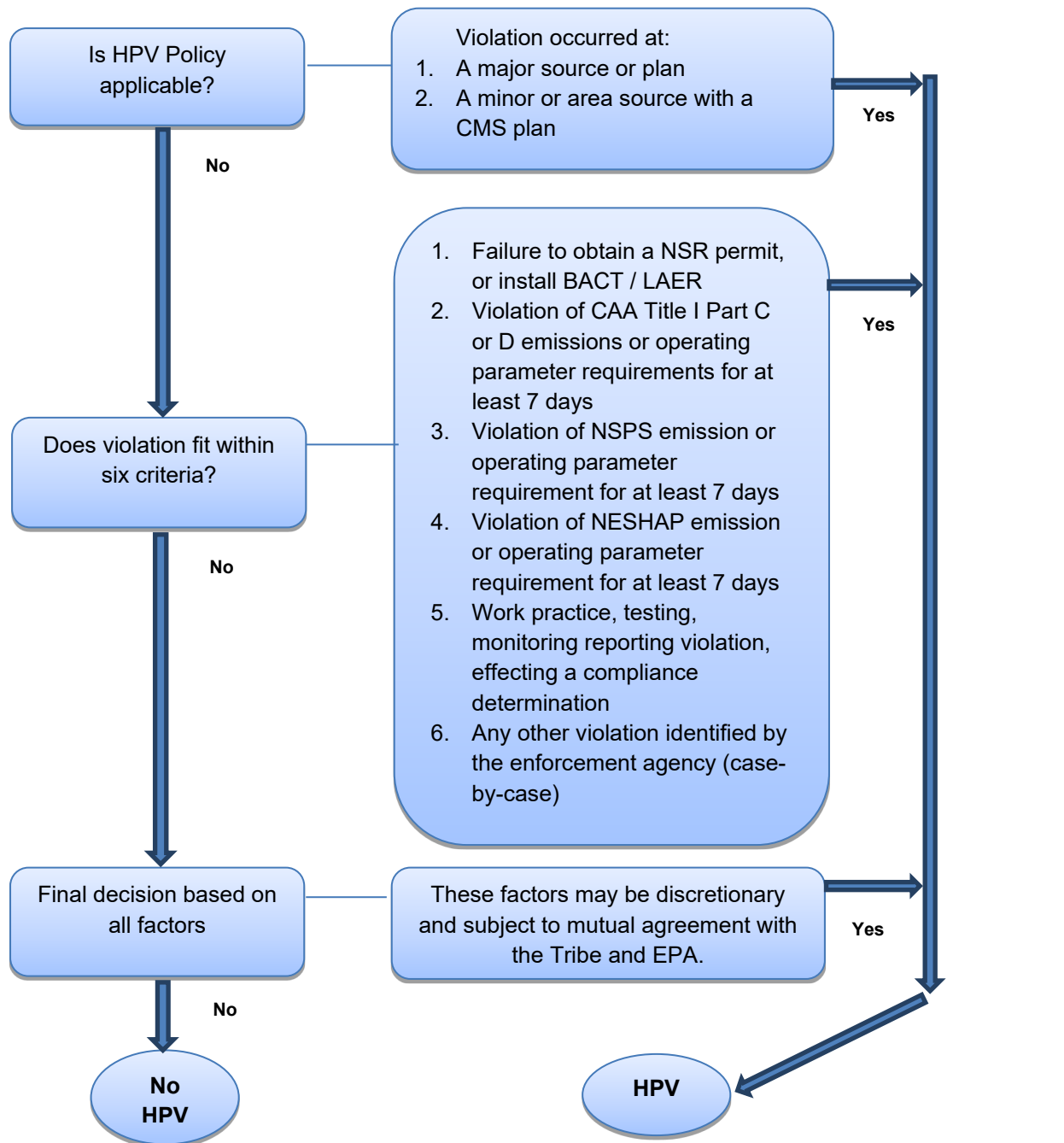
Criterion 3 – A violation of any emission limitation, standard, or operating parameter surrogate for emissions in NSPS Part 60

Criterion 4 – A violation of any emission limitation, standard, or operating parameter surrogate for emissions in NESHAP Part 61 and 63

Criterion 5 – A violation that involves federally enforceable work practices, testing requirements, monitoring, recordkeeping, reporting, effecting enforcement or compliance

Criterion 6 – Any other violations an enforcement agency warrants even if the duration is less than seven days

Figure 1: HPV Applicability Determination Flow Chart



Enforcement Procedures and Penalty Manual

2. HPV Resolution Timelines

HPV enforcement cases must meet specific timelines for resolution. The date of the initial identification of a violation, Day Zero, is the earlier of either (1) the date the agency has sufficient information to determine that a violation occurred or (2) 90 days after the compliance monitoring activity that first provides information indicating a violation. At this point, the AQP must record the HPV in ICIS-Air. After the case file is saved, it should be linked to the Discovery Action(s). Other MDR's for ICIS-Air include Addressing Action and Resolving Action.

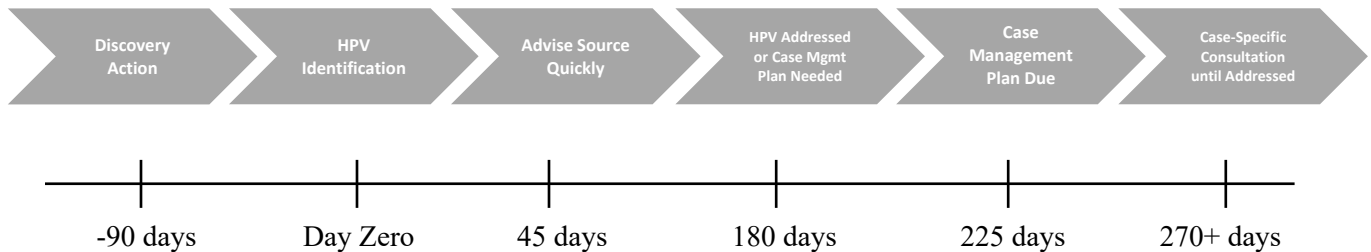
Appropriate resolution timelines for enforcement actions are calculated from Day Zero. After 45 days, the AQP must advise a source of a violation. This may include a NOV. If the initial timeline needs revision, a new assessment may be addressed with EPA, as long as it is within 180 days.

3. Penalties

All civil penalties should be sufficient to achieve effective deterrence, recover economic benefit, and reflect the seriousness (gravity) of the violation.

Figure 2: Appropriate Enforcement Response for HPV

The following figure presents the enforcement timeline as required by EPA's HPV Policy:



Notes:

1. A regularly scheduled EPA Region consultation should be held at least quarterly.
2. The timeline applies to the agency initiating the action. Parallel actions and lead changes may occur at any time.
3. Timeline may be extended in a complex case. Also, follow-up may be necessary to complete the case or to monitor compliance schedule.

Enforcement Procedures and Penalty Manual

X. Penalty Assessment Criteria

The Tribe has the authority to collect civil penalties under RAC § 2-121(2) for the violation of any applicable requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or orders issued by the Tribe. RAC § 2-121(2) provides that:

- Civil penalties or damages assessed, sought, or agreed upon by the Tribe shall be appropriate to the violation; and
- Penalties or damages shall be separately recoverable in an amount not to exceed \$10,000 per day per violation.

This manual is intended, in part, to provide guidance on how the Tribe will calculate the gravity of the violation (the “gravity component”) and remove any significant economic benefit (the “economic benefit component”) of noncompliance. The gravity component and the economic benefit component are determined separately for each violation and then added together to determine the preliminary deterrence amount. All calculated penalties will be evaluated by the Tribe’s Air Enforcement Coordinator and when appropriate, the Tribe’s legal counsel, to ensure the total monetary penalty amount does not exceed the statutory maximum. Specific penalty calculation examples and methodologies are contained in the *Southern Ute Indian Tribe – Reservation Air Program, Compliance and Enforcement Penalty Calculation Worksheet*.

1. Calculating the Gravity Component

Once an alleged violation has been evaluated and categorized as described in Sections V. (1) and VII. of this manual, objective factors consistent with the EPA’s Clean Air Act Civil Penalty Policy will be evaluated and assessed as outlined below:

a. Actual or Potential Harm

- Actual or Potential Harm** - A violation will be evaluated to determine whether there has been a release to the atmosphere and will be categorized as either an actual release or a potential release. Actual is defined as "existing in fact or reality; not merely potential." Potential is defined as "existing in possibility; capable of development into actuality."
- Amount of Pollutant** - A violation will be evaluated to quantify the percent above a permit or regulatory standard a pollutant was emitted or the total amount of pollutant emitted above a permit or regulatory standard. This factor will only be evaluated for actual violations of emission standards.
- Toxicity of the Pollutant** - A violation will be evaluated for the toxicity of the pollutant involved. Violations involving toxic pollutants regulated by a National Emission Standard for Hazardous Air Pollutants or listed under Section 112(b)(1) of the CAA will be considered more serious violations.
- Sensitivity of the Environment** - A violation will be evaluated to determine sensitivity of the environment where the violation occurred. For example, excessive emissions near a Mandatory Class 1 Federal Area (40 CFR Part 81) may have substantially more impact on the environment. This factor will only be

Enforcement Procedures and Penalty Manual

used when evaluating Tribal Implementation Plan and New Source Performance Standards cases only.

- v. **Length of Time a Violation Continues** - A violation will be evaluated to determine the length of time the violation continues uncorrected. The longer the duration, the greater the risk of harm.

b. Importance to the Regulatory Scheme

- i. **Work Practice Standards** – A violation will be evaluated for the extent to which it deviates from a work practice standard outlined in any Tribal permit or applicable requirement.
- ii. **Reporting and Notification** – A violation will be evaluated considering any partial or full failure to provide a notification or report, submit a report or notification by the specified timeframe, and/or submit an incomplete notification or report required by any Tribal permit or applicable requirement.
- iii. **Recordkeeping** – A violation will be evaluated considering any partial or full failure to maintain records required by any Tribal permit or applicable requirement.
- iv. **Testing** – A violation will be evaluated considering any partial or full failure to conduct a performance test, or failure to conduct a performance test within any required timeframe, or use of the proper test or reference method to complete a performance test required by any Tribal permit or applicable requirement.
- v. **Permitting** – A violation will be evaluated considering any partial or full failure to obtain any permit authorization or registration or partial or full failure to pay any subsequent permit authorization or registration fees required by the Reservation Air Code or other applicable requirement.
- vi. **Emission Control Equipment** – A violation will be evaluated considering any partial or full failure to install, maintain, or operate a pollution control device required by any Tribal permit or applicable requirement.
- vii. **Monitoring** – A violation will be evaluated considering any partial or full failure to install, maintain, or operate monitoring equipment required by any Tribally-issued permit or applicable requirement.
- viii. **Administrative Orders** – A violation will be evaluated to determine if it constitutes a deviation from an existing Settlement Agreement, Compliance Order, or any other Administrative Order.
- ix. **Requests for Information** - A violation will be evaluated considering any incomplete or full failure to respond to CAA Section 114 requests for information.
- x. **Compliance Certifications** - A violation will be evaluated considering any partial or full failure to meet a compliance schedule deadline, submit a notification or progress report within a specified timeframe, or submit a complete notification or progress report required by any Tribal permit or applicable requirement.

c. Additional Considerations

- i. **Size of Source** - A violation will be analyzed and assessed based on the size of the company's entire operations, not just the facility in violation. A company's net

Enforcement Procedures and Penalty Manual

worth or net current assets will be considered an adjusting factor when assessing penalties.

- ii. **Compliance History** – The compliance history of a source will be considered when evaluating a violation and assessing a monetary penalty. The Tribe will check for and consider prior violations under all environmental statutes when determining the amount of the adjustment to be made under this factor. Evidence that a source has repeated a violation of a Tribal permit or applicable requirement may indicate the source was not deterred by a previous enforcement response. In determining the size of this adjustment, the Tribe will consider the following factors:

- Similarity of the violation in question to prior violations. A violation will generally be considered "similar" if a previous enforcement response should have alerted the source to a particular type of compliance problem. Some facts indicating a similar violation are: 1) Violation of the same permit or permit provision; 2) Violation of the same emissions standard; 3) Violations involving the same emission units at a facility or source; 4) Violation of the same Reservation Air Code or applicable requirement provision; or 5) A similar act or omission.
- The number of prior violations. For purposes of this section, a "prior violation" includes any act or omission resulting in a Tribal, State, or Federal enforcement response (Written Warning, Compliance Advisory, Notice of Violation, administrative order, complaint, Consent Decree, consent agreement, or administrative and judicial order) under any environmental statute enforced by the Tribe unless subsequently dismissed or withdrawn on the grounds that the owner or operator was not liable. It also includes any act or omission for which the source has previously been given written notification, however informal, that the regulating agency believes a violation exists.
- Time elapsed since the prior violation. Three or more violations in the previous five years may result in an increase of the penalty amount up to 5%.
- Source's response to prior violations with regard to correcting the previous problem and attempts to avoid future violations.
- The extent to which the gravity component had already been increased in a previous enforcement action due to a repeat violation.

d. Other Factors that Justice May Require

The AQP may recommend adjustment of the penalty amount, on a case-by-case basis, upon a consideration of factors unique to the situation. This adjustment may result in an increase or decrease of the penalty amount. For example, a downward adjustment may be appropriate when an owner or operator inherits an enforcement action or poor compliance

Enforcement Procedures and Penalty Manual

history as a result of purchasing an existing facility. The resulting penalty may not reflect the compliance efforts of the new owner.

- i. **Willfulness and/or Negligence** – The Clean Air Act is a strict liability statute for civil actions, so that willfulness, or lack thereof, is irrelevant to the determination of legal liability. However, this does not render the source's willfulness or negligence irrelevant in assessing an appropriate monetary penalty. A violation will be assessed to determine the degree of willfulness or negligence, if applicable, considering the following factors:

- The degree of control the source had over the events constituting the violation.
- The foreseeability of the events constituting the violation.
- The level of sophistication within the industry in dealing with compliance issues or the accessibility of appropriate control technology (if this information is readily available). This should be balanced against the technology-forcing nature of the statute, where applicable.
- The extent to which the owner or operator in fact knew of the legal requirement that was violated.

e. Mitigating Factors

The following objective factors have the combined potential to mitigate up to 30% of the gravity component of a civil penalty:

- i. **Voluntary and Complete Reporting or Disclosure of Noncompliance** - The voluntary and complete disclosure by a source of a violation in a timely manner after the discovery of noncompliance may yield a reduction in the gravity component of a penalty.
- ii. **Prompt Correction of Environmental Problem** - Full and prompt cooperation with the Tribe to resolve an environmental problem following the self-disclosure of a violation or discovery of a violation as the result of an investigation, including, when appropriate, entering into a legally enforceable commitment to undertake compliance and remedial efforts may yield a reduction in the gravity component of a penalty.
- iii. **Existence and Scope of Environmental Compliance Program or Audit** - The existence and scope of a regularized and comprehensive environmental compliance program or environmental audit program may yield a reduction in the gravity component of a penalty.
- iv. **Ability to Pay** - Consistent with the goal of providing fair and equitable treatment of the regulated community, the Tribe will consider a source's ability to pay a

Enforcement Procedures and Penalty Manual

penalty, for both the gravity component and economic benefit components, when assessing the preliminary deterrence amount.

The Tribe will not reduce a monetary penalty, even when a source proves conclusively that it cannot afford to pay, in the following situations: 1) the source refuses to comply with pollution control requirements; 2) the source cannot afford to comply with pollution control requirements; or, 3) the source's conduct was egregious (e.g., willful violations, or violations that might have or actually endangered lives).

If a source claims an inability to pay a penalty, the Tribe will first consider a delayed payment schedule with interest as a first option. If the delayed payment schedule with interest is not a viable option, the burden to demonstrate an inability to pay, as with the burden of demonstrating the presence of any other mitigating circumstances, rests with the source.

The source will demonstrate their inability to pay, by providing supporting financial statements, using the EPA's ABEL or INDIPAY computer models. These models will be used to assist the Tribe in assessing an owner or operator's ability to afford compliance costs, cleanup costs, or civil penalties. If the source fails to provide sufficient information, or the models do not demonstrate a financial inability to pay, the Tribe will disregard this factor in adjusting the monetary penalty.

- v. **Early Settlement** – The early resolution of an enforcement action may yield a reduction in the gravity component of a monetary penalty.
- vi. **Degree of Cooperation** – The cooperation by a source in assisting the AQ Compliance Specialists and AQ Enforcement Coordinator in gathering data and supplying the necessary information to determine compliance with the requirements may reduce the penalty.

2. Calculating the Economic Benefit Component

A cornerstone of the Tribe's civil penalty program is the recapture of the economic benefit a source may have gained from illegal activity. Economic benefit penalties help to level the economic playing field, preventing sources from obtaining an unfair financial advantage over their competitors who made timely and necessary investments in environmental compliance. Penalties serve as incentives to protect the environment and public health by encouraging the adoption of pollution prevention practices that limit exposure to pollutant discharges. Appropriate penalties help deter future violations by the source and by others similarly situated.

The economic benefit component focuses on the source's economic gain from noncompliance. Economic gain from noncompliance may occur in three basic ways. It may occur as a result of: 1) delays in necessary pollution control expenditures; 2) avoidance of necessary pollution control expenditures; or 3) an illegal competitive advantage gained during the period of noncompliance.

Enforcement Procedures and Penalty Manual

a. Economic Benefit from Delayed and/or Avoided Costs

Each violation will be evaluated to determine if an economic benefit was gained from a source's noncompliance. When there is evidence that an economic benefit exists, based on delayed or avoided costs, the AQP will estimate the value of the economic benefit and include this amount in the proposed civil penalty under RAC § 2-121(2).

If the economic benefit is determined to exceed \$10,000, the Tribe will use EPA's BEN model as the method for calculating economic benefit from delayed and avoided expenditures. For economic benefit calculations of less than \$10,000, or where the owner or operator will not or cannot provide financial data in a timely manner, staff may make estimates based on available resources, including their best professional judgment.

The BEN model uses several data variables, most of which contain default values. The required variables include information about capital and non-capital costs, annual operation and maintenance costs, and the dates for the period of noncompliance. The BEN model allows a facility to provide actual financial data that may affect the civil penalty calculation. Finally, methods other than the BEN model may be used to calculate economic benefit of noncompliance, where the Tribe concludes that an alternative method provides more meaningful results.

A necessary first step when making a preliminary determination of economic benefit is to understand the costs avoided or delayed through noncompliance. A delayed cost is an expenditure that, through current noncompliance, can be put off until sometime in the future. An avoided cost is an expenditure not made, resulting in noncompliance. Examples of *delayed costs* include, but are not limited to:

- Failure to install equipment needed to meet emission control standards;
- Failure to effect process changes needed to reduce pollution;
- Failure to test where the test still must be performed; and
- Failure to install required monitoring equipment.

Many types of violations enable a violator to avoid permanently certain costs associated with compliance. Examples of *avoided costs* include, but are not limited to:

- Failure to employ a sufficient number of staff;
- Disconnecting or failing to properly operate or maintain existing pollution control equipment;
- Failure to adequately train staff;
- Failure to establish or follow precautionary methods required by regulations or permits;

Enforcement Procedures and Penalty Manual

- Removal of pollution equipment resulting in operational, or maintenance savings;
- Disconnecting or failing to properly operate or maintain required monitoring equipment; and
- Operation and maintenance of equipment that the source failed to install.

b. Economic Benefit from Illegal Competitive Advantage

In some enforcement cases, the Tribe may determine that a source may have gained an Illegal Competitive Advantage associated with noncompliance. The four categories of ICA are:

- Source gains additional market share;
- Source sells products or services prohibited by law;
- Source initiates construction or operation before meeting regulatory authorization requirements; and,
- Source operates at higher capacity than it should have.

The EPA BEN model will be used, when appropriate, to estimate economic benefit associated with an ICA. However, the BEN model does not include calculation methodologies to estimate every scenario associated with an economic benefit gained from ICA. The Tribe will use the EPA's policy *Identifying and Calculating Economic Benefit That Goes Beyond Avoided and/or Delayed Costs (May 25, 2003)* when calculating penalties involving an ICA that are not addressed by the BEN model.

c. Considerations for Adjusting the Economic Benefit Penalty

The following factors may be considered by the Tribe when settling the total civil penalty for an amount less than the economic benefit.

- The economic benefit component represents an insignificant amount of the total monetary penalty. The discretion to forego the economic benefit component is generally limited to less than \$5,000. Considerations for pursuing the economic benefit component, even when considered an insignificant portion of the total monetary penalty include: 1.) if the economic benefit component will have a noticeable effect on the source's competitive advantage or profits gained from noncompliance; and 2.) if the gravity component is small and by itself, does not provide adequate deterrence.
- There are compelling public concerns that justice would not be served by taking a case to trial;
- It is unlikely, based on the facts of the particular case as a whole, the Tribe will be able to recover the economic benefit in litigation; and

Enforcement Procedures and Penalty Manual

- The owner or operator has successfully documented an inability to pay the total proposed civil penalty.

3. Voluntary Discovery, Disclosure, and Remediation of Violations

Sources that voluntarily discover, promptly disclose, and timely remediate violations of federal environmental laws and regulations may qualify for penalty mitigation. The Tribe adopts and incorporates by reference the U.S. EPA's *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (commonly known as EPA's "Audit Policy," found at 65 Fed. Reg. 19618 (April 11, 2000)). The Audit Policy is at <https://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8954.pdf>. Sources may enter audit agreements with the AQP as a means of self-policing and potentially receive penalty mitigation for violations discovered in the course of an audit, provided they meet all requirements of the Audit Policy. Sources who wish to enter into an audit agreement with the AQP should notify the AQP and submit an audit proposal so that sources will have the opportunity to independently discover and disclose potential violations before those violations are discovered during a compliance inspection or investigation. The audit proposal should include, at a minimum, the following information:

- What the source plans to audit (i.e. name of facility);
- When the source plans to audit; and
- The deadlines for reporting and correcting deviations

a. Interim Approach to Applying the Audit Policy to New Owners

Owners of newly acquired facilities ("new owners") may also qualify for penalty mitigation for violations that are voluntarily discovered, promptly disclosed, and timely remediated at newly acquired facilities. The Tribe adopts and incorporates by reference the U.S. EPA's *Interim Approach to Applying the Audit Policy to New Owners* (commonly known as EPA's "Interim Approach," found at 73 Fed. Reg. 44991 (August 1, 2008)). EPA's Interim Approach can be found at: <https://www.gpo.gov/fdsys/pkg/FR-2008-08-01/pdf/E8-17715.pdf>. New owners may enter into audit agreements with the AQP as a means of self-policing and potentially receive penalty mitigation for violations at their newly acquired facilities, provided they satisfy the requirements of the Interim Approach. New owners seeking to enter into an audit agreement with the AQP must do so within nine months of the acquisition closing date for newly acquired facilities. New owners who wish to enter into an audit agreement with the AQP should notify the AQP as soon as possible and submit an audit proposal so that sources will have the opportunity to independently discover and disclose potential violations before those violations are discovered during a compliance inspection or investigation. The audit proposal should include, at a minimum, the following information:

- What the source plans to audit (i.e. name of facility);
- When the source plans to audit; and
- The deadlines for reporting and correcting deviations (all violations must be reported within nine months after the acquisition of a new facility)

Enforcement Procedures and Penalty Manual

XI. SUIT/CO Environmental Commission

1. Notice of Enforcement Action

The AQP will provide notification of all final non-appealable civil enforcement actions to the Environmental Commission, Tribal Council, and the State Liaison for the Environmental Commission, at least annually. Information provided may include a summary of enforcement actions (number of enforcement cases and type of enforcement actions) of the most recent fiscal year.

2. Annual Update

An annual update on compliance and enforcement activities completed by the AQP will be presented at an Environmental Commission meeting each Fiscal Year. This update will present the status of compliance monitoring (inspections) with respect to the Compliance Monitoring Strategy and summarize enforcement actions initiated by the AQP.

3. Administrative Appeal Procedures

a. Appealable Administrative Actions and Request for Hearing

Appealable administrative actions taken by the Tribe are subject to review in accordance with the administrative appeal procedures contained in the Southern Ute Indian Tribe/State of Colorado Environmental Commission's Procedural Rules (RAC § 1-107).

b. Judicial Review

Any final order of the Commission that would be subject to appellate review if it were made by the EPA Administrator, is subject to judicial review by the United States Court of Appeals for the Tenth Circuit in accordance with Section 6 (1) of the *Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2004* (i.e., the Act of October 18, 2004, Pub. L. No. 108-336, 118 Stat. 1354-56).

XII. Records Retention and Case Resolution Timelines

a. Enforcement Records Retention

The Tribe will retain compliance monitoring records consistent with EPA records policy. For evaluations that lead to Settlement Agreements and civil administrative enforcement actions including Compliance Orders, the Tribe will retain records 10 years after closure of the enforcement file. For cases filed in district court that lead to civil judicial actions, or cases that result in criminal referral to the EPA, the Tribe will retain records 20 years after the closure of the case file.

Enforcement Procedures and Penalty Manual

b. Case Resolution Landmarks and Target Timeline

Landmarks		Target Date*
1	Notice of Violation Issued	90 days after the close of the on-site inspection
2	Notice of Violation Conference	10 business days after email receipt of NOV
3	Settlement Agreement with deferral expires (as applicable)	30 days after email receipt of NOV
4	Settlement Agreement offer expires	90 days after email receipt of NOV (unless renegotiated during NOV Conference)
5	Penalty Payment	30 days after execution date of a Settlement Agreement
6	Notification of Compliance	90 days after effective date of Settlement Agreement (unless renegotiated during NOV Conference)
7	Follow-up Investigation	Scheduled after NOC received
8	Case Resolved	When compliance requirements are met and follow-up investigation report is signed
9	Notice of Non-Compliance	When compliance requirements are not met and a follow-up investigation report is signed.

* Timelines may exceed these dates if additional records are requested during the course of the inspection or if the enforcement case is complex.

XIII. Supplemental Environmental Project

In all enforcement settlements, sources will be required to achieve and maintain compliance with all applicable regulations. In some instances, sources may receive some monetary penalty relief resulting from their commitment to implement a Supplemental Environmental Project. A SEP is a project that the source agrees to undertake in settlement of an enforcement action that benefits either the environment or public health, or both, but the source is not otherwise legally required to perform.

The Tribe's sole interest in considering SEPs is to ameliorate the adverse public health and environmental impacts of violations. SEPs are not intended to reward the source for undertaking activities that are obviously in its economic self-interest. Therefore, although a SEP may indirectly benefit a source, there must be no doubt that the primary beneficiary is the public health or the environment. The Tribe may consider allowing a SEP if: (1) violations are corrected through actions to ensure future compliance; (2) deterrence objectives are served by payment of a monetary penalty, which must include the economic benefit accruing to the source for noncompliance; and (3) there is an appropriate relationship between the nature of the violation and the environmental benefits to be derived from the SEP.

The decision to accept a proposed SEP as part of a settlement is within the Tribe's sole discretion. Even though a project may appear to satisfy all of the provisions of this plan, the Tribe may decide for one or more reasons that a SEP is not appropriate. Factors that could influence such a decision include if the costs to the Tribe for reviewing or overseeing the SEP are excessive, the provisions of a SEP are not enforceable, or the Tribe believes the source may

Enforcement Procedures and Penalty Manual

not have the ability or reliability to complete the proposed SEP. The AQP Part 70 permitting, compliance and enforcement program cannot accept SEP funds, nor can a SEP project fund activities the Tribe is already required to perform pursuant to delegated regulatory authority.

1. SEP Basic Guidelines

A SEP will not be approved if the source is otherwise legally required to perform the proposed activity. For example, a SEP must not include actions required by any federal, tribal, state, or local law, regulation, administrative or court order or permit. A SEP cannot include actions the source may be required to perform as injunctive relief, as part of a settlement or order in another legal action, or by federal, tribal, state or local requirements.

There are two different types of SEPs, a first or third party SEP. A first party SEP is an environmental project performed within a source's own facility. A third party SEP is a monetary donation for the implementation of an environmental project to an organization that the source is not financially or legally affiliated with.

SEPs may be used to mitigate some or all of a civil penalty in accordance with the following criteria:

- 1) Neither a first or third party SEP may be used to offset the economic benefit component of a monetary penalty. At the Tribe's discretion, a SEP performed by a source for the benefit of a third party may be approved to mitigate the gravity component portion of a civil penalty;
- 2) The cost of a SEP for the benefit of a first party will generally exceed the amount of monetary penalty mitigation offered in exchange (see Section 3. Extent to Which a SEP Can Mitigate a Penalty). For third party SEPs, the cost will generally equal the amount of monetary penalty mitigation offered in exchange;
- 3) Because deterrence objectives must be met, SEPs may only mitigate 80% of the gravity portion of a civil penalty for first party SEPs. SEPs may be approved to mitigate up to 100% of the gravity portion of a civil penalty for third party SEPs;
- 4) Sources are precluded from seeking or receiving any tax benefit or favorable tax treatment associated with a SEP, including third party SEP donations; and
- 5) All SEPs must result in improvements to the environment or reduce the total risk burden posed to public health or the environment by the identified violations beyond what is required by law.

SEPs are not intended to reward the source for undertaking activities that are obviously in its economic self-interest (e.g., update or modernize a plant to become more competitive). Therefore, as a general rule, SEPs will usually not be approved when they represent a "sound business practice." For example, capital expenditures or management improvement for which the source, rather than the public, is likely to receive the substantial share of the benefits which accrue from it will not be approved. The exception to this general rule is for a "pollution prevention project." Although such projects are viewed as sound business practice since they are designed both to make production more efficient and reduce the likelihood of noncompliance, they also have the advantage of potentially providing significant long-term environmental and health benefits to the public.

Enforcement Procedures and Penalty Manual

If a proposed SEP is to benefit a medium other than air quality, (e.g. water quality or waste management and remediation), the Air Quality Program manager will consult with the Environmental Programs Division Head and program managers before approval of the SEP.

The SEP should typically benefit the area or community adversely affected by the violation, and consideration of projects with a geographic nexus to the violation are given preference. The source may be required to notify the public of a SEP.

2. Categories of SEPs

The Tribe considers the following seven categories of projects for potential SEPs. Each project will be closely scrutinized to ensure that all aspects of the project fulfill the legitimate objectives of the Tribe's SEP plan in all respects.

a. Pollution Prevention Projects

For the purposes of developing a SEP, a pollution prevention project is any project that substantially reduces or prevents the generation or creation of pollutants through:

- **Source reduction** - eliminating the source of pollution by changing industrial processes or substituting less polluting fuels or less toxic raw materials in existing processes;
- **Alternative/Renewable Energy, Energy Efficiency** – application of measures and technologies to reduce or eliminate dependency upon traditional resources. Examples include, but are not limited to: wind, solar, biomass and geothermal powered generation of electricity, ethanol-based (“E-85”) or bio-diesel fuels for vehicles, and sustainable building engineering;
- **Waste minimization** - conserving those materials that are sources of pollution; this includes application of closed-loop processes or other resource-efficiency measures;
- **In-process recycling** – returning waste materials produced during a manufacturing process directly to production within the same manufacturing process using dedicated, fixed, and physically integrated equipment so that no releases, including fugitive releases, occur;
- **Innovative recycling technologies** - substantially reducing the discharge of generated pollutants through innovative recycling technologies that keep the pollutants out of the environment in perpetuity; and
- **Conservation** - protecting natural resources through conservation or increased efficiency in the use of energy, water or other materials. A specific example of such a project that the Tribe encourages is an up-front capital investment in energy efficiency improvements and reinvestment of the resulting cost savings into a long-term green energy program either on-site or in a community-based program, or a combination of both.

Enforcement Procedures and Penalty Manual

In order for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount or toxicity of pollution released to the environment, not merely a transfer of pollution among media.

b. Pollution Reduction Projects

A pollution reduction project is defined as a project that goes substantially beyond compliance with permit or regulatory requirements to further reduce the amount of pollution discharged into the environment. Where a pollutant or waste stream already has been generated or released, a pollution reduction approach (recycling, treatment, containment, or disposal techniques) may be appropriate, so long as it does not create an increased or adverse cross-media impact on public health or the environment. Examples include: (1) a project that reduces the discharge of pollutants through more effective end-of-pipe or stack removal technologies; (2) improved operation and maintenance; and, (3) recycling of residuals for use as raw materials in production off-site, thereby reducing the need for treatment, disposal, or consumption of energy or natural resources.

c. Environmental Restoration and Protection Projects

The objective of an environmental restoration project is to repair damage done to the environment beyond the need to remediate the damage done by the violation. Cross-media projects are a preferred option for this type of project. Examples of approvable projects include: (1) reductions in discharges of pollutants that are not the subject of the violation or the subject of other regulatory requirements within an affected air basin or watershed; (2) development of a conservation program or protection of habitat critical to the well-being of a species' ecosystem; and (3) purchase and management of an open space buffer zone to protect sensitive species or drinking water supply and conservation easements.

Environmental restoration projects could also include, in appropriate circumstances, projects that involve the remediation of facilities and buildings, provided such activities are not otherwise legally required. This includes the removal or mitigation of contaminated materials, such as contaminated soils, asbestos, contamination from the illegal manufacture of methamphetamines, and leaded paint, which are a continuing source of releases or threats to individuals.

d. Environmental Assessments

Two types of environmental assessment projects may be considered by the Tribe:

- **Pollution prevention assessments** are independent, systematic reviews of processes and operations conducted internally by a source. The goal of the assessment is to identify opportunities to reduce the use, production, and generation of hazardous and other pollutants; and
- **Environmental Management System (EMS) assessments** are a systematic, independent, and documented compliance and environmental management practices verification process, conducted by a third party EMS auditor. The auditor objectively obtains and evaluates evidence to determine whether an entity's EMS conforms to the EMS requirements which closely reflect the ISO 14001 criteria. This type of evaluation may identify the need for: a formal

Enforcement Procedures and Penalty Manual

corporate environmental compliance policy and enforceable procedures for implementation of that policy; the need for planning processes as they pertain to an EMS, such as hazard identification and risk assessments, environmental programs, etc.; implementation and operation criteria including educational and training programs for employees, communication activities, EMS documentation requirements, operation and maintenance programs and in-plant and community emergency plans; checking and corrective action criteria, including monitoring and measurement systems, record keeping and reporting systems and internal audit criteria; and management review activities.

These types of SEPs can only be approved where the source commits to provide the Tribe with copies of all assessments and reports and commits to implement technically feasible and economically reasonable steps identified in the assessments. If the source chooses not to implement all recommendations in the assessment, it must submit a justification for not implementing certain recommendations. Environmental audits that merely represent compliance-focused, general good business practices are not acceptable SEPs.

Any pollution prevention assessment or environmental management system development conducted as part of a SEP should include a materials accounting component that estimates the amounts of certain [or all] materials entering and exiting the facility.

The calculation of an appropriate mitigation for assessment projects will take place in two phases. In the first phase, the source will receive monetary penalty mitigation for the cost of undertaking the assessment. Upon completion of the assessment, the source may receive further mitigation for implementation of activities recommended in the assessment, provided that such activities meet all other requirements for a SEP described elsewhere in this plan and are reviewed and approved by the Tribe. The SEP settlement shall establish a timeframe within which the second phase must be completed, but generally no later than 24 months from the effective date of the agreement. If the source opts not to complete the second phase, the balance of the unpaid penalty becomes due and payable to the Tribe.

e. Environmental Education and Training

- Environmental education projects are intended to improve environmental behavior, raise the public's awareness of actions it can take to prevent pollution, and promote environmental sustainability. Environmental education projects increase public awareness and knowledge about environmental issues and provide the skills necessary to make informed decisions and take responsible actions. The Tribe will give priority to projects that include an action component providing measurable and quantifiable outcomes. Education projects that focus on fostering environmentally beneficial behavior using social marketing tools or that follow National Guidelines for Excellence in Environmental Education (where applicable) are preferred. The source must contract with an appropriate external expert to develop and implement an environmental education project.
- Environmental training projects are defined as the use of publications, broadcasts, or seminars that underscore the importance of complying with environmental laws or that disseminate technical information about the means of complying with

Enforcement Procedures and Penalty Manual

environmental laws. These projects provide necessary training and technical support to identify, achieve, and maintain compliance with applicable regulatory requirements; avoid violations; and go beyond compliance by reducing the generation, release or disposal of pollutants beyond legal requirements. Public awareness projects may include: (1) sponsoring industry-wide seminars directly related to correcting widespread or prevalent violations within an industry; or (2) organizing a conference on pollution prevention solutions for compliance in a particular sector. The source must contract with an appropriate external expert to develop and implement an environmental training project. Environmental training projects using social marketing techniques are encouraged.

f. Public Health

A public health project provides preventive, screening, diagnostic, therapeutic health care, or education related to actual or potential threats to human health. This may include epidemiological data collection and analysis, medical examinations of potentially at-risk or affected persons, collection and analysis of blood/fluid/tissue samples, medical treatment, and rehabilitation therapy.

g. Other Types of Projects

Facilities may propose other types of projects as long as those projects meet all additional requirements of a SEP as described in this plan. Note: SEPs for research will only be allowed if the study investigates innovative practical pollution prevention or reduction solutions. In addition, the entity conducting the SEP must commit to implement the results of the study, as feasible, and make available the technology or solution to other interested facilities.

3. Extent to Which a SEP Can Mitigate a Penalty

There are two steps in determining the extent to which a SEP can mitigate a monetary penalty. The first step is to calculate the minimum portion of the penalty assessment that must be collected in cash. The second step is to determine the amount of credit each dollar spent on the SEP will receive against the penalty.

- 1.) Penalties are comprised of a gravity component and, when applicable, an economic benefit component.
 - For a first party SEP, the SEP may generally be used to offset up to 80% of a civil penalty assessed. There are exceptions for small businesses (defined as having fewer than 50 employees), nonprofit organizations, and third party SEPs, in which case the percentage may be as high as 100%. The Tribe, however, retains the sole discretion to allow SEPs to mitigate penalties.
 - A SEP, either first or third party, cannot be used to offset any portion of the economic benefit component.
- 2.) The extent to which penalty mitigation will be allowed by a SEP will depend on the Tribe's evaluation of how effectively it will achieve the six factors listed below. Only exceptional projects and projects that benefit a third party, will be allowed the maximum mitigation.

Enforcement Procedures and Penalty Manual

- **Benefits to the Public or Environment** - All SEPs must meet this objective. The extent to which a project reduces discharges of pollutants to the environment or reduces risk to the general public resulting in a higher positive environmental effect will rate higher in this factor.
- **Innovativeness** - SEPs that further the development and implementation of innovative processes, technologies, or methods to more effectively reduce the use, generation, release, or disposal of pollutants; conserve natural resources; or, promote compliance will rate well in this factor.
- **Environmental Justice** - SEPs that mitigate damage or reduce risk to minority or low income populations that have been disproportionately exposed to pollution, or are at environmental risk, perform well in this factor.
- **Cross-media Impacts** - SEPs that reduce emissions in more than one medium (air, water, or soil) perform well in this factor.
- **Pollution Prevention** - SEPs that develop and implement pollution prevention techniques and practices perform well in this factor.
- **Community Input** - SEPs that perform well in this factor will have been developed taking into consideration input received from the affected community. No credit should be given for this factor if the respondent did not actively participate in soliciting and incorporating public input into the SEP.

In determining the amount of credit each dollar spent on a SEP should receive, the Tribe will determine the primary beneficiary of the SEP. For a first party SEP the ratio of penalty mitigation to SEP cost shall typically be no less than 1 to 1.5 (e.g., to receive \$100,000 in penalty mitigation, a source may be required to spend as much as \$150,000 on a SEP). The 1 to 1.5 ratio of civil penalty mitigation recognizes the potential cost savings, public relations, and other benefits associated with first party SEP expenditures that may accrue to the source. SEP costs may be lower than 150% and, at times, as low as 100% of the amount of the monetary penalty mitigation, if the source chooses a SEP that benefits a third party and can prove there is no benefit to the source associated with the expenditures. Credit for a SEP cannot be given for a project planned or initiated before the enforcement action because it credits a project that would otherwise occur.

4. Legal Guidelines for Negotiating SEPs

Before approving a SEP, the Tribe will also consider:

- Projects that have an adequate and reasonable relationship, or nexus, between the violation and the proposed project. This relationship exists if the project remediates or reduces the probable overall environmental or public health impacts of risks to which the violation contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future.
- All projects must be completed within the exterior boundaries of the Southern Ute Indian Reservation.

Enforcement Procedures and Penalty Manual

- Projects cannot be inconsistent with any underlying statute and generally must advance at least one of the declared objectives of the Reservation Air Code.
- Projects cannot involve the commitment of the source to do an activity or meet an objective the source is already mandated or required to do under any statutory or regulatory requirement.
- Projects cannot involve any initiative the source began or proposed to do before the commencement of the enforcement action.
- Projects must be set forth in sufficient detail in a signed Settlement Agreement or supporting document required by a Settlement Agreement. The Tribe will not approve a SEP without having a well-defined project or project timeline.

The Tribe may not play a role in managing or controlling funds to be set aside or escrowed for performance of a SEP, nor may the Tribe retain authority to manage or administer the SEP. The Tribe may provide oversight to ensure that a project is implemented pursuant to the provisions of the settlement and will pursue legal recourse if the SEP is not adequately performed.

5. Drafting Enforceable SEPs

The Settlement Agreement must accurately and completely describe the SEP, including the specific actions to be performed and provide a reliable and objective means to verify the source has completed the project in a timely manner. To the extent feasible, the source should be required to estimate, at the outset, the benefits associated with the SEP and to subsequently track, measure, and report those benefits to the Tribe. The source is ultimately responsible and legally liable for ensuring that a SEP is completed satisfactorily. The source may not transfer this responsibility and liability to a third party. The Settlement Agreement should require a source to clearly state that the project was undertaken as part of an enforcement action whenever the source publicizes the SEP and the results of the SEP.

6. Measurement

When feasible, the initial SEP proposal should include an estimate of all environmental benefits, a description of the methodology used to estimate those benefits, and baseline data regarding the relevant environmental impact in order to measure progress.

The source may be required to submit status reports as appropriate. A “SEP Completion Report” must be submitted to the Tribe no later than 2 months after project completion. If more time is needed for outcome measurements or project evaluation, a deadline extension should be requested in writing to the Tribe. At a minimum, the SEP Completion Report should include:

- 1) A detailed description of the project as implemented;
- 2) A description of any operating problems encountered and the solutions thereto;

Enforcement Procedures and Penalty Manual

- 3) Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
- 4) Certification and demonstration that the SEP has been fully implemented pursuant to the provisions of the Consent Order; and
- 5) A description of the environmental and public health benefits resulting from implementation of the SEP along with **quantification** of the outcomes and benefits.

The calculation of the cost and benefits of the SEP must include actual costs and economic benefits to the source. For example, the source must clearly document any benefits received by the sale of equipment being replaced by the SEP or benefits received from land donations.

7. Failure to Complete a SEP and Penalties

If a SEP is not completed to the satisfaction of the Tribe within the time periods specified, or the source fails to implement the terms of the SEP for the entire life of the agreement, the remaining penalty mitigation attributed to the SEP or a stipulated penalty must be paid to the Tribe as an administrative penalty. The Tribe may impose a stipulated penalty, in addition to the remaining penalty mitigation attributed to the SEP, for the source's failure to comply with the specific requirements of the SEP (e.g., failure to meet deadlines in the agreement or adequate completion of the SEP). The determination of whether a SEP has been satisfactorily completed is in the sole discretion of the Tribe. Although it is the source that is ultimately responsible for ensuring that a SEP is completed satisfactorily, third party SEP recipients should recognize that any failure on their part to complete a SEP or submit a SEP Completion Report would result in a loss of eligibility for receiving future SEP funding.

Enforcement Procedures and Penalty Manual

Last Revised November 29, 2022.

This manual has been reviewed by the Tribe's legal counsel and is approved by the signatories below on the dates written:

SOUTHERN UTE INDIAN TRIBE

By: _____ **Date:** _____
Chris Mimmack,
Justice and Regulatory Department Director

By: _____ **Date:** _____
Mark Hutson,
Environmental Programs Division Head

By: _____ **Date:** _____
Daniel Powers,
Air Quality Program Manager

cc: David Smith, Legal Services Director
Sam W. Maynes, Tribal Legal Counsel
Lorelyn Hall, Deputy Legal Department Director

Enforcement Procedures and Penalty Manual

Attachment 2 - Violation Categorization Matrix (subject to change)

	Major (Class A)	Moderate (Class B)	Minor (Class C)
1	Not maintaining control equipment or failure to operate control equipment for a pollutant at a major NSR source in a manner consistent with good air pollution control practices.	Not maintaining control equipment or failure to operate control equipment, for a pollutant, at a synthetic minor source, in a manner consistent with good air pollution control practices.	Not maintaining control equipment or failure to operate control equipment, for a pollutant, at a true minor source, in a manner consistent with good air pollution control practices.
2	Violation by a synthetic minor source of an emission limit or permit condition that affects the source's Title V status.	Emission limit violations at a synthetic minor source that does not jeopardize the synthetic minor status of the source.	Emission limit violation at a true minor source that did not result in the source exceeding true minor source permitting thresholds.
3	Failure to conduct emissions tests necessary to demonstrate compliance with standards involving a pollutant for which the source is a synthetic minor.	Failure to monitor or maintain records necessary to demonstrate compliance with standards involving a pollutant for which the source is a synthetic minor.	Failure to conduct emissions tests, monitor, or maintain records necessary to demonstrate compliance with standards involving a pollutant for which the source is a true minor source.
4	Violations that involve recordkeeping or reporting that substantially interfere with enforcement or determining the source's compliance status with applicable emission requirements.	Partial violations of recordkeeping or reporting that interfere with enforcement or determining the source's compliance status.	Minor deficiencies of recordkeeping or reporting that do not interfere with enforcement or determining the source's compliance status.
5	Substantial violation of the source's obligation to submit a Title V permit application or significant permit revision.	Failure to obtain a necessary minor permit revision, or failure to apply to incorporate a new or revised NSR permit into a Title V permit.	Failure to obtain an administrative permit revision, submit an off-permit change notification, or document an applicability determination.
6	Violation of the source's Title V certification obligations due to substantial failures to report deviations in ACOMP and SIXMON reports and certifications.	Violation of the source's Title V certification obligations due to moderate failures to report deviations in ACOMP and SIXMON reports and certifications.	Violation of the source's Title V certification obligations due to minor failures to report deviations in ACOMP and SIXMON reports and certifications.
7	Significant failure to install or operate emission controls correctly, and resulting in excess emissions to atmosphere.	Partial failure to install or operate emission controls correctly and not resulting in excess emissions to atmosphere.	Failure that was infrequent and of short duration to operate emission controls correctly, with minimal or no emissions to atmosphere.
8	Failure to submit an emission test report or performance test report greater than 60 days late.	Late submission of an emission test report or performance test report 30 to 60 days late.	Late submission of an emission test report or performance test report less than 30 days late.
9	Significant or complete failure of work practice or operational standards.	Failure of work practice or operational standards that were not self-reported by the source.	Failure of work practice or operational standards that were infrequent and of short duration and that were self-reported by the source.
10	Failure to submit emissions fees, emissions inventory, or compliance certifications greater than 60 days late.	Late submission of emission fees, emissions inventory, or compliance certifications 30 to 60 days late.	Late submission of emission fees, emissions inventory, or compliance certifications less than 30 days late.
11	Significant or complete failure to install, calibrate, maintain or operate a continuous parametric monitoring system or continuous emissions monitoring system that substantially interferes in determining compliance with the source's monitoring requirements.	Partial failure to calibrate or maintain a continuous parametric monitoring system or continuous emissions monitoring system that interferes in determining compliance with the source's monitoring requirements.	Partial failure to calibrate or maintain a continuous parametric monitoring system or continuous emissions monitoring system that does not significantly interfere with determining compliance with the source's monitoring requirements.
12	Substantial violation of CAA Section 112(r) requirements.	Failure to maintain records of an Alternative Operating Scenario.	Failure to submit contemporaneous notice of an Alternative Operating Scenario.
13	Failure to respond to CAA §114 Request for Information greater than 30 days late.	Complete failure to submit a Notification of Compliance Status or Notification of Intent to conduct a test.	Failure to submit a Notification of Compliance for a performance test at least 60 days after the test, or a Notification of Intent at least 60 days before a test.
14	Failure to install BACT and/or operate it correctly.	Failure to complete tuning or an energy assessment of a boiler, furnace, or heater as required under MACT.	Failure to file relocation notices (with no attendant permit, NSPS, or MACT violations).
15	Significant failure of continuous parameter monitoring with a data capture period less than 50% of total operating time.	Moderate failure of continuous parameter monitoring with a data capture period between 50-80% of total operating time that was not self-reported by the source.	Minor failure of continuous parameter monitoring with a data capture period between 50-80% of total operating time that was self-reported by the source.

Enforcement Procedures and Penalty Manual

16	Violation of an emission limit measured during a performance test with test results indicating emissions greater than 60% above the emission standard or test method deviation that substantially interferes in determining the source's compliance with an applicable emission standard.	Violation of an emission limit measured during a performance test with test results greater than 1% but less than 60% above the emission standard, or test method deviation that could potentially interfere with determining the source's compliance with an applicable emission standard.	Deviation of a test method that does not significantly interfere with determining the source's compliance with an applicable emission standard.
17	Violation of parameter limits where parameter is a direct surrogate for an emissions limitation, detected by continuous or periodic parameter monitoring.	Violation of parameter limits where parameter is not a direct surrogate for an emissions limitation, detected by continuous or periodic parameter monitoring.	Violations of a parameter limit at a true minor source.
18	Clean Air Act (CAA) violations by chronic or recalcitrant violators.	Failure to submit a new or revised fugitive dust control plan upon request, or to implement the plan.	Using a generally accepted test protocol without prior Administrator approval.
19	Violation of any substantive term of any Tribal or Federal order, consent decree, or administrative order.	Violation of a minor term of any Tribal or Federal order, consent decree, or administrative order.	Violation of an insubstantial term of any Tribal or Federal order, consent decree, or administrative order.

Enforcement Procedures and Penalty Manual

Attachment 3 – Clean Air Act Penalty Basis

A. Actual or Potential Harm					
Actual Release	Percent Above Standard			Penalty	Additional Info
	Range				
	<	but	≤		
	0%		30%	\$ 5,000.00	
	31%		60%	\$ 10,000.00	
	61%		90%	\$ 15,000.00	
	91%		120%	\$ 20,000.00	
	121%		150%	\$ 25,000.00	
	151%		180%	\$ 30,000.00	
	181%		210%	\$ 35,000.00	
	211%		240%	\$ 40,000.00	
	241%		270%	\$ 45,000.00	
271%		300%	\$ 50,000.00		
301%	and greater		\$50,000.00	+ 5,000 for each 30% or fraction increment above the standard	
			No Penalty	\$0.00	
			Total Amount	\$0.00	

Notes - From CAA CPP Page 10

Toxicity of Pollutant	HAP or MACT Standard		Penalty	Additional Info
	Penalty is per HAP emitted or for each MACT Subpart with violations		\$ 15,000.00	
	No Penalty		\$ -	
	Total Amount		\$ -	

*Only used in conjunction with 40 CFR Part 63 related violations.
Notes - From CAA CPP Page 11*

Sensitivity of the Environment NSPS	1. Non-attainment areas		Penalty	Additional Info
	Ozone			
		Extreme	\$ 18,000.00	
		Severe	\$ 16,000.00	
		Serious	\$ 14,000.00	
		Moderate	\$ 12,000.00	
		Marginal	\$ 10,000.00	
	CO and PM			
		Serious	\$ 14,000.00	
		Moderate	\$ 12,000.00	
	All other Criteria Pollutants		\$ 10,000.00	
	2. Attainment			
		PSD Class I	\$ 10,000.00	
		PSD Class II or III	\$ 5,000.00	
	3. Summary			
No Penalty		\$ -		
Total Amount		\$ -		

Notes - From CAA CPP Page 11 (for SIP and NSPS cases only)

Enforcement Procedures and Penalty Manual

Length of Time of Each Violation	Months of Duration			Penalty	Additional Info
	Range but				
	<		≤		
	0		1	\$ 5,000.00	
	2		3	\$ 8,000.00	
	4		6	\$ 12,000.00	
	7		12	\$ 15,000.00	
	13		18	\$ 20,000.00	
	19		24	\$ 25,000.00	
	25		30	\$ 30,000.00	
	31		36	\$ 35,000.00	
	37		42	\$ 40,000.00	
	43		48	\$ 45,000.00	
	49		54	\$ 50,000.00	
	55		60	\$ 55,000.00	

Notes - From CAA CPP Page 12

B. Importance to the Regulatory Scheme:					
Work Practice Standards	Deviation from Standard		Penalty	Additional Info	
			Minimum	\$ 10,000.00	
			Maximum	\$ 15,000.00	

Notes - From CAA CPP Page 12

Reporting and Notification	Late, Partial or Complete Failure		Penalty	Additional Info	
			Complete failure	\$ 15,000.00	
			Late	\$ 5,000.00	
		Incomplete Reports	Minimum	\$ 5,000.00	
		Maximum	\$ 15,000.00		

Notes - From CAA CPP Page 12
Includes compliance certifications

Recordkeeping	Partial or Complete Failure		Penalty	Additional Info	
			Complete failure	\$ 15,000.00	
		Incomplete Records	Minimum	\$ 5,000.00	
			Maximum	\$ 15,000.00	

Notes - From CAA CPP Page 12

Testing	Incorrect, Partial or Complete Failure		Penalty	Additional Info	
			Complete failure or improper test method	\$ 15,000.00	
			Partial failure or late	\$ 5,000.00	
			Incorrect test procedure	\$ 5,000.00	

Notes - From CAA CPP Page 13

Permitting	Incorrect, Partial or Complete Failure		Penalty	Additional Info	
		Permit Authorization	Complete failure	\$ 15,000.00	
		Fees	Failure to pay fee	50%	of total fee amount CAA 502(b)(3)(C)(ii)
			Current Daily Interest Rate		plus interest on amount unpaid

Notes - From CAA CPP Page 13

Enforcement Procedures and Penalty Manual

Emission Control Equipment	Complete or Intermittent Failure		Penalty	Additional Info	
			Complete failure	\$ 15,000.00	
	Intermittent operation		Minimum	\$ 5,000.00	
			Maximum	\$ 15,000.00	
<i>Notes - From CAA CPP Page 13</i>					

Monitoring	Late, Partial or Complete Failure		Penalty	Additional Info	
			Complete failure to install	\$ 15,000.00	
			Partial or late failure to operate	\$ 5,000.00	
				\$ 15,000.00	
<i>Notes - From CAA CPP Page 13</i>					

Administrative Orders	Any Failure to Comply		Penalty	Additional Info
	Consent Decree	Any violation	\$ 15,000.00	
	<i>Notes - From CAA CPP Page 13</i>			

Requests for Information	Failure to Respond or Incomplete Response		Penalty	Additional Info	
			Complete failure to respond	\$ 15,000.00	
	Incomplete response		Minimum	\$ 5,000.00	
			Maximum	\$ 15,000.00	
<i>Notes - From CAA CPP Page 13</i>					

Compliance Certification	Late, Partial or Complete Failure		Penalty	Additional Info	
			Failure to submit	\$ 15,000.00	
	Incomplete		Late	\$ 5,000.00	
			Minimum	\$ 5,000.00	
			Maximum	\$ 15,000.00	
<i>Notes - From CAA CPP Page 13</i>					

Enforcement Procedures and Penalty Manual

C. Additional Aggravating Factors					
Size of Source	Net Worth or Net Current Assets Units in USD x 1000		Penalty	Additional Info	
	<	Range but ≤			
	\$ 1,000.01		\$ 10,000.00	\$ 2,000.00	
	\$ 10,000.01		\$ 50,000.00	\$ 5,000.00	
	\$ 50,000.01		\$ 200,000.00	\$ 10,000.00	
	\$ 200,000.01		\$ 400,000.00	\$ 20,000.00	
	\$ 400,000.01		\$ 700,000.00	\$ 35,000.00	
\$ 700,000.01		\$ 1,000,000.00	\$ 50,000.00		
\$ 1,000,000.01			\$ 70,000.00	+ \$25,000 for every \$30,000,000 fraction thereof	
Reduce penalty to 50% if total penalty for Size of Source is greater than 50% preliminary deterrence penalty.					
Notes - From CAA CPP Page 14					

Compliance History			% Adjustment	Additional Info	
	Satisfactory Performer	- generally complies with regulations	No air quality violations within the previous 2 years and less than 3 air quality violations within the previous 5 year period	0%	
	Unsatisfactory Performer	- performs below minimal acceptable standards	Three or more violations in last five years	5%	
	Unclassified	- No compliance information	New facility	0%	
	Compliance History Summary		Unclassified	0%	

Other Factors that Justice May Require			% Adjustment	Additional Info
		Willfulness or Negligence		
		Degree of Cooperation		
0-20%				

D. Mitigating Factors				
Mitigating Factors			TOTAL Not to Exceed 30%	Percent Reduction
	Voluntary Disclosure of Non-Compliance			0%
	Prompt Correction of Environmental Problem			0%
	Degree of Cooperation			0%
	Environmental Compliance Program or Audit			0%
	Early Settlement			0%
	Total Amount			0%

E. Litigation Risk	
From CAA CPP Page 19	
Penalty amount yields higher than the statutory maximum	
Indication from court recommending a lower penalty amount	

Enforcement Procedures and Penalty Manual

Attachment 4 – Clean Air Act Civil Penalty Policy

This document can be found at: <http://www2.epa.gov/enforcement/clean-air-act-stationary-source-civil-penalty-policy-october-25-1991>

Enforcement Procedures and Penalty Manual

Attachment 5 – EPA Federally-Reportable Violations (FRV) and High Priority Violator (HPV) Policy

The FRV policy can be found at: <https://www.epa.gov/compliance/guidance-federally-reportable-violations-stationary-air-sources>

The HPV policy can be found at: <https://www.epa.gov/sites/production/files/2015-01/documents/hvpolicy2014.pdf>

Enforcement Procedures and Penalty Manual

Note - all samples of letters and enforcement actions are subject to change

Attachment 6 – Example Area of Concern

AIR QUALITY PROGRAM

Environmental Programs Division
Southern Ute Indian Tribe
PO Box 737 MS#84
Ignacio, CO 81137
970-563-0135

<http://www.southernute-nsn.gov/justice-and-regulatory/epd/air-quality>



{Date}

Certified Mail No. *{##}*
Return Receipt Requested

{Recipient, title}
{Company name}
{Mailing address}
{City, State ZIP}

Area(s) of Concern

Respondent: *{Company name – Facility name}*
Account ID: *{#-###}*
Inspection Date: *{Date}*

Dear *{Recipient}*:

On *{Date}*, *{Mr. or Ms. Inspector first and last name}*, an inspector with the Air Quality Program (AQP) of the Southern Ute Indian Tribe, conducted a *{Full or Partial}* Compliance Evaluation at *{Company name and Facility name}*.

This letter is being provided to advise *{Company name}* of certain areas of concern noted during the inspection having the potential to become regulatory non-compliance issues. Based on *{Mr. or Ms. Inspector's last name}* *{inspection and/or records review}*, the AQP has determined:

1. *{Describe area of concern, being sure to cite evidence and dates}*.
 - *{Potential non-compliance issue}* could result in a potential violation of *{RAC Citation, Permit Provision, and CFR with Subpart}*.

We appreciate your cooperation and attention to this matter. If you have any questions, please feel free to contact me at 970-563-*{Inspector's phone extension}* or by email at *{Inspector's email address}*.

**SOUTHERN UTE INDIAN TRIBE,
AIR QUALITY PROGRAM**

Enforcement Procedures and Penalty Manual

{Inspector name},
Air Quality Compliance Specialist

cc: *{AQP Manager name}*, AQP Manager
{AQ Enforcement Coordinator name}, AQ Enforcement Coordinator

Enforcement Procedures and Penalty Manual

Attachment 7 – Example Request for Information

AIR QUALITY PROGRAM

Environmental Programs Division
Southern Ute Indian Tribe
PO Box 737 MS#84
Ignacio, CO 81137
970-563-0135

<http://www.southernute-nsn.gov/justice-and-regulatory/epd/air-quality>



Request for Information

{Date}

{Recipient, Title}

{Company Name}

Account ID:

{Mailing Address}

{City, State ZIP}

Dear *{Recipient}*:

Regarding the AQP inspection conducted at your facility's premises on *{date}*, we respectfully request additional information to complete our inspection report. Please provide copies of or responses to the following requests to AQP by *{Day, Month Date, Year (which corresponds to two weeks from sent date)}*:

- 1.
- 2.
- 3.

We recognize that some of this material may have been submitted to AQP in the past. If such is the case, and that material is the most current information, simply refer to the title, date, and specific recipient of such documents in your response to this request.

Pursuant to the RAC § 2-124, you are entitled to claim information provided to AQP, or collected by AQP during an inspection, as confidential business information. Any such claim for confidentiality must conform to the requirements set forth in 40 CFR 2.203(b). Information which is emission data, is not eligible for confidential treatment as provided in 40 CFR 2.301(e).

If you have any questions, please contact 970-563-*{Inspector's phone extension}*. Thank you for your assistance in this matter.

Sincerely,

{AQP Compliance Specialist Name}

Air Quality Compliance Specialist

Enforcement Procedures and Penalty Manual

Attachment 8 – Example Written Warning

AIR QUALITY PROGRAM

Environmental Programs Division
Southern Ute Indian Tribe
PO Box 737 MS#84
Ignacio, CO 81137
970-563-0135



<http://www.southernute-nsn.gov/justice-and-regulatory/epd/air-quality>

{Date}

Certified Mail No. {##}
Return Receipt Requested

{Recipient, title}
{Company name}
{Mailing address}
{City, State ZIP}

Written Warning

Respondent: {Company name – Facility name}

Account ID: {#-###}

Inspection Date: {Date}

Dear {Recipient}:

This Written Warning provides notice to {Full Company name (Company name)} of compliance issues discovered by the Air Quality Program (AQP) of the Southern Ute Indian Tribe at {Facility name}. {Company name} owns and operates {Facility name} which is located within the exterior boundaries of the Southern Ute Indian Reservation at {Section}, {Township}, {Range}, {County}, Colorado. {Facility name} is subject to the terms and conditions of Tribal Operating Permit No. V-SUIT-{XXXX-XXXX.XX} issued on {Date} and the Reservation Air Code (RAC).

On {Date}, {Mr. or Ms. Inspector full name}, of the AQP, {inspected and/or conducted a records review} of the {Facility name}. Based on {Mr. or Ms. Inspector's last name}'s {inspection and/or records review}, AQP has identified the following alleged violations:

1. RAC Citation and Permit Provisions {I.A.I.a.} – Failure to comply with the {requirement}.

- **Finding:** The {requirement} for the period from {date} until {date}, was due {date}. {Requirement} is required by {Subpart} for emission unit(s). The report was received on {date}, {##} days late.

This letter constitutes a formal warning that {Company's Name - Facility name} may have operated in violation of Tribal Operating Permit No. V-SUIT-XXXX-XXXX.XX and the RAC. Please be aware that you are responsible for complying with the RAC and there are substantial penalties for failing to comply with applicable regulatory requirements. RAC § 2-

Enforcement Procedures and Penalty Manual

121(2)(b) authorizes the AQP to assess penalties and damages of up to a maximum of \$10,000 per day per violation for violations of any applicable requirement; permit condition; fee or filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or orders issued by the Tribe.

If you have any questions concerning this matter, please contact me at 970-563-XXXX or by email at *{AQP Manager email address}*.

**SOTHERN UTE INDIAN TRIBE,
AIR QUALITY PROGRAM**

{AQP Manager Name},
Air Quality Program Manager

cc: *{Name}*, Environmental Programs Division Head
{Name}, Tribal Legal Counsel
{Name}, Tribal Legal Counsel

Enforcement Procedures and Penalty Manual

Attachment 9 – Example Compliance Advisory

AIR QUALITY PROGRAM

Environmental Programs Division
Southern Ute Indian Tribe
PO Box 737 MS#84
Ignacio, CO 81137
970-563-0135



<http://www.southernute-nsn.gov/justice-and-regulatory/epd/air-quality>

{Date}

Certified Mail No. {##}
Return Receipt Requested

{Recipient, title}
{Company name}
{Mailing address}
{City, State ZIP}

Compliance Advisory

Respondent: {Company name – Facility name}

Account ID: {#-###}

Enforcement ID: {#####-##}

Inspection Date: {Date}

Dear {Recipient}:

The Southern Ute Indian Tribe (Tribe) Air Quality Program (AQP) issues this Compliance Advisory, pertaining to the operation of the {Facility name} by {Company name}, pursuant to the AQP's authority under the Southern Ute Indian Tribe/State of Colorado Environmental Commission's Reservation Air Code (RAC) §§ 1-104, 1-105 and 2-121. The AQP is initiating this Compliance Advisory action because it has cause to believe the compliance issues identified as follows may constitute violations of the RAC.

{Company name} owns and operates {Facility name}, located at {Section ##, T##N, R#W}, {County} Colorado, on the Southern Ute Indian Reservation. {Company name's Facility name} is subject to the Southern Ute Indian Tribe/State of Colorado Environmental Commission's RAC, federal air quality statutes and regulations, and the terms and conditions of Operating Permit No. V-SUIT-XXXXX-XXXX.XX. Permit Condition {I.A.I.a.}, Compliance Requirements, of the operating permit provides that any noncompliance with permit terms or conditions constitutes a violation of the RAC and the Clean Air Act.

On {Date}, an authorized AQP Compliance Specialist conducted an inspection of the {Facility name}. The AQP has identified the following alleged violations:

1. **RAC Citation and Permit Provisions {I.A.I.a.}** – Failure to comply with the {requirement}.

Enforcement Procedures and Penalty Manual

- **Finding:** The *{requirement}* for the period from *{date}* until *{date}*, was due *{date}*. *{Requirement}* is required by *{Subpart}* for emission unit(s). The report was received on *{date}*, *{##}* days late.

The AQP requests that *{Company name}* provide a written response to each alleged violation identifying any actions taken to resolve the alleged violations and, if an alleged violation is disputed, the basis for the dispute. For any unresolved alleged violation, the AQP requests that *{Company name}* provide a schedule, contingent upon the AQP's approval, which outlines a timeline for the full and final resolution of each unresolved alleged violation. For alleged violations that are resolved by the receipt date of this letter and which the resolution has been previously disclosed to the AQP through a report required by the RAC, submission of a schedule of resolution is not required. However, the AQP requests that *{Company Name}* address the final resolution of each alleged violation in a written response which specifies the date of resolution and the report in which the resolution was reported to the AQP. Please provide your written response and a Certification of Truth and Accuracy to the attention of *{Enforcement Coordinator}*, Enforcement Coordinator at *{email}* no later than ten business days of the receipt of this letter.

The AQP encourages *{Company name}* to take immediate action to resolve the alleged violations outlined above. Please be aware that you are responsible for complying with the RAC and there are potential penalties for failing to comply with applicable regulatory requirements. RAC § 2-121(2)(b) of the authorizes the AQP to assess penalties and damages of up to a maximum of \$10,000 per day per violation for violations of any applicable requirement; permit condition; fee or filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or orders issued by the Tribe.

Issuance of this Compliance Advisory does not in any way limit or preclude AQP from pursuing additional enforcement options concerning the AQP's *{Full/Partial}* Compliance Evaluation of *{Company name – Facility name}*, including issuance of a compliance order and assessment of penalties. In addition, this Compliance Advisory does not constitute a bar to an enforcement action for conditions not addressed in this letter. If at any time throughout the process of reaching a resolution of this Compliance Advisory, AQP determines the parties cannot agree to the dispositive facts, compliance requirements, and penalty assessments (if any) associated with this Compliance Advisory, or a resultant enforcement action, the Tribe's AQP may exercise its full enforcement authority allowed under the law.

For your information, the AQP's enforcement process is outlined in the ***Enforcement Procedures and Penalty Manual*** located at <https://www.southernute-nsn.gov/justice-and-regulatory/epd/air-quality/air-permitting/>. If *{Company name}* would like to discuss this Compliance Advisory, please contact either *{Enforcement Coordinator}*, Enforcement Coordinator at 970-563-XXXX or *{AQP Manager}*, Program Manager at 970-563-XXXX.

**SOUTHERN UTE INDIAN TRIBE,
AIR QUALITY PROGRAM**

By: _____ **Date:** _____

Enforcement Procedures and Penalty Manual

{AQP Manager Name},
Air Quality Program Manager

cc: *{Name}* Environmental Programs Division Head
 {Name} Tribal Legal Counsel
 {Name} Tribal Legal Counsel

Enforcement Procedures and Penalty Manual

Attachment 10 – Example Notice of Violation

AIR QUALITY PROGRAM

Environmental Programs Division
Southern Ute Indian Tribe
PO Box 737 MS#84
Ignacio, CO 81137
970-563-0135

<http://www.southernute-nsn.gov/justice-and-regulatory/epd/air-quality>



{Date}

Certified Mail No. *{###}*

Return Receipt Requested

{Responsible Official's Name, Title}

{Company Name}

{Mailing address}

{City, State ZIP}

Notice of Violation and Settlement Offer

Respondent: *{Company Name} – {Facility Name}*

Account ID: *{X-XXX}*

Enforcement Case ID: *{Current Year-Case #}*

On-site Inspection *{Facility Name}*: *{Facility Inspection Date}*

Dear Mr./Ms. *{RO's Last Name}*:

The Southern Ute Indian Tribe (Tribe) Air Quality Program (AQP) issues this Notice of Violation to *{Company name}{Facility Name}* pursuant to the AQP's authority under the Southern Ute Indian Tribe/State of Colorado Environmental Commission Reservation Air Code (RAC) §§ 1-104, 1-105, and 2-121. Please find attached a proposed Settlement Agreement and Stipulated Final Compliance Order. The proposed Settlement Agreement and Stipulated Final Compliance Order constitutes an offer of settlement for this Notice of Violation. This offer with the deferral expires on *{30 days from issuance of NOV}*.

I. FINDINGS OF FACT

1. *{Company name}* owns and operates *{Facility name}*, located at *{Section ##, T##N, R#W}*, in La Plata County, Colorado, on the Southern Ute Indian Reservation. *{Company name}{Facility name}* is subject to the Southern Ute Indian Tribe/State of Colorado Environmental Commission's RAC, federal air quality statutes and regulations, and the terms and conditions of Operating Permit No. V-SUIT-*{#####-#####.##}*. Permit Condition *{III.B.1.(a) or IV.B.1.(a)}*, Compliance Requirements, of the operating permit provides that any noncompliance with permit terms or conditions constitutes a violation of the RAC and the Clean Air Act.

2. *{Company name}* applied for and was issued an initial Operating Permit No. V-SUIT-*{#####-#####.##}* from the Tribe on *{date}* for *{Company name's} {Facility name}*. (This permit was revised on *{date}* leading to Permit No. *{SUIT Permit #}*).

Enforcement Procedures and Penalty Manual

3. An authorized AQP Compliance Specialist completed a scheduled *{Full/Partial}* Compliance Evaluation, consistent with the Tribe's Compliance Monitoring Strategy, for *{Company name}{Facility name}* on *{Inspection date}*. During the inspection and records review, an AQP's Compliance Specialist identified certain alleged violations pertaining to emission unit(s) *{Emission Unit IDs}* at *{Facility Name}*, which are documented and outlined in Section II.1 of this Notice.

II. PROVISIONS OF THE LAW ALLEGED TO HAVE BEEN VIOLATED

The following alleged violations were documented by the Tribe's AQP at the *{Facility Name}*:

1. **RAC Citation and Permit Provisions *{I.A.1.a.}*** – Failure to comply with the *{requirement}*.
 - **Finding:** The *{requirement}* for the period from *{date}* until *{date}*, was due *{date}*. *{Requirement}* is required by *{Subpart}* for emission unit(s). The report was received on *{date}*, *{##}* days late.

III. CIVIL PENALTIES FOR THE ALLEGED VIOLATIONS

The amount of noncompliance penalty is calculated as *{Dollar amount}* (\$0) in accordance with the AQP's ***Enforcement Procedures and Penalty Manual***, a copy of which can be found at <https://www.southernute-nsn.gov/justice-and-regulatory/epd/air-quality/air-permitting/>. *{dollar amount}* (\$) will be deferred if *{Company name}* executes this Settlement Agreement on or before *{30 days from issuance of NOV}*, and the amount of *{Total minus Deferral Dollar amount}* (\$) is paid within 30 days of the effective date of this Settlement Agreement, and contingent upon *{Company's Name}* timely and satisfactory compliance with all terms of the Settlement Agreement and Stipulated Final Compliance Order, the Air Quality Program will defer *{Company's name}* payment of *{Dollar amount}* (\$) of the civil penalty amount. See attached Penalty Summary. RAC § 2-121(2) authorizes the AQP to assess penalties and damages of up to a maximum of \$10,000 per day per violation for violations of any applicable requirement; permit condition; fee or filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or orders issued by the Tribe.

IV. CONFERENCE REGARDING THE ALLEGED VIOLATIONS

1. In accordance with the procedures set forth in the AQP's ***Enforcement Procedures and Penalty Manual***, a conference regarding the alleged violations described above has been scheduled for *{date}* at *{0:00 AM/PM}*, at the Air Quality Program office, located at 71 Mike Frost Way, Ignacio, Colorado, 81137. This conference will provide *{Company name}* an opportunity to submit data, views, and arguments concerning the alleged violations and whether assessment of civil penalties was appropriate. *{Company name}* may provide information in advance of the NOV conference.

Enforcement Procedures and Penalty Manual

2. If *{Company name}* has any questions concerning the conference, or does not wish to participate in a conference, please contact *{Enforcement Coordinator's Name}*, Air Quality Enforcement Coordinator, at 970-563-*{XXXX}* or *{email}*.

V. ADDITIONAL ACTION BY THE DIVISION

{Company name's} failure to accept the proposed Settlement Agreement and Stipulated Final Compliance Order on or before *{90 days from issuance of NOV}*, will result in issuance of a Compliance Order and assessment of additional penalties against *{Company name}*. Subsequent violation of a Compliance Order may subject *{Company name}* to further enforcement action under RAC § 2-121.

VI. EFFECTIVE DATE OF NOTICE

This Notice of Violation will become effective upon receipt dated *{date emailed}*, with a hard copy to follow.

If *{Company name}* would like to discuss this Notice of Violation or the proposed Settlement Agreement and Stipulated Final Compliance Order, please contact *{Enforcement Coordinator Name}*, Enforcement Coordinator, at 970-563-*{XXXX}*, or *{Program Manager's Name}*, Program Manager, at 970-563-*{XXXX}*. If no response is received from *{Company name}* by *{10 business days from NOV issuance}*, the Settlement Agreement will expire and a Compliance Order may be issued.

SOUTHERN UTE INDIAN TRIBE, AIR QUALITY PROGRAM

By: _____ Date: _____
{Name},
Air Quality Program Manager

cc: *{Name}*, Environmental Programs Division Head
{Name}, Tribal Legal Counsel
{Name}, Tribal Legal Counsel

Attachments:

1. Civil Penalty Summary of Enforcement Worksheet
2. Proposed Settlement Agreement and Stipulated Final Compliance Order Enforcement Case ID: *{####-##}*

Enforcement Procedures and Penalty Manual

Attachment 11 – Example No Further Action Letter

AIR QUALITY PROGRAM

Environmental Programs Division
Southern Ute Indian Tribe
PO Box 737 MS#84
Ignacio, CO 81137
970-563-0135



<http://www.southernute-nsn.gov/justice-and-regulatory/epd/air-quality>

{Date}

Certified Mail No. {##}
Return Receipt Requested

{Recipient, title}
{Company name}
{Mailing address}
{City, State ZIP}

No Further Action

Respondent: {Company name – Facility name}

Account ID: {#-###}

Inspection Date: {Date}

Dear {Recipient}:

As a result of an {inspection and/or records review of} conducted at {Company name - Facility name} on {Date}, the Air Quality Program (AQP) of the Southern Ute Indian Tribe sent a {Compliance Advisory or Notice of Violation} letter on {Date of CA or NOV letter}. The {Compliance Advisory or Notice of Violation} stated that {outline alleged violations}.

{Outline and discuss reasons or documentation substantiating source compliance and/or AQP decision not to pursue enforcement}

For the reasons outlined above, the AQP has determined that No Further Action is warranted in relation to the previously cited alleged violations. AQP is therefore closing out {Enforcement Case ID:#} associated with {Company name, Source name} and will not pursue enforcement action at this time for the alleged violations. This “no further action” determination is based on the information currently possessed by the AQP and assumes the truth, accuracy and completeness of the information supplied by {Company name}. If any information associated with this no further action determination turns out to be incorrect, AQP reserves the right to rescind this NFA determination and take appropriate action

We appreciate your time and cooperation in this matter. If you have any question, please contact {Enforcement Coordinator}, Enforcement Coordinator, at 970-563-XXXX or me at 970-563-XXXX {Program Manager phone}.

**SOUTHERN UTE INDIAN TRIBE,
AIR QUALITY PROGRAM**

Enforcement Procedures and Penalty Manual

By: _____ Date: _____
{AQP Manager Name},
Air Quality Program Manager

cc: *{Name}* Environmental Programs Division Head
 {Name} Tribal Legal Counsel
 {Name} Tribal Legal Counsel

Enforcement Procedures and Penalty Manual

Attachment 12 – Example Settlement Agreement

AIR QUALITY PROGRAM ENVIRONMENTAL PROGRAMS DIVISION SOUTHERN UTE INDIAN TRIBE

SETTLEMENT AGREEMENT AND STIPULATED FINAL COMPLIANCE ORDER Enforcement Case ID: XXXX-XX

In the Matter of:
{Company Name – Facility Name}

This Settlement Agreement and Stipulated Final Compliance Order is entered into between the Southern Ute Indian Tribe by and through its Environmental Programs Division, Air Quality Program, pursuant to the Southern Ute Indian Tribe’s authority under §§1-104, 1-105 and 2-121 of the Southern Ute Indian Tribe/State of Colorado Environmental Commission’s Reservation Air Code (RAC) and the Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2004, Pub. L. No. 108-336, 118 Stat. 1354, and *{Full Company name (Company name)}*. The Air Quality Program and *{Company name}* may be referred to collectively as “the Parties.”

I. STATEMENT OF PURPOSE

The mutual objectives of the Parties entering into this Settlement Agreement and Stipulated Final Compliance Order are:

- A. To bring *{Company name – Facility name}* into compliance with the RAC.
- B. To resolve alleged RAC violations, as described below, discovered at *{Company name – Facility name}* by the Air Quality Program during an on-site inspection and records review on *{date}*.

II. HISTORY AND ALLEGED VIOLATIONS

The Parties stipulate to the following facts:

- A. *{Company name}* owns and operates the *{Facility name}*, a *{facility description}* facility, located at *{Section ##, T##N, R#W}*, in *{County}* County, Colorado, on the Southern Ute Indian Reservation. *{Company’s name – Facility name}* is subject to the Southern Ute Indian Tribe/State of Colorado Environmental Commission’s RAC, federal air quality statutes and regulations, and the terms and conditions of Operating Permit No. V-SUIT-*{#####-####.##}*. Permit Condition *{III.B.1.(a) or IV.B.1.(a)}*, Compliance Requirements, of the operating permit provides that any noncompliance with permit terms or conditions constitutes a violation of the RAC and the Clean Air Act.

Enforcement Procedures and Penalty Manual

B. *{Company name}* applied for and received Title V Operating Permit No. V-SUIT-*{#####-#####.##}* for the *{Facility name}* from the Southern Ute Indian Tribe on *{date}*. The permit became effective on *{date}*.

C. On *{date}*, two authorized Air Quality Compliance Specialists of the Air Quality Program conducted an on-site inspection associated with a *{Full/Partial}* compliance evaluation to assess the compliance status of the *{Company name – Facility name}* with respect to the terms and conditions of Operating Permit No. V-SUIT-*{XXXX-XXXX.XX}*. The Air Quality Program found the following alleged violations:

1. RAC Citation and Permit Provisions *{I.A.I.a.}* – Failure to comply with the *{requirement}*.

- **Finding:** The *{requirement}* for the period from *{date}* until *{date}*, was due *{date}*. *{Requirement}* is required by *{Subpart}* for emission unit(s). The report was received on *{date}*, *{##}* days late.

D. The Air Quality Program issued a Notice of Violation (NOV) to *{Company name}* on *{date}* for the alleged violations documented at the *{Facility name}*.

E. A NOV conference was proposed on {10 business days after issuance of NOV} to provide *{Company name}* with an opportunity to present data, arguments, and other information concerning the alleged violations.

F. The Air Quality Program and *{Company name}* entered into settlement discussions for alleged violations at the *{Facility name}* since it is in the interest of both parties to resolve the alleged violations and reach a Settlement Agreement. The terms of the Parties' Settlement Agreement and Stipulated Final Compliance Order are set forth below.

III. COMPLIANCE REQUIREMENTS

Based on the foregoing stipulated facts, *{Company name}* agrees to:

A. Effective immediately and without limitation, *{Company Name}* shall comply with the Reservation Air Code and Operating Permit No. V-SUIT-*{XXXX-XXXX.XX}* in the regulation and control of air pollutants from *{Company name – Facility name}*, including timely reporting.

B. Within 90 days of the effective date of this Settlement Agreement, *{Company Name}* shall submit a written Notification of Compliance and a Certification of Truth and Accuracy to the Air Quality Program demonstrating these compliance requirements have been met:

1. *{Company Name}* shall...

IV. PENALTIES

A. Based upon the factors set forth in the Clean Air Act and the Southern Ute Indian Tribe's Enforcement Procedures and Penalty Manual, the Air Quality Program has assessed a civil

Enforcement Procedures and Penalty Manual

penalty in the amount of *{Dollar Amount}* *{\$0}* against *{Company Name}* for alleged violations of the Reservation Air Code and Title V Operating Permit cited in Section II of this Settlement Agreement and Stipulated Final Compliance Order. (See attached Penalty Summary).

B. If *{Company Name}* (1) executes this Settlement Agreement on or before *{30 days from issuance of NOV}*, (2) pays the amount of *{Total minus Deferral Dollar Amount (\$)}* within 30 days of the effective date of this Settlement Agreement, and (3) fully, timely, and satisfactorily complies with all terms of the Settlement Agreement and Stipulated Final Compliance Order, the Air Quality Program will defer *{Company's Name}* payment of *{Dollar Amount (\$)}* of the civil penalty amount. If *{Company Name}* fails to timely and satisfactorily comply with the requirements of this Settlement Agreement and Stipulated Final Compliance Order, the Air Quality Program may require *{Company Name}* to pay all or part of the deferred penalty.

C. *{Company Name}* shall pay the civil penalty due by electronic funds transfer (EFT) to the Southern Ute Indian Tribe, Air Quality Program in accordance with written instructions to be provided to *{Company Name}* by the Air Quality Program. At the time of payment, *{Company Name}* shall send a copy of the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to this Settlement Agreement and Stipulated Final Compliance Order and shall reference Settlement Agreement and Stipulated Final Compliance Order Enforcement Case ID XXXX-XX, by email to *{AQP Program Manager's email}*; and by mail to:

**Environmental Programs Division
P.O. Box 737 MS# 84
Ignacio, CO 81137**

D. Penalties paid pursuant to this Settlement Agreement and Stipulated Final Compliance Order are not deductible for federal tax purposes under 28 U.S.C. § 162(f).

V. *{COMPANY NAME}* AGREEMENT TO SETTLE

A. *{Company Name}* agrees to the terms and conditions of this Settlement Agreement and Stipulated Final Compliance Order. Compliance with this Settlement Agreement and Stipulated Final Compliance Order shall be a requirement under the RAC. *{Company Name}* agrees not to challenge the factual or legal determinations made by the Air Quality Program in connection with this enforcement case, the Air Quality Program's authority to bring, or the federal court's jurisdiction to hear, any action to enforce the terms of this Settlement Agreement and Stipulated Final Compliance Order.

B. The undersigned representative of *{Company Name}* certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Stipulated Final Compliance Order and to execute and legally bind *{Company Name}* to this document.

C. Failure by *{Company Name}* to comply with any of the terms of this Settlement Agreement and Stipulated Final Compliance Order shall constitute a breach of this Settlement Agreement and Stipulated Final Compliance Order and may result in referral of the matter to the

Enforcement Procedures and Penalty Manual

Southern Ute Indian Tribe's legal counsel for legal action seeking compliance with this Settlement Agreement and Stipulated Final Compliance Order and for such other relief as may be appropriate.

VI. SCOPE AND EFFECT OF SETTLEMENT AGREEMENT

A. The Parties agree and acknowledge that this Settlement Agreement and Stipulated Final Compliance Order constitutes a full and final resolution of the Air Quality Program's civil claims for the alleged violations addressed in this Settlement Agreement and Stipulated Final Compliance Order and Notice of Violation. The Parties further agree not to challenge the terms and conditions of this Settlement Agreement and Stipulated Final Compliance Order in any proceeding before any administrative body or any judicial forum, whether by way of direct judicial review or collateral challenge.

B. Nothing herein shall be construed as prohibiting the Air Quality Program from seeking compliance with this Settlement Agreement and Stipulated Final Compliance Order in the event either party fails to fulfill its obligations under this Settlement Agreement and Stipulated Final Compliance Order. Each party reserves all legal and equitable remedies available to enforce the provisions of this Settlement Agreement and Stipulated Final Compliance Order. This Settlement Agreement and Stipulated Final Compliance Order shall not be construed to limit the rights of the Air Quality Program to obtain penalties or injunctive relief for violations not addressed in this Settlement Agreement and Stipulated Final Compliance Order. The Air Quality Program further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, *{Company Name}*, whether related to the violations addressed in this Settlement Agreement and Stipulated Final Compliance Order or otherwise.

C. This Settlement Agreement and Stipulated Final Compliance Order constitutes a final agency order upon execution by *{Company Name}* and the Air Quality Program and shall be enforceable by either party. The Parties agree that any violation of the provisions of this Settlement Agreement and Stipulated Final Compliance Order by *{Company Name}* shall be a violation of a final order of the Air Quality Program.

D. The Parties' obligations under this Settlement Agreement and Stipulated Final Compliance Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Settlement Agreement and Stipulated Final Compliance Order are incorporated into this Settlement Agreement and Stipulated Final Compliance Order and become enforceable under the terms of this Settlement Agreement and Stipulated Final Compliance Order as of the date of approval by the Air Quality Program.

E. The Air Quality Program's approval of any submission, standard, or action under this Settlement Agreement and Stipulated Final Compliance Order shall not constitute a defense to, or an excuse for, any prior violation of any requirement under the RAC or any subsequent violation of any requirement of this Settlement Agreement and Stipulated Final Compliance Order or the RAC.

Enforcement Procedures and Penalty Manual

F. The alleged violations will constitute part of *{Facility Name}* compliance history for any purpose for which such history is relevant, including considering the violations described above in assessing a penalty for any subsequent violations, in accordance with the provisions of RAC § 2-121, against *{Facility Name}*.

G. *{Company Name}* shall comply with all applicable federal, Environmental Commission, and tribal laws or regulations and shall obtain all necessary approvals or permits to conduct the investigation and remedial activities required by this Settlement Agreement and Stipulated Final Compliance Order and perform its obligations required hereunder. The Air Quality Program makes no representation with respect to approval and permits required by federal, Environmental Commission, and tribal laws or regulations other than those specifically referred to herein.

H. By signing this Settlement Agreement and Stipulated Final Compliance Order, *{Company Name}* certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response, and statement.

I. This Settlement Agreement and Stipulated Final Compliance Order constitutes the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied herein and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Settlement Agreement and Stipulated Final Compliance Order or the settlement it represents, nor shall it be used in construing the terms of this Settlement Agreement and Stipulated Final Compliance Order.

VII. NOTICES

Unless otherwise specified, any report, notice or other communication required under the Settlement Agreement and Stipulated Final Compliance Order shall be sent to:

**Southern Ute Indian Tribe
Environmental Programs Division
Air Quality Program
P.O. Box 737 MS# 84
Ignacio, CO 81137**

**For: *{Company Name – Facility Name}*
*{Enforcement Case ID#}***

VIII. EFFECT OF BANKRUPTCY PETITION

The obligations imposed by this Settlement Agreement and Stipulated Final Compliance Order require the performance by *{Company Name}* of actions which are reasonably designed to protect public health and welfare and the environment. Any enforcement of the obligations imposed by this Settlement Agreement and Stipulated Final Compliance Order constitutes, solely

Enforcement Procedures and Penalty Manual

for the purposes of 11 U.S.C. section 362(b)(4), the enforcement of a judgment, other than a money judgment, obtained in an action to enforce the Tribe's regulatory and police powers.

IX. MODIFICATIONS

This Settlement Agreement and Stipulated Final Compliance Order may be modified only upon mutual written agreement of the Parties. The Air Quality Program, in its sole discretion, may extend any deadlines set forth herein, and upon acceptance of such extension by *{Company Name}*, any such extension shall constitute a modification to this Settlement Agreement and Stipulated Final Compliance Order.

X. COUNTERPARTS

This Settlement Agreement and Stipulated Final Compliance Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement. Electronic signed versions are the same as originals.

XI. RESERVATION OF RIGHTS

The Air Quality Program reserves the right to bring any action or to seek civil or administrative penalties for any past, present or future violations of the RAC not specifically addressed herein. Further, the Air Quality Program has the right to bring any action to enforce this Settlement Agreement and Stipulated Final Compliance Order and to seek any authorized penalties for any violation of this Settlement Agreement and Stipulated Final Compliance Order. The Air Quality Program reserves the right to revoke this Settlement Agreement and Stipulated Final Compliance Order if and to the extent the Air Quality Program finds, after signing this Settlement Agreement and Stipulated Final Compliance Order, that any information provided by *{Company Name}* was materially false or inaccurate at the time such information was provided to the Air Quality Program, and the Air Quality Program reserves the right to assess and collect any and all civil penalties for any violation described herein.

XII. BINDING EFFECT, EFFECTIVE DATE, AND TERM

This Settlement Agreement and Stipulated Final Compliance Order is binding upon the Parties to this Settlement Agreement and Stipulated Final Compliance Order and their corporate subsidiaries or parents, their officers, directors, agents, attorneys, employees, contractors, successors in interest, and assigns. The undersigned representatives certify that they are authorized by the party or parties whom they represent to enter into this Settlement Agreement and Stipulated Final Compliance Order and to execute and legally bind that party or those parties to the terms and conditions of the Settlement Agreement and Stipulated Final Compliance Order. This Settlement Agreement and Stipulated Final Compliance Order shall become effective as of the date on which the last of all required signatures has been obtained and shall expire upon *{Company name}*'s fulfillment of all of its obligations under this Settlement Agreement and Stipulated Final Compliance Order.

XIII. DISPUTE RESOLUTION

Enforcement Procedures and Penalty Manual

Any claim, dispute, or controversy arising out of or in connection with or relating to this Settlement Agreement and Stipulated Final Compliance Order or the breach or alleged breach thereof, shall be settled by mutual agreement of the Parties' senior management to the extent possible. To the extent disputes cannot be mutually resolved, each party may pursue any available remedies.

XIV. STIPULATED FINAL COMPLIANCE ORDER

This Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Parties, is approved as a final Compliance Order.

{RESPONDENT - COMPANY NAME}

By: _____ Date: _____
{Respondent – Responsible Official Name},
{Respondent – Title}

**SOUTHERN UTE INDIAN TRIBE,
AIR QUALITY PROGRAM**

By: _____ Date: _____
{Name},
Environmental Programs Division Head

By: _____ Date: _____
{Name},
Air Quality Program Manager

cc: *{Name},* Tribal Legal Counsel
{Name}, Tribal Legal Counsel

Enforcement Procedures and Penalty Manual

Attachment 13 – Example Compliance Order

AIR QUALITY PROGRAM

Environmental Programs Division
Southern Ute Indian Tribe
PO Box 737 MS#84
Ignacio, CO 81137
970-563-0135



<http://www.southernute-nsn.gov/justice-and-regulatory/epd/air-quality>

{Date}

Certified Mail No. {##}
Return Receipt Requested

{Recipient, title}
{Company name}
{Mailing address}
{City, State ZIP}

**BEFORE THE AIR QUALITY PROGRAM
ENVIRONMENTAL PROGRAMS DIVISION
SOUTHERN UTE INDIAN TRIBE**

COMPLIANCE AND PENALTY ORDER
Enforcement Case ID: {#####-##}

In the Matter of:
{Company name, Facility name}

This Compliance Order is issued by the Air Quality Program (AQP) to {Company name, Facility name} pursuant to the authority of the Southern Ute Indian Tribe under §§1-104, 1-105 and 2-121 of the Southern Ute Indian Tribe/State of Colorado Environmental Commission's Reservation Air Code.

I. FINDINGS OF FACT

1. {Company name}, owns and operates {Facility name}, a {Facility description} facility located at {Section}, {Township}, {Range}, {County}, Colorado. {Company name – Facility name} is subject to the Southern Ute Indian Tribe/State of Colorado Environmental Commission's Reservation Air Code, Federal air quality statutes and regulations, and the terms and conditions of Operating Permit No. V-SUIT- {#####-#####.##}. Permit Condition No. {III.B.1.(A) or IV.B.1.(A)} provides that any noncompliance with permit terms or conditions constitutes a violation of the RAC and the Clean Air Act.
2. On {Date}, {Inspector's name} conducted an {inspection and/or records review}, to assess the compliance status of {Company name – Facility name} with the terms and conditions of Operating Permit No. V-SUIT- {#####-#####.##}. Based on the results of this {inspection and/or records review}, AQP has determined the following:

Enforcement Procedures and Penalty Manual

- A. *{Company name, Facility name}* failed to *{summarize violation such as “maintain records of performance tests and performance evaluations for emission unit X”}* in violation of Federal Operating Permit No. V-SUIT-*{#####-#####.##}*, Permit Condition *{number}*.
 - B. *{add more violation description lines as necessary}*.
3. Pursuant to the above Findings of Fact, the Tribe issued a *{a Compliance Advisory (CA) or Notice of Violation (NOV)}* to *{Company name, Facility name}* on *{Date of CA or NOV}* based on the results of this *{inspection and/or records review}*.
 4. A *{CA or NOV}* conference was held on *{Date of CA or NOV conference}* to provide *{Company name, Facility name}* with an opportunity to present data, arguments, and other information concerning the alleged violations. *{Company name}* *{attended/did not attend}* the conference and *{presented/failed to present}* information that demonstrated noncompliance with the RAC and the terms and conditions of Operating Permit No. V-SUIT-*{#####-#####.##}* as identified above.

II. CONCLUSIONS OF LAW

Based on the foregoing findings of fact, and pursuant to its authority under RAC §§ 1-104, 1-105 and 2-121, the AQP determines that *{Company name, Facility name}* violated the following:

1. Operating Permit No. V-SUIT-*{#####-#####.##}*, Permit Condition *{number}*, *{cite parallel RAC requirement}*, and *{cite parallel regulatory requirements from NSPS, NESHAP and/or MACT}*. These violation(s) occurred on *{Date or Date Range}*.
2. *{add more violation citation lines as necessary}*

III. COMPLIANCE REQUIREMENTS

Based on the foregoing Findings of Fact and Conclusions of Law, and pursuant to RAC §2-121, *{Company name, Facility name}* is hereby ordered to comply with the following requirements:

1. Effective immediately and without limitation, *{Company name}* shall comply with the Reservation Air Code and Operating Permit No. V-SUIT-*{#####-#####.##}* in the regulation and control of air pollutants from *{Company name, Facility name}*.
2. *{Add compliance requirement/action lines such as “{Company name, Facility name} shall install oxidation catalysts on emission unit no. {XX} by {Date} reducing carbon monoxide emissions to less than {X} g/hp-hr. Source testing shall be conducted within 90 days of installation to confirm the emission rate of {X} g/hp-hr has been achieved”}*.

Enforcement Procedures and Penalty Manual

3. *{Add more compliance requirement/action lines as necessary}*.

This Compliance Order shall constitute a final order of the AQP.

IV. CIVIL PENALTIES

1. Based upon the factors set forth in the Southern Ute Indian Tribe's Enforcement Procedures and Penalty Manual, the AQP has assessed a civil penalty in the amount of _____ Dollars (\$ _____) against *{Company name, Facility name}* for violations of the Reservation Air Code cited in Section II. of this Compliance Order.
2. *{Company name, Facility name}* shall pay the civil penalty to the Southern Ute Indian Tribe, Air Quality Program within 30 days of the effective date of this Compliance Order. *{Company name, Facility name}* shall pay the civil penalty due by electronic funds transfer ("EFT") to the Southern Ute Indian Tribe, Air Quality Program in accordance with written instructions to be provided to *{Company name, Facility name}* by the Air Quality Program. At the time of payment, *{Company name, Facility name}* shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to this Compliance Order, and shall reference the Compliance Order Enforcement Case ID # by email to *{AQP Manager email}*; and by mail to:

**Environmental Programs Division
P.O. Box 737 MS#84
Ignacio, CO 81137**

V. OPPORTUNITY TO APPEAL

Pursuant to RAC § 1-104 and the Environmental Commission's Procedural Rules, *{Company name, Facility name}* has the right to appeal to the Environmental Commission by sending a written request for a hearing to the Commission at:

**Southern Ute Indian Tribe/State of Colorado Environmental Commission
% Environmental Programs Division
P.O. Box 737 MS#84
Ignacio, CO 81137**

The request for a hearing may include a request to determine any one or all of the following items:

1. Whether the alleged violation or noncompliance existed or did not exist.
2. Whether *{Company name, Facility name}* is subject to civil penalties under RAC § 2-121 and whether the civil penalties are appropriate for the alleged violation or noncompliance.

Enforcement Procedures and Penalty Manual

The Environmental Commission's Administrative Appeal Procedures require that all requests for review be filed with the Commission within 30 days following the date of the appealed action.

VI. NOTICE OF POTENTIAL LIABILITY FOR ADDITIONAL CIVIL PENALTIES AND INJUNCTIVE RELIEF

In accordance with RAC § 2-112(1)(c), failure to comply with the terms of this Compliance Order could result in termination of *{Company name, Facility name}*'s permit to operate. In addition, the Act of October 18, 2004, Pub. L. No. 108-336, 118 Stat. 1354, and RAC § 2-121 authorize the Tribe or the Environmental Commission to bring a civil action for declaratory and injunctive relief, or for other orders in aid of enforcement, against any person who fails to comply with any term or condition contained in any permit or other final civil order of the Tribe or the Commission and assess penalties for failure to comply with a final order of the Tribe or Commission in an amount up to \$10,000.00 per day per violation.

VII. EFFECTIVE DATE OF ORDER

This Compliance Order shall become effective upon receipt.

SOUTHERN UTE INDIAN TRIBE, AIR QUALITY PROGRAM

By: _____ Date: _____
{Name},
Environmental Programs Division Head

By: _____ Date: _____
{Name},
Air Quality Program Manager

cc: *{Name}* Tribal Legal Counsel
{Name} Tribal Legal Counsel

Enforcement Procedures and Penalty Manual

Attachment 14 – Example Notice of Non-Compliance

AIR QUALITY PROGRAM

Environmental Programs Division
Southern Ute Indian Tribe
P.O. Box 737 MS#84
Ignacio, CO 81137
970-563-0135



<http://www.southernute-nsn.gov/justice-and-regulatory/epd/air-quality>

{Date}

Certified Mail No. {##}
Return Receipt Requested

{Responsible Official's Name, Title}

{Company Name}

{Mailing Address}

{City, State ZIP}

Notice of Non-Compliance with Settlement Agreement and Stipulated Final Compliance Order

Respondent: {Company name} – {Facility name}

Account ID: #-###

Enforcement Case ID: {Case #}

Dear Mr./Ms. {RO's Last Name}:

The Southern Ute Indian Tribe Air Quality Program issues this Notice of Non-Compliance with Settlement Agreement and Stipulated Final Compliance Order to {Company name}{Facility name} pursuant to the Air Quality Program's (AQP's) authority under Sections IV and V of the Settlement Agreement and Stipulated Final Compliance Order for Enforcement Case ID {Case #}, that was fully executed by the and {Company name} on {Date}. Please find attached the corresponding Settlement Agreement and Stipulated Final Compliance Order for Enforcement Case ID {Case #}.

I. BACKGROUND

{An/Two} Authorized AQP Compliance Specialist{s} conducted a {full/partial} Compliance Evaluation for {Company name}{Facility Name} on {Inspection Date}. The AQP documented {number of violations} alleged violations of the Reservation Air Code and Operating Permit No. V-SUIT-{XXXX-XXXX.XX} and issued a Notice of Violation on {Date}. {Company name} and the AQP executed a Settlement Agreement and Stipulated Final Compliance Order on {Date}.

II. DOCUMENTATION OF NON-COMPLIANCE

On {Date}, an Air Quality Enforcement Coordinator conducted a follow-up investigation to verify {Company name}'s completion of the Compliance Requirements in Section III of the Settlement Agreement and Stipulated Final Compliance Order. The Air Quality Enforcement

Enforcement Procedures and Penalty Manual

Coordinator documented that *{Company name}* failed to comply with the following Compliance Requirements from the Settlement Agreement and Stipulated Final Compliance Order for Enforcement Case ID *{Case #}*:

#. [*Compliance Requirement language from Settlement Agreement and Stipulated Final Compliance Order*]

III. CIVIL PENALTIES FOR NON-COMPLIANCE

{Company name} failed to timely and satisfactorily comply with the requirements of Settlement Agreement and Stipulated Final Compliance Order for Enforcement Case ID *{Case #}*. In accordance with Section IV.B of the Settlement Agreement and Stipulated Final Compliance Order, the Air Quality Program may require *{Company name}* to pay all or part of the deferred penalty amount if *{Company name}* fails to timely and satisfactorily comply with the requirements of the Settlement Agreement and Stipulated Final Compliance Order.

The Air Quality Program has calculated the non-compliance penalty as *{dollar amount}* (\$). RAC § 2-121(2) authorizes the AQP to assess penalties and damages of up to a maximum of \$10,000 per day per violation for violations of any applicable requirement; permit condition; fee or filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or orders issued by the Tribe.

IV. PENALTY PAYMENT INSTRUCTIONS

{Company name} shall pay the non-compliance penalty due by electronic funds transfer (EFT) to the Southern Ute Indian Tribe, Air Quality Program in accordance with written instructions to be provided to *{Company name}* by the AQP. At the time of payment, *{Company name}* shall send a copy of the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the non-compliance penalty owed pursuant to this Notice of Non-Compliance and shall reference the corresponding Settlement Agreement and Stipulated Final Compliance Order Enforcement Case ID *{Case #}*, by email to *{AQ Enforcement Coordinator's email}*; and by mail to:

**Environmental Programs Division
P.O. Box 737 MS# 84
Ignacio, CO 81137**

V. ADDITIONAL ACTION BY THE DIVISION

{Company name's} failure to pay the non-compliance penalty on or before *{date/90 days from issuance}*, will result in issuance of a Compliance Order and assessment of additional penalties against *{Company name}*. Subsequent violation of a Compliance Order may subject *{Company name}* to further enforcement action under RAC § 2-121.

VI. EFFECTIVE DATE OF NOTICE

Enforcement Procedures and Penalty Manual

This Notice of Non-Compliance with a Settlement Agreement and Stipulated Compliance Order will become effective upon receipt dated *{date emailed}*, with a hard copy to follow.

If *{Company name}* would like to discuss this Notice of Non-Compliance of Settlement Agreement and Stipulated Compliance Order, please contact *{Name}*, Enforcement Coordinator, at 970-563-*{XXXX}*, or *{Name}*, Program Manager, at 970-563-*{XXXX}*. If no response is received from *{Company name}* by *{10 business days from issuance}*, a Compliance Order may be issued.

SOUTHERN UTE INDIAN TRIBE,
AIR QUALITY PROGRAM

{AQP Manager Name},
Air Quality Program Manager

cc: *{Name}*, Environmental Programs Division Head
{Name}, Tribal Legal Counsel
{Name}, Tribal Legal Counsel

Attachments:

1. Civil Penalty Summary of Enforcement Worksheet
2. Settlement Agreement and Stipulated Final Compliance Order Enforcement Case ID: *{#####-##}*

Enforcement Procedures and Penalty Manual

XV. History and Amendments

Changes agreed to on January 29, 2015 (AQP, Tribal Legal Counsel) –

- Section IX. Replaced Figure 2. Appropriate Enforcement Response for HPVs with the new timeline. Based upon revisions to the USEPA Enforcement Response Policy for High Priority Violations of the Clean Air Act: Timely and Appropriate Enforcement Response to High Priority Violations August 25, 2014, Section V.
- Section IX. Harmonized Figure 1. HPV Applicability Determination Flow Chart with the new HPV criteria based upon revisions to the USEPA Enforcement Response Policy for High Priority Violations of the Clean Air Act: Timely and Appropriate Enforcement Response to High Priority Violations August 25, 2014.
- Section VIII. Amended to add Federally-Reportable Violations (FRV). Based upon the September 23, 2014 Issuance of the Guidance on Federally-Reportable Violations for Clean Air Act Stationary Sources.
- Section XIII. Amended to add Attachment 7 - Example of Request for Information Letter. For instances when a source has not provided information requested by a certain date.
- Section VIII. Amended to add FRV language to summarize reportable violations based upon the September 23, 2014 Issuance of the Guidance on Federally-Reportable Violations for Clean Air Act Stationary Sources.
- Section IX. Amended HPV introduction and updated with the six new violations criteria based upon revisions to the USEPA Enforcement Response Policy for High Priority Violations of the Clean Air Act: Timely and Appropriate Enforcement Response to High Priority Violations August 25, 2014.
- Section IX. Updated HPV flowchart and edited notes based upon revisions to the USEPA Enforcement Response Policy for High Priority Violations of the Clean Air Act: Timely and Appropriate Enforcement Response to High Priority Violations August 25, 2014.

Changes agreed to on February 23, 2017 (AQP, Tribal legal counsel) –

- Section VI.1.b. Amended to add Area of Concern paragraph to the informal enforcement process pathway and added Section XIV. Attachment 6 - Example Area of Concern Letter.

Enforcement Procedures and Penalty Manual

- Section XIV. Added Federally-Reportable Violations Policy hyperlink to Attachment 5.
- Section XIV. Removed Attachment 6 – “Identifying and Calculating Economic Benefit That Goes Beyond Avoided and/or Delayed Costs”.
- Section XIV. Update Attachment 2 – Violation Categorization Matrix added new violation categories of major, moderate, and minor violations.
- Section VI.2.c. Added paragraph on Settlement Agreement to the Formal Process of Enforcement Pathways.
- Section XI. Amended to change the title of section to SUIT/CO Environmental Commission.
- Section X.2. Added Annual Report for SUIT/CO Environmental Commission.
- Section XIV. Amended Attachment 10 with the revised Notice of Violation template.
- Section XIV. Amended Attachment 12 with a revised Settlement Agreement template.
- Section XIV. Added content to Attachment 3 – Clean Air Act Penalty Basis to include Compliance History, Other Factors that Justice May Require, and Litigation Risk.
- Section XII. Added new section Records Retention and Case Resolution Timeline.
- Section X.1.e.i. Incorporate by reference EPA “Audit Policy”.

Changes agreed to on April 18, 2018 (AQP, Tribal Legal Counsel) –

- Section II. First Paragraph. Corrected the name of the Intergovernmental Agreement.
- Section V.1.d. Added language to clarify the type of violations that are used in a Compliance Advisory.
- Section V.2. Fourth Bullet. Corrected the name of the Memorandum of Agreement.
- Section VI. Second Paragraph. Corrected the name of the Memorandum of Agreement.

Enforcement Procedures and Penalty Manual

- Section IX.1. Amended who will examine the facts.
- Section X.1.b. Amended Reporting and Notification standards.
- Section X.1.c. Amended the third bullet.
- Section X.1.e. Removed the Incorporate by reference EPA “Audit Policy”.
- Section X.1.3. Added a new section, “Voluntary Discovery, Disclosure, and Remediation of Violations” and a new subsection, “Interim Approach to Applying the Audit Policy to New Owners.”
- Section XI.1. Amended the type of information provided to the Environmental Commission.
- Section XII.b. Amended the table to clarify email receipt.
- Section XIII.1. Added definitions of first and third party supplemental environmental projects (SEPs). Added different mitigation penalties for first and third party SEPs.
- Section XIII.3.1. Added different mitigation penalties for first and third party SEPs.
- Section XIII.3. Second Paragraph. Added different mitigation penalties for first and third party SEPs.
- Section XIV. Attachment 2. Added new categories for major, moderate, and minor categories.
- Section XIV. Attachment 3. Revised page 1 and page 4 of the Clean Air Act Penalty Basis.
- Section XIV. Attachment 6. Revised Area of Concern template letter.
- Section XIV. Attachment 7. Revised Request for Information template letter.
- Section XIV. Attachment 12. Revised Settlement Agreement template.

Enforcement Procedures and Penalty Manual

Changes agreed to on January 9, 2020 (AQP, Tribal Legal Counsel) –

- Section XIV. Attachment 2 - Added new categories for major, moderate, and minor categories to Violation Categorization Matrix.
- Section XIV. Attachment 2 – Rearranged matrix categories for alignment of violation from major, moderate, and minor categories to Violation Categorization Matrix.
- Section XIV. Attachment 9. Revised Compliance Advisory Template.
- Section XIV. Attachment 10. Revised Notice of Violation Template. Updated the webpage hyperlink and revised the language in section IV titled ‘Conference Regarding Alleged Violations’.
- Section XIV. Attachments 1-13. Updated Air Quality Program contact information, i.e. email and phone number, in all attachments.

Changes agreed to on March 11, 2020 (AQP, Tribal Legal Counsel)

- Title Page and corresponding title references within document. Document renamed from “Enforcement Procedures and Penalty Policy” to, “Enforcement Procedures and Penalty Manual”.
- Section XIII. Supplemental Environmental Project – Amended section to refer to Supplemental Environmental Project (SEP) policy as SEP “plan”.

Changes agreed to on November 29, 2022 (AQP, Tribal Legal Counsel)

- Made minor typographical changes to entire manual.
- Section I. Updated definitions and deleted six terms.
- Section VI. Formal Process. Added a bullet point to describe a Notice of Non-Compliance.
- Section XII. Case Resolution Timeline. Updated to include Notice of Non-Compliance. Revised Notice of Violation issuance target date.

Enforcement Procedures and Penalty Manual

- Section XIV. Attachment 2 - Added new minor, moderate, and major categories to Violation Categorization Matrix. Increased font size.
- Section XIV. Attachment 9 - Updated Compliance Advisory template.
- Section XIV. Attachments 6-14 - Updated letter heads on all enforcement letters.
- Section XIV. Attachment 12 - Changed one sentence in Section V.C. and added enforcement case number to Section VII.
- Section XIV. Added Attachment 14, “Notice of Non-Compliance with Settlement Agreement and Stipulated Compliance Order” to Attachments section.