

# St. Regis Mohawk Tribe Tribal Implementation Plan



**Developed for:**  
**St. Regis Mohawk Tribe**  
**By the SRMT Environment Division**  
**Air Quality Program**

Date: February 2004

Revision: 003

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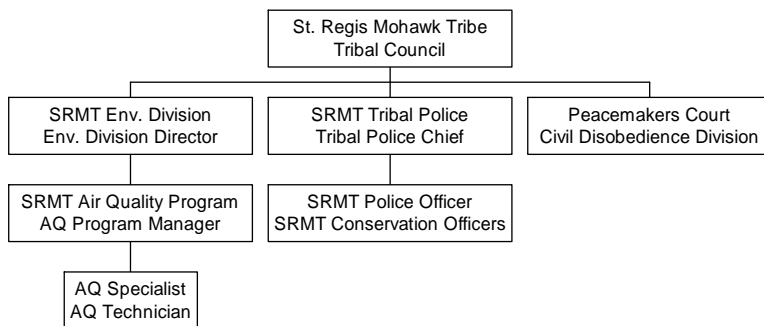
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## Declaration of Policy

It is declared to be the policy of the St. Regis Mohawk Tribe (SRMT) to maintain a reasonable degree of purity of Tribal Air Resources, which shall be consistent with the public health and welfare and the public enjoyment thereof, the industrial development of the Reservation, the propagation and protection of flora and fauna, and the protection of physical property and other resources, and to that end to require the use of all available practical and reasonable methods to prevent and control air pollution on the Reservation. It is further declared that this can be done most effectively by focusing on goals to be achieved by a maximum of cooperation among all parties concerned and that rules and regulations established under the provisions of this Plan should be clearly premised upon scientific knowledge of causes as well as of the facts.

## Section 1.0 St. Regis Mohawk Tribe (SRMT) Organizational Structure



## Section 2.0 Legal Authority

### 2.1 Purpose

### 2.2 Applicability

#### 2.1 Purpose

It is the purpose of this TIP to safeguard the air resources of the Tribe from pollution by: (1) controlling or abating air pollution which shall exist when this Plan shall be enacted; and (2) preventing new air pollution, under a program which shall be consistent with the declaration of policy stated below and in accordance with the provisions of this Plan.

Tribal Council Resolution, TCR 99-43, was signed on December 3, 1999 (Appendix B). TCR 99-43 expressly states that the Tribe authorizes the SRMT's Air Quality Program to submit applications for federal assistance and to receive delegation of the federal CAA authority, as allowed by law under the CAA of 1970 and Amendments to the act thereafter. Furthermore, the SRMT has signed into effect Tribal Resolutions: TCR 89-19, *To Adopt Ambient Standards for PCBs on the St. Regis Mohawk Reservation*, (appendix C) and TCR 89-34, *Tribal Emergency Pollution Authority* (appendix D).

The TIP shall become effective 30 days from St. Regis Mohawk Tribal Council approval. The Tribal Council Resolution for the TIP, TCR-2002-183 (appendix E) was adopted October 3, 2002.

## 2.2 Applicability

On September 19, 2000 (appendix F), May 25, 2001(appendix G), and March 5, 2003 (appendix H) letters signed by the Regional Administrator for the US Environmental Protection Agency (US EPA) announced the approval for the St. Regis Mohawk Tribe's request for *Eligibility Determination for the St. Regis Mohawk Tribe for Treatment in the Same Manner as a State Under the Clean Air Act*. In the letter, the US EPA Region 2 Office of Regional Counsel (ORC) and the Division of Environmental Planning and Protection (DEPP) determined the SRMT met the criteria at 40 CFR 49.6;

- (1)The applicant is an Indian Tribe recognized by the Secretary of the Interior;
- (2)The Indian Tribe has a governing body carrying out substantial governmental duties and functions;
- (3)The functions to be exercised by the Indian Tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the Tribe's jurisdiction.

The Indian Tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the CAA and all applicable regulations.

## **Section 3.0 Resources**

### **3.1 Purpose**

### **3.2 Applicability**

#### 3.1 Purpose

The SRMT Air Quality Program provides research, analysis and educational outreach to the Mohawk community. The SRMT Air Quality Program has increased its capabilities, skills and knowledge since the beginning of the program in 1990. The program is currently operating under both CAA Section 105, Section 103 and private funding. At times, the Air Quality Program also cooperates with public and private institutions to finance research activities. When appropriate, the Air Quality Program is supplemented by the SRMT Environment Division, which is currently staffed with 21 employees.

The Air Quality Program employs three technicians and one program manager. The educational background ranges from Bachelors of Science to a Masters degree. Each technician is cross-trained to perform monitoring for Atmospheric Deposition, Polychlorinated Biphenyls, Polycyclic Aromatic Hydrocarbons, Sulfur Dioxide, Nitrogen Oxides, heavy metals, Particulate Matter and styrene. Cross-training each technician prevents data gaps should one technician be out of the office. All equipment used for monitoring is owned by the Air Quality Program and is maintained and calibrated on-site.

Support staff for the Air Quality Program includes two Conservation Officers, Environmental Lawyers, an on-site legal advisor, technical support through the Tribal Air Monitoring Center, Las Vegas, and maintenance personnel.

### 3.2 Applicability

The SRMT Air Quality Program reserves the right to apply for additional CAA Section 105/103 grants and expand its resources as necessary to conduct research, investigations, experiments, demonstrations, surveys and/or studies relating to the causes, effects, extent, prevention and control of air pollution within the exterior boundaries of the SRM reservation.

## **Section 4.0 Severability**

If any Section of this Plan is considered invalid and as such cannot be approved, such invalidity shall not affect other Sections of the Plan that can be given effect without the invalid Section.

## **Section 5.0 Definitions**

### **5.1 Purpose**

### **5.2 Definitions**

#### 5.1 Purpose

As used in this TIP, all terms not defined herein will have the meaning given them in the CAA (42 U.S.C. 7401 et seq., as amended by Pub. L. 91-604, 84 Stat. 1676 Pubs. L. 95-95, 91 Stat., 685 and Pub. L. 95-190, 91 Stat., 1399.)

#### 5.2 Definitions

*Administrator* means the Administrator of the Environmental Protection Agency (EPA) or an authorized representative.

*Air Quality Program* means the legal body within the St. Regis Mohawk Tribe, Environment Division.

*Area source* means any small residential, governmental, institutional, commercial, or industrial fuel combustion operations; onsite solid waste disposal facility; motor vehicles, aircraft vessels, or other transportation facilities or other miscellaneous sources identified through inventory techniques similar to those described in the "AEROS Manual series, Vol. II AEROS User's Manual," EPA-450/2-76-029 December 1976.

*Begin actual construction* means, in general, initiation of physical, on-site construction, reconstruction, or modification activities on an emissions unit, which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipe work, and construction of permanent storage structures. Such activities do not include site clearing and grading or entering into binding agreements or contractual obligations. With respect to a change in method of operating, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change. Owners or operators that undertake these activities prior to obtaining any required permits do so at their own risk; a permit may not be issued or may not contain the terms the applicant desires.

*Compliance schedule* means the date or dates by which a source or category of sources is required to comply with specific emission limitations contained in an implementation plan and with any increments of progress toward such compliance.

*Construction* means fabrication, erection, or installation of an emission facility, emissions unit, or stationary source. Construction also includes excavation, blasting, removing rock and soil, and/or backfilling unless the administrator deems these activities to be of minimal cost, do not significantly alter the site, and are not permanent in nature. Construction does not include site clearing or grading.

*Control strategy* means a combination of measures designated to achieve the aggregate reduction of emissions necessary for attainment and maintenance of national standards including, but not limited to, measures such as:

- (1) Emission limitations.
- (2) Federal or Tribal emission charges or taxes or other economic incentives or disincentives.
- (3) Closing or relocation of residential, commercial, or industrial facilities.
- (4) Changes in schedules or methods of operation of commercial or industrial facilities or transportation systems, including, but not limited to, short-term changes made in accordance with standby plans.
- (5) Periodic inspection and testing of motor vehicle emission control systems.
- (6) Emission control measures applicable to in-use motor vehicles, including, but not limited to, measures such as mandatory maintenance, installation of emission control devices, and conversion to gaseous fuels.
- (7) Any transportation control measure including those transportation measures listed in section 108(f) of the CAA as amended.
- (8) Any variation of, or alternative to any measure delineated herein.
- (9) Control or prohibition of a fuel or fuel additive used in motor vehicles, if such control or prohibition is necessary to achieve a national primary or secondary air quality standard and is approved under section 211(4) of the Act.

*Criteria pollutant* means any of the following: sulfur dioxide, particulate matter, nitrogen oxides, carbon monoxide, ozone, lead, and any other pollutants for which national ambient air quality standards have been established in Plan of Federal Regulations, title 40, part 50, as amended, or for which tribe ambient air quality standards have been established in Section 9.0.

*De minimis facility* means a facility that

- (1) meets all of the following de minimis criteria:
  - (a) has actual emissions of 19.9 tons per year or less of each criteria pollutant, or has actual emissions of 2 tons per year of any one HAP or 5 tons per year of any combined HAPs;
  - (b) is not a “major source” as defined in 40 CFR Section 71; or
  - (c) is not operated in conjunction with another facility or source that is subject to air quality permitting; or
- (2) is not subject to the federal NSPS, 40 CFR Part 60; or
- (3) is not subject to the NESHAP, 40 CFR Parts 61 and 63.

*Emission limitation* and *emission standard* mean a requirement established by the SRMT Air Quality Program which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

*Excess emissions* means emissions of an air pollutant in excess of an emission standard.

*Existing facility* means an emission facility at which construction, modification, or reconstruction was commenced before the effective date of the applicable Tribal air pollution control rule.

*Fossil fuel-fired steam generator* means a furnace or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

*Fugitive emission* means emissions of an air contaminant, which could not reasonably pass through a stack, vent, chimney or other functionally equivalent opening.

*Hazardous Air Pollutant* is any one of the compounds listed in 40 CFR Section 61. Note: For all listings which contain the word “compounds”, and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as that chemical’s infrastructure.

*Modification* means any physical change or change in the method of operation of an emissions unit, emission facility, or stationary source that results in an increase in the emission of a regulated air pollutant. Emissions are considered to increase if there is an increase in the rate of emissions of any regulated air pollutant, or new emissions of a regulated air pollutant not previously emitted, from any unit at the source. To determine if there is an increase in the rate of emissions, the Air Quality Program shall compare the pounds per hour of emissions at maximum capacity before and after the physical or operational change.

*New facility* means an emission facility on which construction, modification, or reconstruction was commenced after the effective date of the applicable tribal air pollution control rule.

*Owner or operator* means any person who owns, leases, operates, controls, or supervises a facility, building, structure, or installation, which directly or indirectly result or may result in emissions of any air pollutant for which a national standard is in effect.

*Point source* means the following:

(1) For Particulate matter, sulfur oxides, carbon monoxide, volatile organic compounds (VOC) and nitrogen dioxide-

Any stationary source the actual emissions of which are in excess of 90.7 metric tons (100 tons) per year of the criteria pollutant; or

(2) For lead or lead compounds measured as elemental lead, any stationary source that actually emits a total of 4.5 metric tons (5 tons) per year or more.

*Reasonably available control technology (RACT)* means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

- (1)The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;
- (2)The social, environmental, and economic impact of such controls; or
- (3)Alternative means of providing for attainment and maintenance of such standard.

*Secondary standard* means a national secondary ambient air quality standard promulgated pursuant to section 109 of the Act.

*Stack* means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

*Stationary source* means an assemblage of all emissions units and emission facilities that belong to the same industrial grouping, are located at one or more contiguous or adjacent properties and are under the control of the same person (or persons under common control). Emissions units or emission facilities must be considered as part of the same industrial grouping if they belong to the same "major group" (that is, which have the same two-digit Plan) as described in the Standard Industrial Classification Manual.

*Transportation control measure* means any measure that is directed toward reducing emissions of air pollutants from transportation sources. Such measures include, but are not limited to, those listed in section 108(f) of the CAA.

*Variance* means the temporary deferral of a final compliance date for an individual source subject to an approved regulation, or a temporary change to an approved regulation as it applies to an individual source.

*Volatile organic compounds (VOC)* means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions; any compounds that EPA exempts according to 40 CFR 51.100(s).

## **Section 6.0            Public Participation**

### **6.1 Purpose**

### **6.2 Applicability**

#### 6.1    Purpose

The SRMT Air Quality Program is to provide opportunity for public comment on information submitted by owners and operators and will keep the public informed of violations and exceedances.

#### 6.2    Applicability

- (1)The SRMT Air Quality Program is to provide opportunity for public comment on proposed construction or modification plans, including the agency's proposed approval or disapproval.

Opportunity for public comment shall include, at minimum:



- a. Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and the agency's analysis of the effect on air quality;
- b. A 30-day period for submittal of public comment;
- c. A notice by prominent advertisement in the area affected of the location of the source information;
- d. A copy of the notice required must also be sent to the Administrator through the appropriate Regional Office. The Air Quality Program shall provide 30 days for EPA review of the proposed permit prior to final action; and
- e. The Air Quality Program will provide EPA with a final permit.

(2)The SRMT Air Quality Program is to provide opportunity for public comment on plan revisions and schedule changes.

Opportunity for public comment shall include, as a minimum:

- a. Availability for public inspection in at least one location in the area by the plan revision or schedule change;
- b. A 30-day period for submittal of public comment;
- c. A notice by prominent advertisement in the area affected of the location of the source information; end
- d. A copy of the notice required must also be sent to the Administrator through the appropriate Regional Office. The Air Quality Program shall provide 30 days for EPA review.

(3)The SRMT Air Quality Program shall notify the public on a regular basis:

- a. Instances or areas in which any primary standard was exceeded during any portion of the preceding calendar year;
- b. Advising the public of the health hazards associated with such an exceedance of a primary standard,
- c. Increase public awareness of measures that can be taken to prevent exceedances and ways in which the public can participate in regulatory and other efforts to improve air quality.

## **Section 7.0 Revisions**

### **7.1 Purpose**

### **7.2 Applicability**

#### 7.1 Purpose

The SRMT Air Quality Program may revise the plan from time to time consistent with the requirements applicable to implementation plans under 40 CFR Section 51. The Tribe must submit any revision of any regulation or any compliance schedule to the Regional Administrator no later than 60 days after its adoption by Tribal Council.

## 7.2 Applicability

The Tribe must submit with the revision, a certification, that the hearing required by Subsection 6.2 of this Plan was held in accordance with the notice required.

## **Section 8.0 Air Quality Control Region**

### **8.1 Scope**

### **8.2 Purpose**

### **8.3 Applicability**

#### 8.1 Scope

The St. Regis Mohawk Reserve is located in northern New York, 10 miles east of Massena, NY. It is situated in the north, western most corner of Franklin County, bordered by St. Lawrence County. It is also divided by the international boundary of the United States and Canada. Approximately 6,000 Mohawks reside on the US portion of the Reserve with a total population nearing 10,000 overall.

The St. Regis Mohawk Reserve (US portion) consists of approximately 14,600 acres, primarily unused agricultural land and wetlands. There has been a decline in agricultural activities over the years due to the negative influence of industrial emissions and pollution. The rivers had also previously provided a means of income through guide fishing, and fish marketing. Since then, industrial pollution has been responsible for the contamination of the fish, to the point that government warnings have been limiting the consumption of fish.

#### 8.2 Purpose

The St. Regis Mohawk territory in the past had been included in the Champlain Valley Interstate Air Quality Control Region 159, "AQCR 159", (40 CFR 81.48). AQCR 159 consists of, in New York State, Clinton County, Essex County, Franklin County, Hamilton County, St. Lawrence County, Warren County, Washington County. The St. Regis Mohawk Tribe asserts authority within the exterior boundaries of the reservation in accordance with the Treaty of Canandaigua of 1784 and the Treaty with the Six Nations of 1796.

The SRMT Air Quality Program will use the history of the AQCR 159 to designate its attainment status in regards to the National Ambient Air Quality Standards (NAAQS). According to 40 CFR 81.333, Attainment Status Designation in New York State, AQCR 159 meets, is better than or is considered unclassifiable according to NAAQ Standards.

#### Attainment Status Designations

NAAQ Pollutant	Attainment Status Designation
Sulfur dioxide (SO <sub>2</sub> )	Better than national standards
Carbon monoxide (CO)	Unclassifiable or in attainment
Ozone (O <sub>3</sub> )	Unclassifiable or in attainment
Particulate matter, 10 microns (PM <sub>10</sub> )	Not designated other than New York County
Nitrogen dioxide (NO <sub>2</sub> )	Unclassifiable or better than national standards

### 8.3 Applicability

The SRMT Air Quality Program will perform ambient monitoring for sulfur dioxide, heavy metals, particulate matter (10 and 2.5 microns), ozone and nitrogen dioxide.

## **Section 9.0 Air Quality Standards**

### **9.1 General**

### **9.2 Sulfur Dioxide**

### **9.3 Particulate Matter**

### **9.4 Nitrogen Dioxide**

### **9.5 Ozone**

### **9.6 Fluorides**

### **9.7 Heavy Metals**

#### 9.1 General

(1) Air quality standards are designed to provide protection from the adverse health effects of air contamination and they are intended further to protect and conserve the natural resources and environment and to promote maximum comfort and enjoyment and use of property consistent with the economic and social well-being of the community.

(2) The provisions of this section shall apply to all areas within the exterior boundaries of the St. Regis Mohawk Reservation and any other areas that the SRMT can show jurisdiction over.

(3) No person shall permit, suffer or allow the emission of contaminants from an emission source, which alone or in combination with emissions from other sources cause contravention of air quality standards promulgated in this Section.

(4) Notwithstanding the existence of specific standards, emissions of odorous, toxic or deleterious substances in concentrations or of such duration that will affect human health or well-being or unreasonably interfere with the enjoyment of property or unreasonably and adversely affect plant or animal life shall not be permitted.

#### 9.2 Sulfur Dioxide

##### (1) Definitions

(a) Sulfur Dioxide (SO<sub>2</sub>). A nonflammable, nonexplosive, colorless gas, having a pungent, irritating odor. For the purpose of this subsection, this term shall also include other material that may test as sulfur dioxide by the specified method of measurement.

(b) ug/m<sup>3</sup>. Micrograms of contaminant per cubic meter of air.

##### (2) Standards

(a) Primary ambient air quality standards for sulfur oxides (sulfur dioxide).

(i) The level of the annual standard is 0.030 parts per million (ppm), not to be exceeded in a calendar year. The annual arithmetic mean shall be rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm shall be rounded up).

(ii) The level of the 24-hour standard is 0.14 parts per million (ppm), not to be exceeded more than once per calendar year. The 24-hour averages shall be determined from successive nonoverlapping 24-hour blocks starting at midnight each calendar day and shall be rounded to two decimal places (fractional parts equal to or greater than 0.005 ppm shall be rounded up).

(b) Secondary ambient air quality standards for sulfur oxides.

(i) The level of the 3-hour standard is 0.5 parts per million (ppm), not to be exceeded more than once per calendar year. The 3-hour averages shall be determined from successive nonoverlapping 3-hour blocks starting at midnight each calendar day and shall be rounded to 1 decimal place (fractional parts equal to or greater than 0.05 ppm shall be rounded up).

(3) Measurement

For primary ambient air standards

(a) Sulfur oxides shall be measured in the ambient air as sulfur dioxide by the reference method described in 40 CFR Part 50 Appendix A or by an equivalent method designated in accordance with 40 CFR Part 53.

(b) To demonstrate attainment, the annual arithmetic mean and the second-highest 24-hour averages must be based upon hourly data that are at least 75 percent complete in each calendar quarter. A 24-hour block average shall be considered valid if at least 75 percent of the hourly averages for the 24-hour period are available. In the event that only 18, 19, 20, 21, 22, or 23 hourly averages are available, the 24-hour block average shall be computed as the sum of the available hourly averages using 18, 19, etc. as the divisor. If fewer than 18 hourly averages are available, but the 24-hour average would exceed the level of the standard when zeros are substituted for the missing values, subject to the rounding rule of paragraph (2)(a)(i) of this section, then this shall be considered a valid 24-hour average. In this case, the 24-hour block average shall be computed as the sum of the available hourly averages divided by 24.

For secondary ambient air standards

(a) Sulfur oxides shall be measured in the ambient air as sulfur dioxide by the reference method described in 40 CFR Part 50 Appendix A or by an equivalent method designated in accordance with 40 CFR Part 53.

(b) To demonstrate attainment, the second-highest 3-hour average must be based upon hourly data that are at least 75 percent complete in each calendar quarter. A 3-hour block average shall be considered valid only if all three hourly averages for the 3-hour period are available. If only one or two hourly averages are available, but the 3-hour average would exceed the level of the standard when zeros are substituted for the missing values, subject to the rounding rule of paragraph (2)(b)(i) of this section, then this shall be considered a valid 3-hour average. In all cases, the 3-hour block average shall be computed as the sum of the hourly averages divided by 3.

### 9.3 Particulate Matter

#### (1) Definition.

Particulate is any matter dispersed in the atmosphere, whether solid or liquid, in which the individual particles are larger than single molecules (about 0.0002  $\mu$  in diameter), but smaller than about 500  $\mu$ . Suspended particulates range below 10  $\mu$  in diameter. For the purposes of this subsection, the suspended particulates are as collected and measured by the method specified.

#### (2) Standards.

##### (a) Primary and secondary ambient air quality standards for PM10.

(i) The level of the primary and secondary 24-hour ambient air quality standards for particulate matter is 150 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), 24-hour average concentration. The standards are attained when the expected number of days per calendar year with a 24-hour average concentration above 150  $\mu\text{g}/\text{m}^3$ , as determined in accordance with 40 CFR 50 Appendix J, is equal to or less than one.

(ii) The level of the primary and secondary annual standards for particulate matter is 50 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), annual arithmetic mean. The standards are attained when the expected annual arithmetic mean concentration, as determined in accordance with 40 CFR Appendix J, is less than or equal to 50  $\mu\text{g}/\text{m}^3$ .

##### (b) Primary and secondary ambient air quality standards for PM2.5

(i) The standards for PM 2.5 are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR Part 50 Appendix L, is less than or equal to 15.0

micrograms per cubic meter.

(ii) The 24-hour primary and secondary PM<sub>2.5</sub> standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR Part 50 Appendix L, is less than or equal to 65 micrograms per cubic meter.

(3) Measurement

(a) For the purpose of determining attainment of the primary and secondary standards, particulate matter shall be measured in the ambient air as PM<sub>10</sub> (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) by the reference method based on 40 CFR Part 50 Appendix J or designated in accordance with 40 CFR Part 53.

(b) For the purpose of determining attainment of the primary and secondary standards, particulate matter shall be measured in the ambient air as PM<sub>2.5</sub> (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) by the reference methods based on Appendix L of 40 CFR Section 50.

9.4 Nitrogen Dioxide

(1) Definitions

Nitrogen dioxide is a reddish-orange-brown gas with a characteristic pungent odor. It is corrosive and highly oxidizing and may be physiologically irritating. NO<sub>2</sub> is essential to the production of photochemical smog.

(2) Standards

(a) Primary and secondary ambient air quality standards for nitrogen dioxide.

(i) The level of the national primary ambient air quality standard for nitrogen dioxide is 0.053 parts per million (100 micrograms per cubic meter), annual arithmetic mean concentration.

(ii) The level of national secondary ambient air quality standard for nitrogen dioxide is 0.053 parts per million (100 micrograms per cubic meter), annual arithmetic mean concentration.

(3) Measurement

(a) The concentration of NO<sub>2</sub> is determined by the reference method based on 40 CFR Part 50 F and designated in accordance with 40 CFR Part 53, or

(b) An equivalent method designated in accordance with 40 CFR Part 53.

(c) The standards are attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm must be rounded up). To demonstrate attainment, an annual mean must be based upon hourly data that are at least 75 percent complete or upon data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter.

## 9.5 Ozone

### (1) Definition

Ozone can cause irritation of the mucous membranes, damage to vegetation and deterioration of materials. They affect the clearance mechanism of the lungs and later resistance to bacterial infection.

### (2) Standards

(a) For 1-hour primary and secondary ambient air quality standards for ozone.

(i) The level of the national 1-hour primary and secondary ambient air quality standards for ozone measured by a reference method based on 40 CFR Part 50 Appendix D and designated in accordance with 40 CFR Part 53, is 0.12 parts per million (235 ug/m<sup>3</sup>).

(ii) The 1-hour standards set forth in this section will remain applicable to all areas notwithstanding the promulgation of 8-hour ozone standard. In addition, after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour standards set forth in this section will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard. Area designations and classifications with respect to the 1-hour standards are codified in 40 CFR part 81.

(b) For 8-hour primary and secondary ambient air quality standards for ozone.

(i) The level of the national 8-hour primary and secondary ambient air quality standards for ozone, measured by a reference method based on 40 CFR Part 50 Appendix D and designated in accordance with 40 CFR Part 53, is 0.08 parts per million (ppm), daily maximum 8-hour average.

(ii) The 8-hour primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the average of the

annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm.

## 9.6 Fluoride

### (1) Definitions

Unless a different meaning is clearly required by context, words and phrases used in this section shall have the following meanings; general terms common with other sections of the Plan as defined in Section 5, and terms specific to standards for fluoride as defined below:

- (a) "Forage" means grasses, pasture and other vegetation that is consumed or is intended to be consumed by livestock.
- (b) "Cured forage" means hay, straw, ensilage that is consumed or is intended to be consumed by livestock.
- (c) "Fluoride" refers to a heterogeneous group of compounds from the highly reactive, nonmetallic gaseous element known as fluorine. For the purpose of this standard, fluoride will include material that tests as fluoride by the method specified or other methods acceptable to the director.

### (2) Standards-forage

- (a) All sampling to determine compliance with these standards shall be conducted in locations and during time periods consistent with protecting livestock and vegetation.
- (b) The fluoride content of forage calculated by dry weight shall not exceed:
  - (i) For growing season (not to exceed six consecutive months)- 40 ppm
  - (ii) For any 60 day period- 60 ppm
  - (iii) For any 30 day period- 80 ppm

### (3) Standards-Ambient

- (a) All sampling to determine compliance with these standards shall be conducted in locations and during time periods consistent with protecting livestock and vegetation.
- (b) Gaseous fluorides in the ambient air calculated as HF at standard conditions (25 degrees Celsius, 760 in. Hg) shall not exceed:
  - (i) 12 hour averages to be less than 1.13 ppb;
  - (ii) 24 hour averages to be less than 0.88 ppb;
  - (iii) One week averages to be less than 0.50 ppb; and,



(iv) One month averages to be less than 0.25 ppb.

(4) Measurement

(a) Compliance with standards. When requested by the Air Quality Program, persons emitting fluorides to the ambient air shall demonstrate their compliance with Section 9.6.2 and 9.6.3 by conducting a monitoring program approved in writing by the Air Quality Program. All monitoring data shall be submitted to the Air Quality Program monthly.

(b) Total fluorides in and on forage is determined by current scientifically acceptable measurement practices that are considered to be standard methods or other methods acceptable to the Director of the Environment Division.

9.7 Heavy Metals

(1) Definitions

All metals shall include the metallic form and metallic compounds that may test as those metals by the acceptable analytical method.

(2) Standards

Applicable in all levels during any month, the average concentration shall not exceed:

- (a) Beryllium (Be) 4.2E-4 ug/m3
- (b) Cadmium (Cd) 2.4E-2 ug/m3
- (c) Chromium (Cr) 1.2 ug/m3
- (d) Lead (Pb) 7.5E-1 ug/m3
- (e) Nickel (Ni) 4.0E-3 ug/m3
- (f) Zinc (Zn) 50.0 ug/m3

(3) Measurement

Metals in air will be sampled according to 40 CFR 50 Appendix B, Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method). The concentration of metals in the ambient air will be analyzed using EPA Method IO-3.5, Inductively Coupled Plasma/Mass Spectrometry (ICP/MS).

9.8 Monitoring Instruments

POLLUTANT	PREVENTION and CONTROL	MONITORING EQUIPMENT and SCHEDULE
Ozone	Reduce motor vehicle reactive organic gas (ROG) and nitrogen oxide	Air Pollution Instrumentation Incorporated (API).

	(NOx) emissions through inspection programs, and reduced vehicle use. Limit ROG emissions from commercial/industrial operations and consumer products. Conserve energy.	Model 400A Ozone Analyzer, Model 700 Calibrator.  Continuous Monitoring
Respirable Particulate Matter (PM10)	Control dust sources, industrial Particulate emissions, wood burning stoves and fireplaces. Reduce secondary pollutants, which react to form PM10. Conserve energy.	R&P Company Incorporated. TEOM Series 1400a Ambient Particulate Monitor.  Continuous Monitoring
Fine Particulate Matter (PM2.5)	Reduce combustion emissions from motor vehicles, equipment, industries, and agricultural and residential burning.	R&P Company Incorporated. TEOM Series 1400a, ACCU System.  Continuous Monitoring-TEOM Every 6 <sup>th</sup> Day-ACCU
Nitrogen Dioxide (NO2)	Control motor vehicle and industrial combustion emissions. Conserve energy.	API, Inc. Model 200A NOx Analyzer Model 700 Calibrator  Continuous Monitoring
Heavy Metals	Reduce emissions from industrial sources.	HI-Q Environmental Total Suspended Particulate Monitor.  Every 6 <sup>th</sup> Day
Sulfur Dioxide (SO2)	Reduce use of high sulfur fuels (e.g. use low sulfur reformulated diesel or natural gas). Conserve energy.	API, Inc. Model 100A SO2 Analyzer Model 700 Calibrator  Continuous Monitoring

## **Section 10.0 Emissions Inventory**

### **10.1 Purpose**

### **10.2 Applicability**

### **10.3 Procedure**

### **10.4 Schedule**

#### 10.1 Purpose

The purpose of the emissions inventory is to establish a baseline for air pollutants impacting the reservation. It is a means to compare impacts that might arise from development and industrialization. It will also document improvements to air quality as a result of emissions reductions through treatment or pollution prevention activities at local neighboring industries.

## 10.2 Applicability

An initial emissions inventory was produced in 1999 utilizing a baseline year of 1995 and the St. Regis Mohawk Reservation's exterior boundaries over which the SRMT has jurisdiction. The land base used for calculations was 14,600 acres. The population was estimated at 6000 residents. These figures will be used until more current information is available. A summary of sources found on the reservation is noted in Table 10.1.

Table 10.1 Emissions Inventory Report Summary

Stationary Source-Fuel Combustion	Commercial Institutional Residential
Stationary Source-Solvent Utilization	Automobile Refinishing Pesticide Application Asphalt Application Tank Drum Cleaning
Stationary Source-Gasoline Marketing	Stage I-underground tank filling Stage II-vehicle refueling
Stationary Source-Petroleum Product Transport	Marine Vessel Truck
Stationary Source-Waste Disposal, Treatment and Recovery	Open burning Solid Waste Transfer Station
On-Road Mobile Sources	Automobiles Buses Sport Utility Vehicles Vans Motorcycles
Non-Road Mobile Sources	Locomotives Lawn and Garden Equipment Agricultural Equipment Commercial Equipment Construction Equipment Recreational Vehicles Recreational Marine Vehicles Commercial Marine Vehicles

## 10.3 Procedure

The emissions inventory will be based on documentation and guidance established by the United States Environmental Protection Agency: Procedures for Emission Inventory Preparation, Volumes I-VII, AP-42 and MOBILE 5/6 (software developed by EPA for estimating emissions from mobile sources).

## 10.4 Schedule

The emissions inventory will be updated in 2004 and every 3-5 years thereafter.

## **Section 11.0            General Permit Requirements**

### **11.1 Purpose**

### **11.2 Applicability**

### **11.3 Public Participation**

### **11.4 Applications**

### **11.5 Review**

### **11.6 Renewal**

### **11.7 Change in Ownership**

### **11.8 Unavoidable Noncompliance and Violations**

### **11.9 Emergency Defense**

### **11.10 Prohibition of Reintroduction of Collected Contaminants to the Air**

#### 11.1 Purpose

The purpose of this Section is to require owners and/or operators of proposed or existing air contamination sources to submit an application and obtain a permit from the Air Quality Program for the operation of such sources.

#### 11.2 Applicability

Unless specifically exempted pursuant to Section 12.2.2, owners and /or operators of air contamination sources must comply with this Section. Owners and/or operators of major stationary sources subject to 40 CFR Part 71, must obtain a Title V permit from the US Environmental Protection Agency. Owners and/or operators of other emission sources must submit an application pursuant to Sections 11.4 and 11.5 of this Plan. Owners and/or operators of emission sources required to obtain a Title V permit may request limitations on such source's potential to emit regulated air pollutants in accordance with Section 13.0 of this Plan in order to avoid such requirements.

#### 11.3 Public Participation

Federal, affected state and public participation in review and permit proceedings will be provided for in accordance with procedures established in Section 6.0 of this Plan unless otherwise provided for in this Section.

#### 11.4 Applications

##### (1) Application Submittals

All applications submitted to the Air Quality Program shall be provided in a format acceptable to the Air Quality Program. At a minimum, the application must include:

- (a) identifying information, including owner and/or operator name and address, plant name and address;
- (b) a location map with the site marked on it if the application is for a new facility;
- (c) a facility description of the operations carried out at the facility;
- (d) a listing of the Standard Industrial Classification Plans (SIC) which correspond to the primary operations carried out at facility;

- (e) a list of Criteria and Hazardous Air Pollutants emitted at the facility, including quantity and rate of emissions; the emissions shall be based upon actual test data or in the absence of such data upon estimations acceptable to the Air Quality Program.
- (f) a listing of the applicable Tribal requirements in this Plan;
- (g) a listing of the applicable Federal requirements;
- (h) proposed start-up date or phased dates when applicable;
- (i) revisions to the installation/construction, if any, that differed from the construction design and plan given in the permit application material, data and specifications.

## (2) Application Fees

An application will be assessed a one-time fee that must accompany the application. Applications received without appropriate fees are incomplete. Fees must be paid by check or money order made payable to *St. Regis Mohawk Tribe* in accordance with the following fee schedule:

- (a) Construction permit application fees.
  - (i) Emissions of any regulated air pollutant over 40 up to and including 99 tons per year- \$500
  - (ii) Emissions of any regulated air pollutant 5 up to and including 40 tons per year - \$300
  - (iii) Emissions of any air pollutant applicable to Sections 9.6 and 9.7- \$300
  - (iv) Extension of time and transfer of ownership – no fee
- (b) Operating permit application fees.
  - (i) Minor permit - \$300
  - (ii) Modification of permit - \$200
  - (iii) Relocation - \$100

## 11.5 Review

The Air Quality Program will make a determination of facility status within 60 days of receipt of a complete application. The Air Quality Program will publish the notice of complete application in accordance with Section 6.2.a.

## 11.6 Renewal

Renewal of minor source permits shall occur every 5 years from the date of original issuance. Owners or operators of affected facilities must submit their application no later than 180 days before the date of expiration.

## 11.7 Change in Ownership.

A minor source permit is valid only for the emission unit(s), owner and/or operator, facility, mode of operation and special conditions stated in the application, or permit. The owner and/or operator can transfer the permit to a new owner and/or operator if the mode of operation and emissions do not change.

## 11.8 Unavoidable Noncompliance and Violations.

At the discretion of the Air Quality Program, a violation of any applicable emission standard for necessary scheduled equipment maintenance, start-up/shutdown conditions and malfunctions or upsets may be excused if such violations are unavoidable. The following actions and record keeping and reporting requirements must be adhered to in such circumstances:

(1) The facility owner and/or operator shall compile and maintain records of all equipment maintenance or start-up/shutdown activities when they can be expected to result in an exceedance of any applicable emission standard, and shall submit a report of such activities to the Air Quality Program. Such reports shall describe why the violation was unavoidable and shall include the time, frequency and duration of the maintenance and/or start-up/shutdown activities and the identification of air contaminants, and the estimated emission rates. If a facility owner and/or operator is subject to continuous stack monitoring and quarterly reporting requirements, he need not submit reports for equipment maintenance or start-up/shutdown for the facility.

(2) In the event that emissions of air contaminants in excess of any emission standard in this Plan occur due to a malfunction, the facility owner and/or operator shall report such malfunction by telephone to the Air Quality Program as soon as possible during normal working hours, but in any event not later than two working days after becoming aware that the malfunction occurred. Within 30 days thereafter, the facility owner and/or operator shall submit a written report to the Air Quality Program describing the malfunction, the corrective action taken, identification of air contaminants, and an estimate of the emission rates.

(3) The Air Quality Program may also require the owner and/or operator to include in reports described under (1) and (2) above an estimate of the maximum ground level concentration of each air contaminant emitted and the effect of such emissions depending on the deviation of the malfunction and the air contaminants emitted.

(4) In the event of maintenance, start-up/shutdown or malfunction conditions which result in emissions exceeding any applicable emission standard, the facility owner and/or operator shall take appropriate action to prevent emissions which will result in contravention of any applicable ambient air quality standard. RACT, as determined by the Air Quality Program, shall be applied during any maintenance, start-up/shutdown or malfunction condition subject to this Section.

## 11.9 Emergency Defense.

An emergency constitutes an affirmative defense to an action brought for noncompliance with emission limitations or permit conditions for all facilities within the exterior boundaries of the SRMT.

(1) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the facility owner and/or operator can identify the cause(s) of the emergency;

(b) The equipment at the permitted facility causing the emergency was at the time being properly operated;

(c) During the period of the emergency the facility owner and/or operator took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; or

(d) The facility owner and/or operator notified the Air Quality Program within two working days after the event occurred. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(2) In any enforcement proceeding, the facility owner and/or operator seeking to establish the occurrence of an emergency has the burden of proof.

#### 11.10 Prohibition of Reintroduction of Collected Contaminants to the Air.

No person shall unnecessarily remove, handle, or cause to be handled, collected air contaminants from an air cleaning device for recycling, salvage or disposal in a manner that would reintroduce them to the outdoor atmosphere.

## **Section 12.0 Permits for Minor Facilities**

### **12.1 Purpose**

### **12.2 Applicability**

### **12.3 Construction Permits**

### **12.4 Operating Permits**

### **12.5 Monitoring, Record Keeping, Reporting**

#### 12.1 Purpose

The purpose of this Section is to regulate the operation and modification of new and existing stationary sources, area sources and devices in order to achieve and maintain the ambient air quality standards established pursuant to Section 109 and 112 of the CAA and Section 9 of this Plan.

#### 12.2 Applicability

(1) Except as provided in this section, no person may commence construction or modification of any minor facility, may operate any new minor facility or may relocate any minor portable source without obtaining a permit from the Air Quality Program.

(2) Sources that meet the following criteria are required to register with the Air Quality Program, as specified in this paragraph:

(a) Facilities with existing stationary sources that are in industrial categories to which a New Source Performance Standard (NSPS) applies, with potential emissions of regulated contaminants below the applicability thresholds of 40 CFR Section 60,

(b) Facilities with existing stationary sources, which emit any contaminant listed as a hazardous air pollutant under Section 112 of the CAA with a potential to emit below the applicability thresholds of 40 CFR Section 61 and 40 CFR Section 63 or which have been deferred from the requirement for obtaining a Title V permit pursuant to 40 CFR Section 71,

(c) Any stationary source, which has its potential to emit capped by rule pursuant to Subsection 13.0 of this Plan.

(3) De minimis facilities, as defined in Section 5.0, are exempted from the permitting requirements of this Section and Section 13.0. De minimis facilities remain subject only to the following air quality rules:

(a) Section 15.0 Open Burning

(4) The issuance of a permit does not prevent the future adoption by the Air Quality Program of pollution control rules, standards or orders more stringent than those now in existence and does not prevent the enforcement of these rules, standards or orders against the permittee.

### 12.3 Construction permits

(1) No person shall cause or allow the construction or installation of any new minor facility other than a de minimis facility as defined in Section 5.0 without first obtaining an air quality construction permit. A construction permit is also required for any modification that would cause an existing facility to no longer qualify for de minimis status or its current permit category. The Air Quality Program will notify the owner/operator on the acceptability of the application within 30 days of receipt.

(2) The proposed facility or activity will not cause any National Ambient Air Quality Standard (NAAQS) or standard pursuant to Section 9.0 of this Plan, in any attainment area to be exceeded. The owner or operator will meet any applicable ambient air quality standards and all applicable regulations.

(3) Air quality modeling is required, in accordance with 40 CFR Part 51 Appendix W, for where the proposed facility or activity will emit more than:

20 tpy of PM 10

40 tpy of SO<sub>2</sub>

40 tpy of NO<sub>x</sub>

40 tpy of Ozone

Permits shall be issued if the Air Quality Program determines that RACT will be applied and the applicant has adequately demonstrated that reasonable further progress toward the attainment of the standards will not be impaired.

(4) Permits are issued based on the production/process rate requested in the permit application. The emission rate associated with the requested production/process rate is a permit condition. The Air Quality Program may modify the production/process rate, hours of operation or other requested permit conditions in order to create Tribe-only or federally and practically enforceable permit conditions.

(5) For where the emission would cause or contribute to ambient concentrations which exceed a National Ambient Air Quality Standard or standard pursuant to Section 9.0 of



this Plan, in designated non-attainment areas, permits shall be issued if the Air Quality Program determines that (RACT) will be applied and the applicant has adequately demonstrated that reasonable further progress toward the attainment of the NAAQS will not be impaired.

(6) A violation by the owner or operator of the limitations or conditions contained in the construction permit shall subject the owner or operator to any or all enforcement penalties, including permit revocation, available under this TIP. No operating permit will be issued until the violation has been resolved to the satisfaction of the Air Quality Program.

(7) A duly issued permit to construct or modify will terminate and become null and void if the construction is not commenced within 18 months of the permit issuance date, or if work is suspended for more than 18 months after it has commenced.

#### 12.4 Operating permits

(1) No person shall cause or authorize the operation of a new or modified minor facility for more than a 60-day period without applying for a minor permit to operate. Owners and operators of registered facilities must notify the Air Quality Program 30 days in advance of undertaking modifications to the facility that will make the facility subject to additional tribal or federal requirements.

(2) Emission limitations established and made a part of the construction permit are incorporated into and become enforceable limitations of the subsequently issued operating permit. Permit limitations in adjustment of or in addition to the facility's construction permit limitations may be made a condition of the facility's operating permit issuance.

#### 12.5 Monitoring, Record Keeping, Reporting

(1) Monitoring requirements must specify the type, interval, and frequency of monitoring activities that are sufficient to yield representative data to determine whether there is compliance with the terms and conditions of the permit or compliance with Tribal and federal pollution control statutes and rules. As appropriate, the permit must contain requirements for the proper use, maintenance, and installation of monitoring equipment or methods. The permit must require the permittee to keep accurate records of monitoring activities and to submit to the Air Quality Program periodic reports of monitoring results required by the permit and, as requested by the Air Quality Program, the results of other monitoring undertaken by the permittee that are related to compliance with the terms and conditions of the permit or compliance with Tribal and federal pollution control statutes and rules.

(2) The permittee shall retain the following items for at least five years from the date of the sample, measurement, report, certification, or application, after which time this period must be automatically extended during the course of an unresolved enforcement action or at the request of the Air Quality Program:

- (a) copies of all reports required by the conditions of the permit;

(b) calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation;

(c) records of the date, exact location, and time of monitoring and testing which is related to compliance with the terms and conditions of the permit or compliance with Tribal and federal pollution control statutes and rules, the name of the individual who performed the sampling or measurements, the date the analysis was performed, the name of the individual who performed the analysis, the analytical techniques or methods used, and the results of the analysis;

(3) The permittee shall at all times properly operate and maintain the facilities and systems of treatment and control and the appurtenances related to them which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures.

(4) The permittee shall install and maintain appropriate backup or auxiliary facilities if they are necessary to achieve compliance with the conditions of the permit and, for all permits other than hazardous waste facility permits, if these backup or auxiliary facilities are technically and economically feasible.

(5) The permit shall require the permittee to submit to the Air Quality Program the reports described in 12.5 (1) to 12.5 (4) by March 1 of each year.

## **Section 13.0 Synthetic Minor Facilities**

### **13.1 Purpose**

### **13.2 Request for Synthetic Minor Status**

### **13.3 Record Keeping**

### **13.4 Compliance**

### **13.5 Renewal**

#### 13.1 Purpose

This Section authorizes the owners or operators of specified stationary sources that would otherwise be major sources to request and accept Tribally and federally enforceable emission limits sufficient to allow the source to be considered “synthetic minor sources”. A synthetic minor source is not subject to Title V-Federal Operating Permit Program, unless it is subject to that rule for any reason other than being a major source. In addition, a synthetic minor source is subject to all applicable Tribal rules, regulations and other requirements.

#### 13.2 Request for Synthetic Minor Status:

(1) A request for designation as a synthetic minor source shall include:

- (a) The identification and description of all existing emission units at the source;
- (b) The calculation of each emission unit's maximum annual and maximum monthly emissions of regulated air pollutants for all operating scenarios to be permitted, including any existing federally-enforceable limits established by a mechanism other than this rule;
- (c) Proposed federally enforceable conditions which:
  - (i) Limit source-wide emissions to below major source thresholds; and
  - (ii) Are permanent, quantifiable, and otherwise enforceable as a practical matter;
- (d) Proposed federally enforceable conditions to impose monitoring, record keeping, and reporting requirements sufficient to determine compliance;
- (e) Any additional information requested by the Air Quality Program; and
- (f) Certification by a responsible official that the contents of the request are true, accurate, and complete.

(2) The owner or operator of a major source who chooses to request synthetic minor source status shall make such a request within the following timeframes:

- (a) For any major source that is operating or is scheduled to commence operating on the effective date of this TIP, the owner or operator shall request synthetic minor source status no later than 60 days from the effective date of this Plan.
- (b) For any major source that commences operating after the effective date of this TIP, the owner or operator shall request synthetic minor source status no later than 180 days prior to commencing operation.

(3) The Air Quality Program shall determine if the request for synthetic minor status is complete within 30 days of receipt, unless a longer period of time is agreed upon by the Air Quality Program and the source's owner or operator.

(4) Federally-enforceable conditions enabling a source to become a synthetic minor source shall be identified as federally enforceable and included in a source's operating permit issued by the Air Quality Program, and shall be:

- (a) Permanent, quantifiable, and practically enforceable permit conditions, including any operational limitations or conditions, which limit the source's potential to emit to below major source thresholds;
- (b) Monitoring, record keeping, and reporting conditions sufficient to determine on-going compliance with the emission limits; and
- (c) Subject to public notice and U.S. EPA review pursuant to Sections 6.0 of this rule. Permits that do not conform to the requirements of this Section, and other requirements of this Plan, or any underlying federal regulations that set forth

criteria for federal-enforceability may be deemed not federally enforceable by the U.S. EPA.

(5) Permits and permit modifications involving federally-enforceable conditions must be subjected to the public notice and comment procedures required for permit applications under Section 6 of this Plan which must include at a minimum, publication of a notice of complete application in a prominent newspaper serving the area and a 30 day public comment period. Copies of permits shall be forwarded to the Administrator through the appropriate Regional Office.

### 13.3 Record Keeping

The owner or operator of any facility subject to this Section must maintain all required records on-site for a period of five years and make them available to representatives of the Air Quality Program upon request. Program representatives must be granted access to any facility regulated by this Section, during normal operating hours, for the purpose of determining compliance with this and any other state and federal air pollution control requirements, regulations or law.

### 13.4 Compliance

(1) On an annual basis, beginning one year after the granting of federally enforceable conditions, the responsible official shall provide a certification to the Air Quality Program that the facility has operated all emission units within the limits imposed by the conditions. This certification shall include a brief summary of the emissions subject to the conditions for that time period and a comparison to those threshold levels that would require the submission of an application for a Title V facility permit, or compliance with an applicable requirement.

(2) The emission of pollutants in exceedance of the applicability thresholds for obtaining a Title V facility permit or other applicable requirements constitutes a violation of this Section and of the Plan and may be subject to one or a combination of the following actions: enforcement action, permit termination, permit revocation and reissuance and permit renewal denial.

### 13.5 Renewal

Renewal of synthetic minor source permits shall occur every 5 years from the date of original issuance. Owners or operators of affected facilities must submit their application no later than 180 days before the date of expiration.

## **Section 14.0 Source Surveillance**

### **14.1 Emission Reports and Record keeping**

### **14.2 Testing, enforcement, inspection and complaints**

### **14.3 Continuous Emissions Monitoring**

#### 14.1 Emission Reports and Record keeping

(1) Emission Reports shall include the following:

(a) Certification by a duly authorized representative. A duly authorized representative must sign a form provided by the Department to verify the truth, accuracy, and completeness of the emission statement. This certification shall state that, based on information and belief formed after reasonable inquiry by the duly authorized representative, the statements and information in the document are true, accurate, and complete. The certification shall include the full name, title, original signature, date of signature and telephone number of the duly authorized representative.

(b) Facility level information, consisting of:

- (i) verification of full name of facility;
- (ii) verification of parent company name;
- (iii) verification of street address (physical location) of the facility;
- (iv) verification of four digit SIC Plan(s) for the facility;
- (v) calendar year reportable emissions;
- (vi) total facility fuel use and fuel sulfur content and heat value (for combustion installations); and
- (vii) fugitive emissions.

(c) Emission point level information, consisting of:

- (i) average hours of operation per day (peak ozone and carbon monoxide seasons);
- (ii) average days of operation per week (peak ozone and carbon monoxide seasons);
- (iii) weeks of operation per year (seasonal and annual);
- (iv) hours of operation per year;
- (v) percentage annual throughput (percentage of annual activity by season); and
- (vi) verification of latitude and longitude.

(d) Process level information, consisting of:

- (i) maximum heat input (for combustion installations);
- (ii) quantity of fuels consumed (for combustion installations);
- (iii) estimated actual annual reportable emissions, for each air regulated air pollutant emitted, (in units of pounds per year);
- (iv) estimated emissions method (see subdivision 202-2.4(b) of this subsection);
- (v) emission factor(s) (if used to determine actual emissions);
- (vi) primary and secondary control equipment identification Plan(s);

- (vii) control efficiencies achieved by the control equipment. The control efficiency should reflect the total control efficiency from all control equipment for a specific criteria group (e.g., VOCs and NO<sub>x</sub>). If the actual control efficiency is unavailable, the design efficiency or the control efficiency limit imposed by a permit shall be used;
- (viii) annual process rate;
- (ix) peak ozone season daily process rate.

(e) Petroleum, volatile organic liquid, and fuel storage and distribution facilities must provide the following additional information:

- (i) tank capacity (including maximum and average liquid height, and working volume);
- (ii) throughput associated with tanks and loading racks (including turnovers per year).

## (2) Emission Reporting Methods and Procedures.

Emission reports shall be submitted to the Air Quality Program on or before March 1 each year for emissions of the previous calendar year. Emissions estimates shall be based on the owner or operator's use of the following methods. If a source owner or operator is required to use a specific monitoring method to demonstrate compliance with other applicable requirements, the Air Quality Program may require that the emission estimates for the corresponding processes be based on information obtained from that monitoring method. The Air Quality Program may reject use of a proposed method for a particular process if it can be demonstrated that the method does not represent actual emissions.

- (a) stack samples or other emission measurements;
- (b) material balance using knowledge of the process;
- (c) US EPA Air Pollution-42 emission factors; and
- (d) best engineering judgment (including manufacturers' guarantees).

## (3) Record keeping

The owner or operator of any facility subject to this Section must maintain all required records on-site for a period of five years and make them available to representatives of the Air Quality Program upon request. Program representatives must be granted access to any facility regulated by this Section, during normal operating hours, for the purpose of determining compliance with this and any other tribal and federal air pollution control requirements, regulations or law.

## 14.2 Testing, enforcement, inspection and complaints

(1) For the purpose of ascertaining compliance or non-compliance with any air pollution control Plan, rule or regulation, the Air Quality Program requires the source owner or operator to submit an acceptable report of measured emissions within 30 days of testing.

The source owner or operator shall bear the cost of measurement and preparing the report of measured emissions. Failure of such person to submit a report acceptable to the Air Quality Program within the stated time shall be sufficient reason for the Air Quality Program to suspend or deny an operating permit. In the event a source owner or operator can demonstrate to the Air Quality Program such time is not sufficient, he may request an extension in writing and be granted a 30-day extension.

(2) A source owner or operator who is required to submit a stack test report shall notify the Air Quality Program, in writing, not less than 30 days prior to the test, of the time and date of the test. Such notification shall also include the acceptable procedures to be used for the stack test including sampling and analytical procedures. The source owner or operator shall allow the Air Quality Program, or a representative, free access to observe the stack testing being conducted. No person shall conceal an emission by the use of air or other gaseous diluent to achieve compliance with an emission standard, which is based on the concentration of a contaminant in the gases, emitted through a stack.

(3) Emission testing, sampling and analytical determinations to ascertain compliance with this Section shall be conducted in accordance with test methods acceptable to the Air Quality Program. The Reference Methods contained in 40 CFR Section 60 Appendix A and 40 CFR Section 61 Appendix B shall be considered as acceptable test methods for those sources and contaminants for which they are expressly applicable.

(4) Enforcement of these rules and regulations shall be performed by the St. Regis Mohawk Conservation Officers. The Conservation Officers will also be responsible for inspecting the facilities based on any complaints received. Findings shall be recorded and a copy given to both the facility and the Air Quality Program. Air Quality Program representatives will be responsible for annual facility inspections and any unannounced audits.

(5) For the purpose of ascertaining compliance or noncompliance with any air pollution control Plan, rule or regulation, the Air Quality Program may conduct separate or additional emission tests on behalf of the Tribe. A source owner or operator shall provide sampling holes, scaffolding and other pertinent equipment required for emission testing. The facility shall bear the costs of such equipment.

### 14.3 Continuous Emissions Monitoring

(1) The owner and operator of any source subject to this section shall be required to install and operate CEMS on each affected unit at the source, and to quality assure the data for sulfur dioxide, nitrogen oxides, opacity and volumetric flow at each such unit.

(2) CEM is the continuous measurement of pollutants emitted into the atmosphere in exhaust gases from combustion or industrial processes. CEM systems include:

- (a) An SO<sub>2</sub> pollutant concentration monitor;
- (b) A NO<sub>x</sub> pollutant concentration monitor;
- (c) A volumetric flow monitor;

- (d) An opacity monitor;
- (e) A diluent gas (O<sub>2</sub> or CO<sub>2</sub>) monitor; or
- (f) A computer-based data acquisition and handling system for recording and performing calculations with the data.

(3) All units over 25 megawatts and new units under 25 megawatts that use fuel with a sulfur content greater than 0.05 percent by weight are required to measure and report emissions under this Section. The new units under 25 megawatts using clean fuels are required to certify their eligibility for an exemption every five years. The following is monitoring methods requirements and options:

- (a) All existing coal-fired units serving a generator greater than 25 megawatts and all new coal units must use CEMs for SO<sub>2</sub>, NO<sub>x</sub>, flow and opacity.
- (b) Units burning natural gas may determine SO<sub>2</sub> mass emissions by:
  - (1) measuring heat input with a gas flow meter and using a default emission rate;
  - (2) sampling and analyzing gas daily for sulfur and using the volume of gas combusted; or
  - (3) using CEMs.
- (c) Units burning oil may monitor SO<sub>2</sub> mass emissions by one of the following methods:
  - (i) Daily manual oil sampling and analysis plus oil flow meter;
  - (ii) Sampling and analysis of diesel fuel oil as delivered plus oil flow meter;
  - (iii) Automatic continuous oil sampling plus oil flow meter;
  - (iv) SO<sub>2</sub> and flow CEMs.
- (d) Gas-fired and oil-fired base-loaded units must use NO<sub>x</sub> CEMs.
- (e) Gas-fired peaking units and oil-fired peaking units may either estimate NO<sub>x</sub> emissions by using site-specific emission correlations and periodic stack testing to verify continued representativeness of the correlations, or use NO<sub>x</sub> CEMs.
- (f) All gas-fired units using natural gas for at least 90 percent of their annual heat input and units burning diesel fuel oil are exempt from opacity monitoring.
- (g) For CO<sub>2</sub> all units can use either (i) a mass balance estimation or (ii) CO<sub>2</sub> CEMs or (iii) O<sub>2</sub> CEMs in order to estimate CO<sub>2</sub> emissions.

If a unit's operation or fuel use changes so that accepted monitoring methods no longer apply, the unit would become subject to CEMS monitoring requirements in the following calendar year.

Not later than thirty-six months after enactment of the TIP, the owner or operator of each affected unit under Section 13.3.3, shall install and operate CEMS, quality assure the data, and



keep records and reports in accordance with the regulations issued under subsections 13.3.1, 13.3.4, 13.3.5, and 13.3.6 of this Section.

(4) Emissions Calculated for Periods of Missing Data

Annual Availability (%) of Monitor or System*	Number of Hours Missing (N)	Value Substituted for Each Missing Hour
Greater than or equal to 95%	N is less than or equal to 24 hours	Average of the hours recorded before and after missing period
	N is greater than 24 hours	90th percentile value recorded in previous 30 days of service or the before/after value, whichever is greater
Less than 95% but greater than or equal to 90%	N is less than or equal to 8 hours	Average of the hours recorded before and after missing period
	N is greater than 8 hours	95th percentile value recorded in previous 30 days of service or the before/after value, whichever is greater
Less than 90%	N is greater than 0 hours	Maximum value recorded in previous 30** days of service

(5) Certification Requirements

The TIP requires the following performance certification tests for CEM systems:

- (a) A 7-day calibration error test for each monitor;
- (b) A linearity check for each pollutant concentration monitor;
- (c) A relative accuracy test audit for each monitor;
- (d) A bias test for each SO<sub>2</sub> pollutant concentration monitor, flow monitor, and the NO<sub>x</sub> CEM system;
- (e) A cycle time test for each pollutant concentration monitor;
- (f) A daily interference test for flow monitors;
- (g) An accuracy test is required for fuel flow meters; and
- (h) A stack test is required for a NO<sub>x</sub> emission correlation for gas- and oil-fired peaking unit.

(6) Quality Assurance/Quality Control

The operator must perform periodic performance evaluations of the equipment, including daily calibration error tests, daily interference tests for flow monitors, and semi-annual relative accuracy test audit and bias tests.

The owner or operator must develop and implement a written quality assurance/quality control plan for each system. The quality control plan must include complete, step-by-step procedures and operations for calibration checks, calibration adjustments, preventive maintenance, audits, and record keeping and reporting. The quality assurance plan must include procedures for conducting periodic performance tests.

**Section 15.0            Open Burning**

**15.1 Purpose**

**15.2 Applicability**

15.1 Purpose

In an effort to preserve the air quality for our community in the wake of increased business and housing development, the regulation of open burning is necessary to preserve the enjoyment of property by all and to assure that Tribal health, safety and welfare are protected (Appendix I). Under this regulation (Appendix J and Appendix K), proven methods and controls will be utilized to minimize air impacts from permitted burning.

15.2 Applicability

The provisions of this section apply to all areas within the exterior boundaries of the SRMT and other areas where the Tribe has shown to have jurisdiction.

**Section 16.0            Reserved**

**Section 17.0            Reserved**

## **Section 18.0            Enforcement**

### **18.1 Applicability**

### **18.2 Compliance**

#### 18.1    Applicability

Through the Safety and Civil Obedience Plan (Appendix L, Appendix M and Appendix N) the St. Regis Mohawk Tribal Police are hereby authorized and given jurisdiction within the external boundaries of the Mohawk Territory to respond to complaints, requests for assistance, reports of problems and/or any other type of inquiry reasonably related to their official duties as police officers.

#### 18.2    Compliance

(1)The St. Regis Mohawk Tribal Police and Conservation Officers will assume enforcement activities for the purposes of air regulations compliance.

- (a) Any individual or owner of an air contamination source will be advised of their conduct-giving rise to the violation. After being so advised, the violator will be issued a summons. The summons must contain a minimum sufficient detail to advise the violator of the exact provision of the TIP, which was allegedly violated, the date and time of the violation.
- (b) It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(2)The Peacemakers Court, Civil Disobedience Division shall be the arbiter of all summons and complaints filed under this Plan.

- (a)    The Peacemakers Court may seal an air contamination source to prevent its operation if compliance with this Chapter is not met within the time provided by an order of the Court issued in the case of the violation. Sealing means labeling or tagging a source to notify any person that operation of the source is prohibited, and also includes physical means of preventing the operation of an air contamination source without resulting in destruction of any equipment associated with such source, and includes, but is not limited to, bolting, chaining or wiring shut control panels, apertures or conduits associated with such source.
- (b)    No person shall operate any air contamination source sealed by the Court in accordance with this section unless a modification has been made which enables such source to comply with all requirements applicable to such modification.
- (c)    Unless authorized by the Court, no person shall remove or alter any seal affixed to any air contamination source in accordance with this section.

## **Section 19.0            Review of State Permits**

### **19.1 Purpose**

### **19.2 Applicability**

#### 19.1 Purpose

The Air Quality Program is capable of evaluating and commenting on air permit notices and draft permits for facilities located in contiguous jurisdictions where the air emissions may affect the Reservation air quality and/or facilities located within 50 miles of the Reservation. The Air Quality Program will be afforded the opportunity to submit written recommendations in respecting the issuance of the permit and its terms and conditions.

#### 19.2 Applicability

In accordance with the approved Eligibility Determination for the SRMT (Appendix ), the Air Quality Program has “affected state” status under 505(a)(2) of the CAA.

## **Section 20.0            Regional Haze Planning**

### **20.1 Purpose**

### **20.2 Scope**

### **20.3 Applicability**

#### 20.1 Purpose

The Air Quality Program in conjunction with the Ozone Transport Commission (OTC), Mid-Atlantic States for Regional Air Management (MARAMA), the Northeast States for Coordinated Air Use Management (NESCAUM), eleven states and the Penobscot Indian Nation of Maine are committed to a long-term strategy for implementing the final regional haze rule. A TIP committal plan for regional haze will be developed for early 2005 and a final revision in 2008.

#### 20.2 Scope

With the finalization of the regional haze rule in mid-1999, EPA started a process for the development of Implementation Plans for regional haze. Given the regional nature of the problem, the rule strongly endorses regional planning, and the role of states and tribes within a regional planning organization (RPO). This organization was formed on July 24, 2001 (Appendix O) and was named the Mid-Atlantic Northeast Visibility Union (MANE-VU).

#### 20.3 Applicability

The final regional haze rule provides for eventually reaching natural background condition in Class 1 areas. Because emissions that cause haze are emitted over wide areas and haze precursors are transported by winds, a regional program to implement EPA’s final rule ensures

improved visibility not only in parks and wilderness areas, but in many other areas of the ozone transport region as well.

## **Section 21.0        Reports**

### **21.1 Purpose**

### **21.2 Reportable Emissions Data and Information**

### **21.3 Reporting Format**

#### 21.1 Purpose

On an annual basis beginning with calendar year 2005, the Air Quality Program shall report to the Administrator (through the appropriate Regional Office) and the SRMT Environmental Director information as specified in Section 21.2 through 21.3. Reports must be submitted by April 15 of each year for data collected and actions, which took place during the period January 1 to December 31 of the previous year.

#### 21.2 Reportable Emissions Data and Information

The Air Quality Program shall submit in the annual report, the following emissions data and information:

- (1) Emissions of Particulate matter (PM10/2.5), sulfur oxides, nitrogen oxides and volatile organic compounds,
- (2) Emissions of lead or lead compounds measured as elemental lead,
- (3) Air toxics in the form of metals-beryllium, cadmium, chromium and nickel,
- (4) Any enforcement action taken or court order,
- (5) Any new construction or modifications approved under Section 12 of this Plan,
- (6) Any source that ceases operation during the reporting period

#### 21.3 Reporting Format

The Air Quality Program will submit the annual report on paper forms and electronic copies.

## **Appendix A-Notice of Public Comment**



**Appendix B-TCR99-43**  
**Clean Air Quality Program Authority**





Saint Regis Mohawk Tribe

**Tribal Chief Tribal Chief Tribal Chief**  
Hilda E. Smoke Alma Ransom Paul Thompson

**Rt. 37 Box 8A**  
Hogansburg, New York 13655  
Tel. 518-358-2272  
Fax 518-358-3203

**Tribal Sub Chief Tribal Sub Chief Tribal Sub Chief**  
Richard A. Terrance John Bigtree Jr. Harry Benedict

**TRIBAL COUNCIL RESOLUTION**

**TCR 99-43**

**Clean Air Quality Program Authority**

**WHEREAS,** The St. Regis Mohawk Tribal Council (Tribal Council) acting as the recognized governing body on behalf of the St. Regis Mohawk Tribe (Tribe) has the authority to govern environmental matters within its territory, and

**WHEREAS,** The St. Regis Mohawk Tribe has the authority to delegate authority to a designated Tribal office or department, and

**WHEREAS,** The St. Regis Mohawk Tribe, Environment Division, Clean Air Quality Program, is primarily responsible for the protection and enhancement of the Tribes air quality, through monitoring, studies and development of air quality legislation, and

**WHEREAS,** The Tribal Council is acting in the best interest of the Tribe,

**NOW THEREFORE BE IT RESOLVED,** that the Tribe authorizes the St. Regis Mohawk Tribe, Clean Air Quality Program to submit applications for federal assistance and to receive delegation of federal Clean Air Act authority, as allowed by law under the Clean Air Act of 1970 and Clean Air Amendments of 1990.

Signed By: Signed by: Hilda E. Smoke, Tribal Chief, Alma Ransom, Tribal Chief, Paul O. Thompson, Tribal Chief, Richard A. Terrance, Sub Chief, John Bigtree Jr., Sub Chief, and Harry Benedict, Sub Chief.  
Certified By: Angus McDonald

## **Appendix C- TCR89-19**

# SAINT REGIS MOHAWK TRIBE

## TRIBAL COUNCIL CHIEFS

BRENDA LAFRANCE  
HAROLD TARBELL  
L. DAVID JACOBS

COMMUNITY BUILDING  
HOGANSBURG, NEW YORK 13655  
518-358-2272

TRIBAL CLERK  
CAROL HERNE  
TRIBAL ADMINISTRATOR  
SAKAKOHE PEMBLETON

*PCB APAS*

## SAINT REGIS MOHAWK TRIBAL COUNCIL RESOLUTION NO. 89-19

A RESOLUTION OF THE SAINT REGIS MOHAWK TRIBAL COUNCIL  
ADOPTING AMBIENT STANDARDS FOR PCBs ON THE SAINT REGIS  
MOHAWK RESERVATION.

- WHEREAS, the Saint Regis Mohawk Tribe a federally recognized Indian Government, in conjunction with the Mohawk Nation Council of Chiefs of the Iroquois Confederacy, and the Mohawk Council of Akwesasne, comprise part of the independent sovereign Mohawk Indian Nation. The Mohawk Nation has existed since time immemorial as the aboriginal people who are the custodians and guardians of their air, lands, surface waters, ground waters, and living resources, and;
- WHEREAS, the Tribal Council of the Saint Regis Mohawk Tribe is empowered by the people to act as the governing body of the Saint Regis Mohawk Tribe within the borders of the United States of America and is authorized to act on the Tribe's behalf to enhance Tribal culture, maintain law and order, protect health and welfare, and preserve the living and non-living resources of Akwesasne, and;
- WHEREAS, the Tribal Council is authorized to protect these interests and values for the next seven generations of Tribal members through the enactment of ordinances, adoption of resolutions, negotiation of intergovernmental agreements, development of studies, and such further actions as may be necessary to protect public health, the environment and the resources upon which the Tribe relies, and;
- WHEREAS, the Saint Regis Mohawk Tribe has a primary interest in protecting the health and welfare of all people who reside or do business on the Saint Regis Mohawk Reservation and in preserving the quality of the Reservation Environment. The natural resources, including the Tribe's fishing and hunting rights, habitat values, and waters, are integral components of the Tribe's economic, social, cultural and spiritual life, and;



AKWESASNE "LAND WHERE THE PARTRIDGE DRUMS"

WHEREAS, the Tribal Council is aware that activities taking place on and off the Saint Regis Mohawk Reservation may impair human health and adversely affect Tribal resources and values, and has determined that it is in the Tribe's best interest to coordinate development, implementation and enforcement of the Tribe's environmental regulatory programs with the U. S. Environmental Protection Agency (EPA), the State of New York and other interested public and private entities, and;

WHEREAS, the Tribal Council is aware that EPA is the lead agency for the GM-Massena Central Foundry Superfund Site, and in the exercise of its Federal trust responsibility to the Tribe, EPA has expressed its interest in entering into one or more Superfund contracts or cooperative agreements with the Tribe to further the efforts of the Tribe, EPA, and other Federal and State agencies in remediation of the GM-Massena Site and assessing the nature and extent of natural resource damages associated with the release of hazardous substances into the environment, and;

WHEREAS, the Tribal Council has determined that exercise of the Tribe's legislative authority is necessary to protect the health, welfare and resources of the people of Akwesasne, and in support of such proposed legislation has directed the Environmental Program Department to: gather and review data regarding Polychlorinated Biphenyls (PCBs); consult with EPA, the State of New York and other experts; and conduct public meetings, and;

WHEREAS, the Tribal Council has been advised that on August 27, 1987 EPA published Interim Guidance on Compliance with other Applicable or Relevant and Appropriate Requirements (ARARs) (52 Fed. Reg. 32496), which acknowledges EPA's obligation to comply with local environmental quality standards in Superfund clean-up actions, and the Council has been further advised that on August 4, 1988, EPA published Revised Draft Guidance on Indian Involvement in the Superfund Program (OSWER Directive No. 9375.1-10, at 11), which further recognized EPA's obligation to consider Tribal ARARs on the same basis as those of states. The Council is also aware that EPA's recognition of Tribal ARARs is further demonstrated in the proposed changes to the National Contingency Plan, 53 Fed. Reg. 51395, (December 21, 1988).

NOW, THEREFORE, BE IT RESOLVED, that we the Tribal Council of the Saint Regis Mohawk Tribe hereby declare that upon enactment of this resolution it shall be the policy of the Tribe that no further degradation of the environment

which comprises the Saint Regis Mohawk Reservation shall occur, moreover, it is the further policy of the Tribe that the Tribe and its members shall enjoy the resources of Akwesasne, and be free to consume fish, plants, and other wildlife free of contamination, as they have in the past, and in furtherance of these policies, the Tribal Council, and its subordinate agencies, shall do all within their power to maintain, enhance and restore the quality of the Reservation Environment so that the fish, plants and other wildlife as well as the air, soils, surface waters, and ground waters are free from contamination and suitable for eating, drinking, swimming, religious and ceremonial use, and;

BE IT FURTHER RESOLVED, that we, the Tribal Council of the Saint Regis Mohawk Tribe in furtherance of these policies, do on this date, hereby promulgate the enact the following PCB ambient levels and PCB clean-up standards into Tribal law.

The clean-up standards for PCBs found in or upon the soils, lands, vegetation, air, sediment, surface waters or ground waters of the Saint Regis Mohawk Reservation shall not exceed: A) the current background level of PCBs for areas where the level of PCB contamination is less than the numerical PCB levels set forth below; or B) the concentrations set forth below where the current level of PCB contamination exceeds these standards:

<u>Media</u>	<u>PCB Level</u>
Sediments	.1 parts per million
For Soils	1 parts per million
For Surface Waters	1 parts per trillion
For Groundwaters	10 parts per trillion
For Air	5 nanograms per cubic meter

BE IT FINALLY RESOLVED, that we the Tribal Council of the Saint Regis Mohawk Tribe, in furtherance of our government-to-government relationship with EPA, hereby request that EPA act in accordance with applicable law and policy, and take such action as may be necessary to protect and further the interests of the Saint Regis Mohawk Tribe as set forth in this Resolution, and that EPA take immediate action to:

- \* Acknowledge the Tribe's authority as a sovereign government to establish ARARs to protect human health and the quality of the Reservation Environment, and that EPA further acknowledge that

Federal Superfund clean-up actions, shall be carried out in a manner consistent with applicable ARARs, including those ARARs promulgated or enacted by the Saint Regis Mohawk Tribe and those relevant and appropriate goals of environmental protection as set forth herein, and;

- \* Acknowledge the governmental, property and aboriginal rights of the Saint Regis Mohawk Tribe inclusive of the Tribe fishery resources, reserved water and environmental quality rights and affirm EPA's commitment to protect, restore and enhance these important fishery and habitat values;
- \* Acknowledge the continuing role of the Tribe in working with EPA and other Federal and State agencies with regard to: (1) remediation; (2) natural resource damage assessment; and (3) adoption of Tribal ARARs as the Federal PCB clean-up standards.

SAINT REGIS MOHAWK TRIBE

*Brenda LaFrance*  
Chief Brenda LaFrance

*Harold Tarbell*  
Chief Harold Tarbell

*L. David Jacobs*  
Chief L. David Jacobs

CERTIFICATION

I, Carol T. Herne, hereby certify that the above Resolution was duly enacted by the Saint Regis Mohawk Tribal Council on the 30th day of April, 1989; a quorum being present, with a vote of 3 for, 0 against.

Carol T. Herne  
Tribal Clerk

RES89-19: jr5

## **Appendix D-TCR89-34**

## SAINT REGIS MOHAWK TRIBE

TRIBAL COUNCIL CHIEFS  
HAROLD TARBELL  
L. DAVID JACOBS  
LINCOLN C. WHITE

COMMUNITY BUILDING  
HOGANSBURG, NEW YORK 13655  
518-358-2272  
FAX # 518-358-3203

TRIBAL CLERK  
CAROL HERNE  
TRIBAL ADMINISTRATOR  
SAKAKOHE PEMBLETON

### RESOLUTION ESTABLISHING TRIBAL EMERGENCY POLLUTION AUTHORITY 89-34 TRIBAL COUNCIL RESOLUTION

WHEREAS, the St. Regis Mohawk Tribe, as a sovereign nation, has fundamental civil regulatory powers enabling it to protect the health, safety and welfare of all people within the exterior boundaries of the Reservation; and

WHEREAS, the sovereign Saint Regis Mohawk Tribe has empowered the Tribal Council to act on the Tribe's behalf as the governing body of the Saint Regis Mohawk Tribe within the borders of the United States of America to protect the health and welfare of the people, maintain law and order, and preserve and enhance their culture and the living and non-living resources of Akwesasne, and;

WHEREAS, the Tribal Council has been authorized to act on the Tribe's behalf by enacting ordinances, adopting resolutions, negotiating intergovernmental agreements, conducting studies, and taking such further action as may be necessary to protect the public health, the quality of the environment and living resources upon which the Tribe relies, and;

WHEREAS, the Saint Regis Mohawk Tribe has a primary interest in protecting the health and welfare of all people who reside or do business on the Saint Regis Mohawk Indian Reservation and in protecting the Reservation environment and the health and welfare of the Reservation population from imminent and substantial endangerment due to the release or threatened release of pollution.

NOW, THEREFORE, BE IT RESOLVED, that it shall be unlawful for any person or entity to discharge, or threaten to discharge pollution into the land, air or waters of the Reservation environment, which discharges or threatened discharge presents an imminent and substantial endangerment to the health, safety or welfare of the Reservation population.



AKWESASNE "LAND WHERE THE PARTRIDGE DRIIMS"



BE IT FURTHER RESOLVED, the Tribal Council may act, without prior notice or hearing, to further protect the public's health, safety or welfare by issuing written orders to the person or persons responsible for the discharge or threatened discharge requiring that the person or persons causing such pollution immediately discontinue such discharge and appear before the Tribal Council at the time and place specified in such written order and provide information pertaining to the violations and conditions alleged in such order.

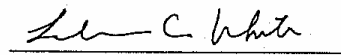
BE IT FURTHER RESOLVED, that the Tribal Council upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where such endangerment is to the wildlife, or other products or goods, may bring suit on behalf of the St. Regis Mohawk Tribe in the appropriate U. S. District Court to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to such pollution or to take such other action as may be necessary.

BE IT FINALLY RESOLVED, that in addition to other civil fines and remedies, the Tribal Council may assess the owners or operators of the pollution source (s) for all governmental and administrative costs incurred, including legal fees and expenses related to the Tribe's response to such discharge or threatened discharge of pollution into the Reservation environment.

SAINT REGIS MOHAWK TRIBE

  
Chief Harold Tarbell

\_\_\_\_\_  
Chief L. David Jacobs

  
Chief Lincoln C. White

CERTIFICATION

I, Carol T. Herne, hereby certify that the above resolution was duly enacted by the Saint Regis Mohawk Tribal Council on the 26th day of September, 1989; a quorum being present, with a vote of 2 for, 0 against.

Carol T. Herne  
Tribal Clerk - Carol Herne

89-34:jr7

## **Appendix E-TCR2002-183**



# SAINT REGIS MOHAWK TRIBE

412 State Route 37  
Akwasasne, New York 13655

Phone: 518 358-5937

Fax: 518 358-6252

Chief Alma Ransom  
Sub-Chief John Bigtree Jr.

Chief Hilda E. Smoke  
Sub-Chief Harry Benedict

Chief Paul O. Thompson

## Tribal Council Resolution Resolution 2002-183 Tribal Implementation Plan

WHEREAS, the Saint Regis Mohawk Tribal Council is the duly recognized governing body of the Saint Regis Mohawk Tribe; and,

WHEREAS, the Saint Regis Mohawk Tribal Council is responsible for the health, safety, education and welfare of all community members; and,

WHEREAS, the authority, responsibility, and jurisdiction of the Tribal Council to protect air resources on Tribal Lands is derived from the Tribe's sovereign rights as the Aboriginal owners and guardians of their lands and waters and has been recognized by Federal Indian Policy; and

WHEREAS, the Tribal Council has determined that the Saint Regis Mohawk Tribe Environment Division shall have primary responsibility for administering an air program which monitors and regulates Tribal air quality, subject to review and approval by the Tribal Council in accordance with Tribal law; and,

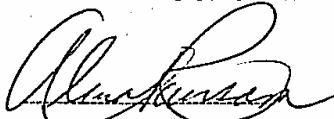
WHEREAS, the Saint Regis Mohawk Tribe Environment Division has identified the need to implement controls over the air quality on Tribal Lands; and,

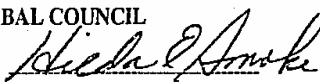
WHEREAS, the Tribal Council has reviewed the proposed "Tribal Implementation Plan" drafted by the Saint Regis Mohawk Environment Division.

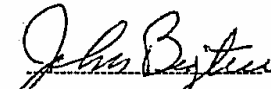
THEREFORE BE IT RESOLVED THAT, the Saint Regis Mohawk Tribal Council hereby approves and makes part of Tribal Law, the "Tribal Implementation Plan" submitted by the Saint Regis Mohawk Tribe Environment Division; and,

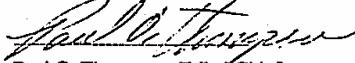
BE IT FURTHER RESOLVED THAT, all Tribal agencies, including, but not limited to the Tribal Police Force, will be provided with copies of the Tribal Implementation Plan, and will assist in the compliance with and whenever applicable, the enforcement of the Tribal Implementation Plan in accordance with applicable law.

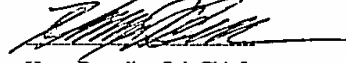
### THE SAINT REGIS MOHAWK TRIBAL COUNCIL

  
Alma Ransom, Tribal Chief

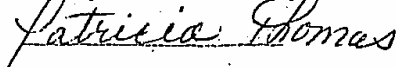
  
Hilda E. Smoke, Tribal Chief

  
John Bigtree Jr., Sub Chief

  
Paul O. Thompson, Tribal Chief

  
Harry Benedict, Sub Chief

CERTIFICATION: This is to certify that the above resolution was duly passed by the St. Regis Mohawk Tribal Council pursuant to the Authority vested therein.

  
Patricia Thomas, Tribal Clerk

10-3-02

Date

**Appendix F-Eligibility Determination,  
September 2000 Letter**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

MAY 25 2001

Chief Hilda E. Smoke  
Chief Alma Ransom  
Chief Paul Thompson  
Route 37 Box 8A  
Hogansburg, NY 13655

Re: Application for Eligibility Determination

Dear Chief Smoke,  
Chief Ransom,  
Chief Thompson:

I am pleased to notify you that the United States Environmental Protection Agency (EPA) Region 2 is approving the Saint Regis Mohawk Tribe's request for an eligibility determination for the purposes of establishing a minor source permitting program. In making this decision, I have evaluated information provided to me by the Saint Regis Mohawk Tribal Council and its Environment Division and determined that the Tribe meets the requirements of CAA Section 301(d) CAA and 40 Code of Federal Regulations (CFR) Section 49 which provide for the authorization of specific Tribal CAA authorities. The scope of today's action is summarized briefly below.

The Tribe applied for an eligibility determination for the purposes of establishing a minor source permitting program. This is the first request for permitting eligibility nationwide and is potentially precedent setting.

In the request, there is also a conflicting jurisdictional claim filed by the State of New York regarding the area known as the Hogansburg Triangle. Under EPA's regulations 40 CFR 49.9(e), if a conflicting claim cannot be readily resolved, the EPA may make a determination of eligibility for the undisputed areas. Therefore, I am making the determination of eligibility for the geographic areas described in the Tribe's application, excluding the Hogansburg Triangle.

Enclosed for your records is a copy of the signed document entitled, "Eligibility Determination for the Saint Regis Mohawk Tribe for Treatment in the Same Manner as a State Under the Clean Air Act".

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

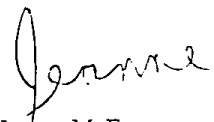
Although the Tribe also applied for an eligibility determination for the purposes of establishing a minor source permitting program, EPA is not making an eligibility determination on that aspect of the program at this time. This is the first request for permitting eligibility nationwide and is potentially precedent setting. Consequently, EPA needs additional time to complete the review process. Nevertheless, we look forward to the timely completion of action on the minor source permitting program and will continue to work cooperatively with the Tribe's Environment Division toward this end.

Finally, there is a conflicting jurisdictional claim filed by the State of New York regarding the area known as the Hogansburg Triangle. Under EPA's regulations 40 CFR 49.9(e), if a conflicting claim cannot be readily resolved, the EPA may make a determination of eligibility for the undisputed areas. Therefore, I am making the determination of eligibility for the geographic areas described in the Tribe's application, excluding the Hogansburg Triangle.

Enclosed for your records is a copy of the signed document entitled, "Eligibility Determination for the Saint Regis Mohawk Tribe for Treatment in the Same Manner as a State Under the Clean Air Act" and its attachments.

Congratulations on this achievement! The Saint Regis Mohawk Tribe is the first Indian nation in EPA Region 2 to receive a CAA eligibility determination. I am confident that today's action will provide for the enhanced protection of air quality on your lands and look forward to continuing our longstanding productive working relationship.

Sincerely,



Jeanne M. Fox  
Regional Administrator

Enclosure

cc: John P. Cahill, Commissioner, NYSDEC  
Bob Warland, Director, NYSDEC  
Patrick Kehoe, New York Office of the Attorney General  
✓ Les Benedict, Saint Regis Mohawk Tribe  
Joyce Barkley, Saint Regis Mohawk Tribe



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

SEP 19 2000

**ELIGIBILITY DETERMINATION FOR THE SAINT REGIS MOHAWK TRIBE FOR TREATMENT IN THE SAME MANNER AS A STATE UNDER THE CLEAN AIR ACT**

The US Environmental Protection Agency (EPA) Region 2's Office of Regional Counsel (ORC) and the Division of Environmental Planning and Protection (DEPP) have reviewed the Saint Regis Mohawk Tribe (the Tribe) application for eligibility for purposes of § 105 and § 505(a)(2) of the Clean Air Act (CAA) and to establish regulations for a minor source permitting program (Attachment 1). Based on information in the pending application, DEPP and ORC have concluded that the Tribe's application meets the requirements for an eligibility determination ("treatment in the same manner as a state") as set forth in § 301(d) of the CAA (42 U.S.C. § 7601(d)) and 40 Code of Federal Regulations (CFR) § 49.6 for purposes of:

- financial assistance under § 105 of the CAA; and
- acting as an "affected state" under § 505(a)(2) of the CAA.

While EPA nationwide has already made several eligibility determinations pursuant to § 105 and § 505(a)(2), this application is the first nationwide to include a determination for establishing a federally enforceable minor source permitting program. As a result, EPA needs additional time to evaluate this part of the application. EPA will defer making a determination on this portion of the application until a proper review can be conducted. Thus this determination will address only §105 and §505(a)(2).

**ELIGIBILITY REQUIREMENTS**

EPA published the Air Quality Planning and Management Rule for Indian Tribes (Tribal Authority Rule or TAR) on February 12, 1998. 63 Federal Register 7254. The Tribal Authority Rule at 40 CFR § 49.6 states:

Sections 301(d)(2) and 302(r), 42 U.S.C.: §§ 7601(d)(2) and 7602(r), authorize the Administrator to treat an Indian Tribe in the same manner as a state for the CAA provisions identified in 40 CFR § 49.3 if the Indian Tribe meets the following criteria:

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- (a) The applicant is an Indian Tribe recognized by the Secretary of the Interior;
- (b) The Indian Tribe has a governing body carrying out substantial governmental duties and functions;
- (c) The functions to be exercised by the Indian Tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the Tribe's jurisdiction; and
- (d) The Indian Tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the CAA and all applicable regulations.

#### **STATE AND PUBLIC REVIEW**

The TAR at § 49.9(b) provides that the Regional Administrator shall notify appropriate governmental entities of an Indian tribe's initial, complete application under the CAA. For applications addressing air resources within reservations, the notification "shall specify the geographic boundaries of the reservation." 40 C.F.R. § 49.9(b)(1). For applications addressing non-reservation areas, the notification "shall include the substance and bases of the tribe's jurisdictional assertions." 40 C.F.R. § 49.9(b)(2). Under the regulations, "governmental entities shall have 30 days to provide written comments to EPA's Regional Administrator regarding any dispute concerning the boundary of the reservation." 40 C.F.R. § 49.9(c). The TAR further provides that when a tribal application addresses non-reservation areas, "appropriate governmental entities may request a single 30-day extension to the general 30-day comment period." 40 C.F.R. § 49.9(c). As of June 26, 2000, EPA had provided the State of New York the information required under TAR § 49.9(b)(1) and (2). EPA also provided notice of the application in local newspapers, and invited local governments and citizens to submit comments to the State of New York and EPA. On July 5, 2000, the State requested an additional 30-day extension to respond. EPA granted the State's request with the understanding that EPA would proceed with the Tribe's application for the undisputed Reservation area after the first 30-day period expires.

On July 20, 2000, the State of New York, through its agent, Hiscock & Barkley, commented on the St. Regis Mohawk Tribe's request for an eligibility determination. The State disputed the Tribe's assertion of jurisdiction over an area known as the "Hogansburg Triangle" and commented on the Tribe's capability to implement a CAA program. As discussed below, EPA is making no determination regarding the Hogansburg Triangle at this time. EPA notes that under the TAR, comments made by appropriate governmental entities "must be . . . limited to the scope of the tribe's jurisdictional assertion, . . ." 40 C.F.R. § 49.9(d). Thus, the State's comments on the Tribe's capability are beyond the scope of the Tribe's jurisdictional claims. No comments from local governments or citizens were received on the application.

For the reasons articulated in this decision document, it is the judgment of the Regional Administrator that the SRMT has demonstrated that it is reasonably expected to be capable of administering a CAA, § 105 grant, and carrying out the functions necessary to be treated as an affected state pursuant to § 505(a)(2) of the CAA.

#### **ELIGIBILITY REVIEW**

The following evaluation reviews whether the Saint Regis Mohawk Tribe meets the eligibility criteria for the CAA authorities that are the subject of the application.

##### **1. Federal Recognition.**

The Saint Regis Mohawk Tribe is federally recognized by the Secretary of the Interior. 63 Federal Register 71941, 71944 (December 30, 1998).

##### **2. Substantial Governmental Duties and Powers.**

The Saint Regis Mohawk Tribal Council is comprised of three duly elected Chiefs, who serve for staggered terms of three-years each, and several sub-officers. This system of government, with limited interruption, has governed the Mohawk people for some 2000 years. As the governing body of the Tribe, the Tribal Council negotiates with Federal, State and local governments; appropriates Tribal funds for public purposes; promulgates and enforces ordinances for the administration of justice; safeguards and promotes the peace, safety, morals and general welfare of the Reservation; and charters subordinate organizations for economic and other purposes. The Tribal Council enacts rules and regulations governing activities within the boundaries of the SRMT Reservation directly, by Resolution. The Tribal Council delegated authority for the protection of human health and the environment to the Environment Division. Thus, each of the environmental programs created by Resolution is administered by the St. Regis Mohawk

Tribe Environment Division. The Environment Division will therefore be the entity responsible for establishing and implementing a program under the CAA.

The application demonstrates that the Saint Regis Mohawk Tribe is an Indian Tribe with a governing body carrying out substantial governmental duties and functions.

**3. The functions to be exercised by the Indian Tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the Tribe's jurisdiction.**

The Tribe is requesting an eligibility determination under §105 (grant), §505(a)(2) ("affected State") of the CAA for lands within the exterior boundaries of the Reservation. In order to clearly and precisely describe the Reservation boundaries, the Tribe included with its application legal descriptions and maps. The Tribe also later submitted the GIS coordinates. The maps and the GIS coordinates together clearly and precisely describe the boundaries of the Reservation, as required by EPA regulations at 40 CFR §49.7(a)(3).

The Tribe's application demonstrates that the functions to be exercised by the Tribe pertain to the management and protection of air resources within the exterior boundaries of the Reservation.

However, the Tribe's application includes an assertion of jurisdiction over an area known as the Hogansburg Triangle. The State of New York has notified EPA that it objects to the Tribe's claim of jurisdiction over this area. This conflicting claim cannot be resolved promptly. As such, the determinations made in this action only include the undisputed areas and do not include the Hogansburg Triangle area. Should any boundary changes occur in the future, ORC and DEPP will take appropriate action pursuant to this eligibility determination.

**4. The Indian Tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the CAA and all applicable regulations.**

The Tribe is seeking eligibility for purposes of CAA § 105 and § 505(a)(2). The two provisions are evaluated separately below.

- § 105. The Tribe has submitted information showing successful management of EPA grants, including § 105 CAA grants, for ten continuous years. The Tribe uses the funds to support its development of enabling legislation, develop its air quality protection infrastructure (the Clean Air Program), adoption of air quality regulations, retention of qualified staff, and establishment of formal relationships

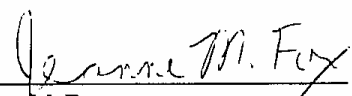
with EPA, NYSDEC, and regulated industries. It has also managed large air quality contracts. In addition to the § 105 grant, the Clean Air Program also manages two CAA 103 grants: acid rain deposition monitoring; and fine particulate matter monitoring across and adjacent to the reservation. The Program accounts for its activities through regular reports describing its activities each quarter including a financial report. These reports are often enhanced by field or technical reports detailing responses to complaints, inspections, or monitoring results. The Clean Air Program has grown to 2 full time employees, 1 part time employee and 1 seasonal intern. The Tribe's Air Program Staff is trained in administration, grants, monitoring, quality assurance, permitting and enforcement.

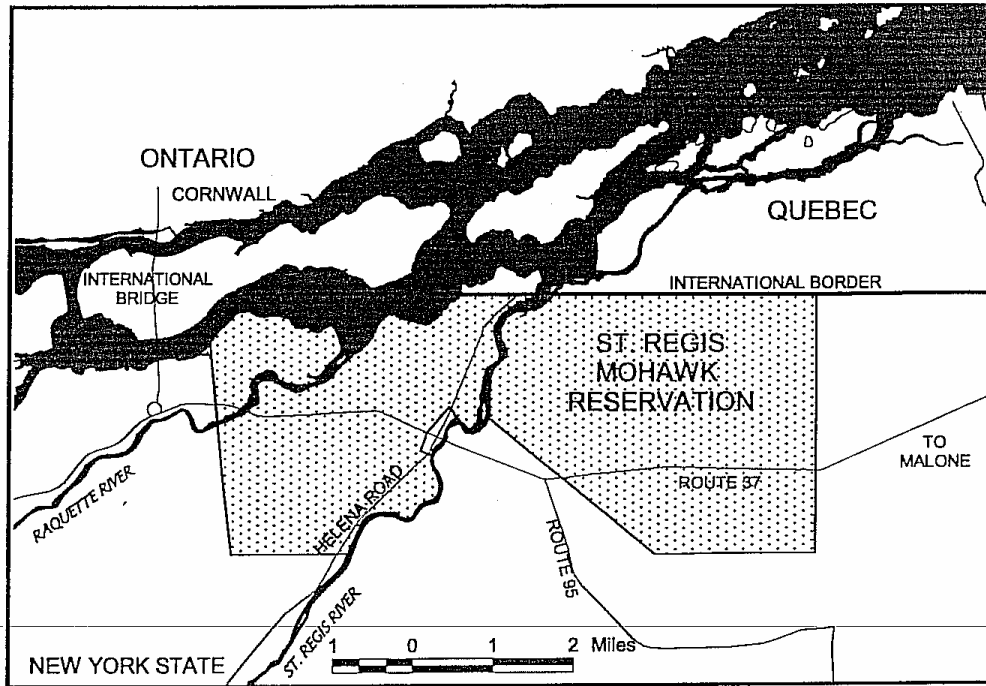
- § 505(a)(2). The Tribe has submitted information showing it has experience in evaluating air quality issues. The Tribe's Environment Division staff is capable of evaluating and commenting on air permit notices and draft permits for facilities located in contiguous jurisdictions where the air emissions may affect the Reservation air quality and/or facilities located within 50 miles of the Reservation. The Tribal air quality specialist spent a total of 6 weeks with Region 2 staff and received training in the areas of permitting issuance and review, instrumentation, monitoring and Tribal Implementation Plan development. For a number of years, the Clean Air Program has been actively involved in reviewing, commenting and concurring on technical documents, the performance of field oversight during sampling and construction activities at Superfund sites, and provided support during negotiations and public outreach activities.
- Minor Source Permitting Program. ORC does not recommend taking action at this time on the Tribe's request for an eligibility determination for establishing a federally enforceable minor source permitting program. The Tribe's application for minor source permitting is the first received by EPA nationwide and is being reviewed with great interest by EPA Headquarters' Office of Air and Radiation and OGC, of particular importance is evaluation of the Tribe's capabilities. EPA will inform the Tribe of EPA's review status of the program by September 30, 2000.



The DEPP has evaluated the capability of the Saint Regis Mohawk Tribe (Attachment 2). Based on the information submitted by the Tribe and DEPP's evaluation, EPA concludes that the Tribe is capable of administering § 105 and § 505(a)(2) of the CAA.

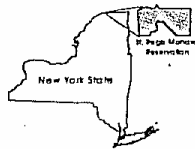
**DETERMINATION**

Based on the information provided to me by the Saint Regis Mohawk Tribal Council, the Division of Environmental Planning and Protection, and the Office of Regional Counsel, I have determined that the Saint Regis Mohawk Tribe meets the requirements of § 301(d) of the CAA (42 U.S.C. § 7601(d)) and 40 CFR § 49.6, for purposes of § 105 and § 505(a)(2) of the CAA.

Date: 9/19/05   
\_\_\_\_\_  
Jeanne M. Fox  
Regional Administrator



-  St. Regis Mohawk Reservation
-  Rivers



Created by Kawennata  
 SRMT GIS Program  
 September 1999  
 UTM - Zone 18 - NAD 27

**Appendix G-Eligibility Determination  
May 2001 Letter**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

MAY 25 2001

Chief Hilda E. Smoke  
Chief Alma Ransom  
Chief Paul Thompson  
Route 37 Box 8A  
Hogansburg, NY 13655

Re: Application for Eligibility Determination

Dear Chief Smoke,  
Chief Ransom,  
Chief Thompson:

I am pleased to notify you that the United States Environmental Protection Agency (EPA) Region 2 is approving the Saint Regis Mohawk Tribe's request for an eligibility determination for the purposes of establishing a minor source permitting program. In making this decision, I have evaluated information provided to me by the Saint Regis Mohawk Tribal Council and its Environment Division and determined that the Tribe meets the requirements of CAA Section 301(d) CAA and 40 Code of Federal Regulations (CFR) Section 49 which provide for the authorization of specific Tribal CAA authorities. The scope of today's action is summarized briefly below.

The Tribe applied for an eligibility determination for the purposes of establishing a minor source permitting program. This is the first request for permitting eligibility nationwide and is potentially precedent setting.

In the request, there is also a conflicting jurisdictional claim filed by the State of New York regarding the area known as the Hogansburg Triangle. Under EPA's regulations 40 CFR 49.9(e), if a conflicting claim cannot be readily resolved, the EPA may make a determination of eligibility for the undisputed areas. Therefore, I am making the determination of eligibility for the geographic areas described in the Tribe's application, excluding the Hogansburg Triangle.

Enclosed for your records is a copy of the signed document entitled, "Eligibility Determination for the Saint Regis Mohawk Tribe for Treatment in the Same Manner as a State Under the Clean Air Act".

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Congratulations on this achievement! The Saint Regis Mohawk Tribe is the first Indian nation nationwide to receive a CAA eligibility determination to establish a minor source permitting. I am confident that today's action will provide for the enhanced protection of air quality on your lands and look forward to continuing our longstanding productive working relationship.

Sincerely,

*Kathleen C. Callahan*

*for* William J. Muszynski  
Acting Regional Administrator

Enclosure

cc: Erin M. Crotty, Commissioner, NYSDEC

**Appendix H-Eligibility Determination  
March 2003 Letter**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

MAR - 5 2003

Hilda E. Smoke, Tribal Chief  
Alma Ransom, Tribal Chief  
Paul Thompson, Tribal Chief  
Route 37 Box 8A  
Hogansburg, NY 13655

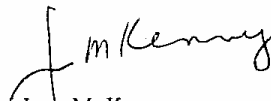
Re: Application for Eligibility Determination for Portions of the Clean Air Act

Dear Ms. Smoke,  
Ms. Ransom,  
Mr. Thompson:

I am pleased to notify you that, based on the information provided to me by the Saint Regis Mohawk Tribal Council on December 10, 2001, I have concluded that the Tribe has met the eligibility requirements of section 301(d) of the CAA (42 U.S.C. § 7601(d)) and 40 C.F.R. section 49.6 for purposes of developing and carrying out an implementation plan under the Clean Air Act. This determination is based on the fact that the Tribe has met the criteria for program approval as described in the enclosed Eligibility Determination. Additionally, the decision to take favorable action is supported by the substantial expertise that the Tribe has demonstrated in successfully administering an air pollution control program for well over a decade. Therefore, consistent with Environmental Protection Agency requirements as described in 40 C.F.R. section 49, I am approving the Tribe's application to implement the provisions of the Clean Air Act pertaining to the development of a Tribal Implementation Plan for air quality.

Congratulations on this achievement! The Saint Regis Mohawk Tribe is the first in this Region to receive a Clean Air Act Eligibility Determination for a Tribal Implementation Plan. EPA Region 2 looks forward to a continuing productive working relationships in improving air quality on the Saint Regis Mohawk lands.

Sincerely,

  
Jane M. Kenny  
Regional Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

**ELIGIBILITY DETERMINATION FOR THE SAINT REGIS MOHAWK TRIBE FOR TREATMENT IN THE SAME MANNER AS A STATE FOR PURPOSES OF SECTION 110 OF THE CLEAN AIR ACT**

On December 10, 2001, the Saint Regis Mohawk Tribe (SRMT or Tribe) submitted an application to the U.S. Environmental Protection Agency (EPA) Region 2 requesting an eligibility determination of "treatment in a similar manner as a state" for a portion of the Clean Air Act (CAA). Specifically, the SRMT requested EPA approval to develop a Tribal Implementation Plan under section 110 of the CAA.

EPA Region 2's Office of Regional Counsel (ORC) and the Division of Environmental Planning and Protection (DEPP) have reviewed the SRMT's application (Attachment 1). Additionally, ORC and DEPP staff have discussed this matter with representatives of the Office of General Counsel, Office of Air and Radiation, and the American Indian Environmental Office in EPA Headquarters to ensure consistency with national policy and program goals. Based on review of information presented in the application, the SRMT's excellent record in conducting air quality program activities since 1990, discussions with Headquarters, a capability determination prepared by the DEPP (Attachment 2), and ORC's review of the application, EPA Region 2 has concluded that the Tribe's application meets the requirements for eligibility as set forth in § 301(d) of the CAA (42 U.S.C. § 7601(d)) and 40 C.F.R. § 49.6 for purposes of developing and carrying out a TIP. EPA Region 2 will evaluate all relevant CAA and regulatory requirements for implementation plans as part of the TIP review process as it reviews the proposed TIP submitted by the Tribe.<sup>1</sup>

**ELIGIBILITY REQUIREMENTS**

EPA published the Air Quality Planning and Management Rule for Indian Tribes (Tribal Authority Rule or TAR) on February 12, 1998. 63 Federal Register 7254. The Tribal Authority Rule at 40 C.F.R. § 49.6 states:

---

<sup>1</sup> Pursuant to EPA regulations at 40 C.F.R. §§ 49.7(a)(6) and 49.8, where applicable CAA or implementing regulatory requirements mandate criminal enforcement authority, tribal applications may be approved if the tribe and relevant EPA Region enter into an agreement regarding procedures for the provision of potential investigative leads to EPA and/or other appropriate federal agencies in circumstances where the tribe is precluded from asserting criminal enforcement authority. Consistent with these provisions, EPA Region 2 and the Tribe will enter into any necessary agreements relating to criminal enforcement authority prior to EPA approval of any implementation plan submitted by the Tribe which raises such issues.

Sections 301(d)(2) and 302(r), 42 U.S.C. §§ 7601(d)(2) and 7602(r), authorize the Administrator to treat an Indian tribe in the same manner as a state for the Clean Air Act provisions identified in [40 C.F.R.] § 49.3 if the Indian tribe meets the following criteria:

- (a) The applicant is an Indian tribe recognized by the Secretary of the Interior;
- (b) The Indian tribe has a governing body carrying out substantial governmental duties and functions;
- (c) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and
- (d) The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations.

#### **STATE AND PUBLIC REVIEW**

The Regional Administrator notified appropriate governmental entities of the Tribe's application for purposes of section 110 of the CAA. In a notice published in local newspapers, EPA also invited local governments and citizens wishing to comment on the boundaries of the St. Regis Mohawk Reservation (the "Reservation") to submit their comments to the State of New York copying EPA.

By letter dated April 5, 2002 from Jan R. Farr of Hiscock & Barclay to Jane M. Kenny, Regional Administrator of EPA Region 2, the State of New York (State) agreed to the northern and western Reservation boundaries asserted by the Tribe, asked for further clarification regarding the eastern boundary and requested additional time to provide information regarding the southern boundary. By letter dated May 28, 2002 from Raymond Werner, Chief, Air Programs Branch of EPA Region 2 to Jan R. Farr of Hiscock & Barclay, EPA Region 2 responded by providing additional information regarding the eastern boundary and additional time for the State to submit any further information on the eastern and southern boundaries. By letter dated June 6, 2002 from Jan R. Farr of Hiscock & Barclay to Raymond Werner, Chief, Air Programs Branch of EPA Region 2, the State replied by agreeing to the description of the eastern boundary and seeking additional information regarding the southern boundary. By letter dated July 18, 2002 from Raymond Werner, Chief, Air Programs Branch of EPA Region 2 to Jan R. Farr of Hiscock & Barclay, EPA Region 2 responded by providing a map containing information regarding the Reservation boundaries, noting that EPA would proceed based upon those boundaries once confirmed by the U.S. Bureau of Indian Affairs and offering to consider further comments from the State. EPA received confirming boundary information from BIA on September 9, 2002. No further clarification was requested by the State. No other comments were received on the application.

## **ELIGIBILITY REVIEW**

The following presents the results of our assessment of whether the SRMT meets EPA's eligibility criteria for CAA authority to develop and carry out a TIP.

### **1. Federal Recognition.**

The SRMT is federally recognized by the Secretary of the Interior. 67 Fed. Reg. 46328 (July 12, 2002).

### **2. Substantial Governmental Duties and Powers.**

The EPA established that the SRMT does have a governing body carrying out substantial governmental duties and functions in determination documents dated September 19, 2000 (relating to the Tribe's application for purposes of sections 105 and 505(a)(2) of the CAA) and May 25, 2001 (relating to the Tribe's application for purposes of establishing a federally enforceable minor source permitting program). See 49 C.F.R. § 49.7(a)(8). In brief, the SRMT has a governing body that carries out substantial government duties and functions. The Tribal government is comprised of three Chiefs and three Sub-Chiefs. The Tribal government enacts laws and legislation within the Saint Regis Mohawk Reservation. The Tribal government administers health, education, environmental and welfare programs for the benefit of its people.

### **3. The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction.**

For purposes of the current application, the Tribe is requesting an eligibility determination solely for lands within the exterior boundaries of the Reservation at this time, the Tribe is not seeking an eligibility determination for the area known as the Hogansburg Triangle area, and EPA is making no determination with respect to that area. Pursuant to § 49.7(a)(3) of the TAR, the application contains a statement describing the basis of the Tribe's assertion of authority for these Clean Air Act purposes.

In order to clearly and precisely describe the boundaries of the Reservation, the Tribe included with its application certain detailed description and maps which included GIS coordinates. The maps adequately describe the exterior boundaries of the Reservation. In addition, the Tribal boundaries were confirmed by BIA's maps.

The Tribe's application appropriately identifies the exterior boundaries of the Saint Regis Mohawk Reservation and demonstrates that the functions to be exercised by the Tribe pertain to the management and protection of air resources within the exterior boundaries of the Reservation.

**4. The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations.**

The application is seeking approval under §301(d) of the CAA (42 U.S.C. §7601(d)) to develop and carry out a TIP. The SRMT Air Quality Program has increased its capabilities, skills, and knowledge since it began in 1990. The Air Quality Program employs three technicians and one program manager. The educational background ranges from Associates in Science to a Masters Degree. Each technician is cross-trained to perform monitoring for atmospheric deposition, polychlorinated biphenyls, polycyclic aromatic hydrocarbons, sulfur dioxide, nitrogen oxides, heavy metals, particulate matter and styrene. All equipment used for monitoring is owned by the Air Quality Program and is maintained and calibrated on-site.

The SRMT Air Quality staff has acquired technical training through the TIP series offered by Northern Arizona University's Institute for Tribal Environmental Professionals. The SRMT Air Quality Program Manager has spent a total of six-weeks with Region 2 staff training in areas of TIP development, permitting issuance, review, and instrumentation.

Support staff for the Air Quality Program includes two Conservation Officers, environmental attorneys, an on-site legal advisor, maintenance personnel and technical support through EPA's Tribal Air Monitoring Center in Las Vegas.

In addition to the technical skills of its staff, as an organization the SRMT's Air Quality Program has demonstrated considerable capabilities in the programmatic, administrative, and legal spheres that contribute to the preparation and implementation a comprehensive TIP. Specifically, the SRMT has demonstrated a working understanding and/or significant skills in the following areas:

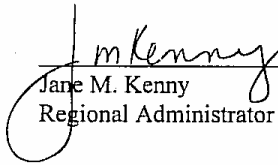
- air quality standards, including recommending attainment designations
- air quality monitoring and data interpretation
- air quality modeling and impact assessment
- air pollution control regulation development
- air pollution control permitting
- enforcement, including the existence of a tribal court system
- program implementation, including obtaining staff and financial resources
- public participation, public notification, and public hearings

The DEPP has evaluated the capability of the Saint Regis Mohawk Tribe (Attachment 2) Based on EPA's evaluation, the Tribe is capable of developing and carrying out a TIP under the Clean Air Act.

**DETERMINATION**

Based on the information provided to me by the Saint Regis Mohawk Tribal Council, the Division of Environmental Planning and Protection, and the Office of Regional Counsel, I have determined that the Saint Regis Mohawk Tribe meets the requirements of § 301(d) of the CAA (42 U.S.C. § 7601(d)) and 40 C.F.R. § 49.6, for purposes of developing and carrying out an implementation plan under section 110 of the CAA.

Date: 3/3/03

  
Jane M. Kenny  
Regional Administrator



## **Appendix I-TCR2002-59**



# Saint Regis Mohawk Tribe

412 State Route 37  
Akwesasne, New York 13655  
Tel. 518-358-2272  
Fax 518-358-3203

## **Tribal Council Resolution Resolution 2002-59 Burn Regulation**

**WHEREAS**, the Saint Regis Mohawk Tribal Council is the duly recognized governing body of the Saint Regis Mohawk Tribe; and,

**WHEREAS**, the Saint Regis Mohawk Tribal Council is responsible for the health, safety, education and welfare of all community members; and,

**WHEREAS**, the authority, responsibility, and jurisdiction of the Tribal Council to protect air resources on Tribal Lands is derived from the Tribe's sovereign rights as the Aboriginal owners and guardians of their lands and waters and has been recognized by Federal Indian Policy; and

**WHEREAS**, the Tribal Council has determined that the Saint Regis Mohawk Tribe Environment Division shall have primary responsibility for administering an Air Quality Program which monitors and regulates Tribal air quality, subject to review and approval by the Tribal Council in accordance with Tribal law; and,

**WHEREAS**, the Saint Regis Mohawk Tribe Environment Division has identified the need to implement controls over open burning on Tribal Lands; and,

**WHEREAS**, the Tribal Council has reviewed the proposed "Clean Air Quality Program-Tribal Burn Regulations" drafted by the Saint Regis Mohawk Environment Division.

**THEREFORE BE IT RESOLVED THAT**, the Saint Regis Mohawk Tribal Council hereby approves and makes part of Tribal Law, "The Clean Air Quality Program-Tribal Burn Regulations" submitted by the Saint Regis Mohawk Tribe Environment Division; and,

**BE IT FURTHER RESOLVED THAT**, all Tribal agencies, including, but not limited to the Tribal Police Force, will be provided with copies of the Tribal Burn Regulations, and will assist in the compliance with and whenever applicable, the enforcement of the Tribal Burn Regulation in accordance with applicable law.

### **THE SAINT REGIS MOHAWK TRIBAL COUNCIL**

Signed by: Alma Ransom, Tribal Chief, Paul O. Thompson, Tribal Chief, John Bigtree Jr., Sub Chief, and Harry Benedict, Sub Chief.

Certified by: Patricia Thomas, Tribal Clerk

## **Appendix J-Tribal Burn Regulations**

**ST. REGIS MOHAWK TRIBE  
ENVIRONMENT DIVISION  
AIR QUALITY PROGRAM; TRIBAL BURN REGULATION**

**Preamble**

**The Four Winds**

**We are thankful to the powers we know as the Four Winds. We hear their voices in the moving air as they refresh us and purify the air we breathe. They help to bring the change of seasons. From the four directions they come, bringing us messages and giving us strength. With one mind, we send our greetings and thanks to the Four Winds.**

It is with the recognition of the Four Winds, that we call air, and their powers of purification and refreshment, that the Tribal Burn Regulations are being instituted.

Clean air is an important resource to the community of Akwesasne and like many other resources it is taken for granted until it becomes scarce. Clean air is important for healthy lives and is really appreciated by the many Tribal members suffering from asthma and other respiratory illness.

The uncontrolled burning of waste materials in backyards and lots is an activity that threatens the health and well being of us all. It produces smoke containing poisons that are immediately harmful as well as containing cancer-causing chemicals. Burning of waste materials does not eliminate waste disposal because there are ashes produced (also toxic) and because many materials, like glass and metals, do not even burn.

In an effort to preserve the air quality for our community in the wake of increased business and housing development, the regulation of open burning is necessary to preserve the enjoyment of property by all and to assure that Tribal health, safety and welfare are protected. Under this regulation, proven methods and controls will be utilized to minimize air impacts from permitted burning.

This regulation also provides the means for resolving open burning issues when education, awareness and all other reasonable means have failed.

Additionally, because open burning creates a fire safety hazard, the fire department has been partnered into the permitting process to facilitate more efficient responses to fire calls.

**Sec.**

- 1.1 Definitions**
- 1.2 Prohibitions**
- 1.3 Burning Allowed by Permit Issued by Environment Division**
- 1.4 Burning Without a Permit Allowed**
- 1.5 Burning Permits**
- 1.6 Enforcement**
- 1.7 Burn Bans**
- 1.8 Penalties/Fines**

**1.1 Definitions.**

(1)Solid Waste. Any garbage, or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded materials, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial mining, and agricultural operations, and from community activities. For the purposes of hazardous waste regulation, a solid waste is a material that is discarded by being either abandoned, inherently waste-like; a certain military munitions, or recycled.

Includes refuse, or all waste material, including but not limited to, garbage, rubbish, incinerator residue, street sweepings, dead animals and offal.

Includes rubbish, defined as, solid or liquid waste material, including but not limited to, paper and paper products; rags; furniture; cans; crockery; plastics; cartons; chemicals; paint, grease; sludge; oils and other petroleum products; chemically treated wood; demolition materials; tires; and automobiles and other vehicles and parts, for junk, salvage or disposal. Rubbish shall not include food garbage, incinerator residue, street sweepings, dead animals or offal.

(2)Food Garbage. The animal and vegetable waste resulting from the handling, preparation, cooking and serving of food.

(3)Open Burning. Any outdoor fire or outdoor smoke producing process from which air contaminants are emitted directly into the outdoor atmosphere. Includes burn barrels, or any other device used to burn solid waste, food garbage, municipal solid waste or hazardous waste.

(4)Enclosed Burning. Any fire that takes place within the confines of an enclosed structure. Does not include combustion reactions contained in an enclosed device where controls are used to maintain efficient combustion and reduce emissions.

(5)Open Dump. Any management facility or site on Mohawk land where Municipal Solid Waste, solid waste, and/or hazardous waste has been disposed of, which is not a sanitary landfill authorized under this Tribal Solid Waste Plan. This term does not include any part of a farm on which only animal or vegetable wastes resulting from the operation of such farm are deposited.

(6)Municipal Solid Waste. A subset of solid waste that is defined as durable goods (e.g. appliances, tires, batteries), non-durable goods (e.g. newspapers, books, magazines) containers and packaging, food wastes, yard trimmings, and miscellaneous organic wastes from residential, commercial, and industrial non-process sources.

(7)Hazardous Waste. Any solid waste that:

(a)Because of its quantity, concentration, or physical, chemical, or infectious characteristics, may either cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating illness, or pose a substantial present or potential hazard to human health, living organisms, or the environment when improperly handled, treated, stored, transported, or disposed of; or

(b)Is specifically defined to be hazardous or toxic, including but not limited to any substance, material, smoke, gas, particulate matter, or combination thereof containing asbestos, petroleum or its byproducts, or Polychlorinated Biphenyls (PCBs); or

(c)Is hazardous, toxic, ignitable, reactive, or corrosive, and that is defined and regulated as such by the Tribe.

(8)Household Hazardous Waste. Any waste substance, material, smoke, gas, particulate matter or combination of that is Hazardous Waste discarded by households.

(9)Planned burn. Burning set or supervised by a Public Official in the performance of official duties.

(10)Director. The Director of the SRMT, Environment Division or his delegee.

## **1.2 Prohibitions.**

(1) Except as may permitted by Section 1.3 and upon obtaining a burn permit, no entity shall burn, cause, suffer, allow or permit the burning in an open *or enclosed* fire:

- (a) of *solid waste*;
- (b) of *food garbage*;
- (c) of *municipal solid waste*;
- (d) of *hazardous waste*;
- (e) of *household hazardous waste*;

- (f) of refuse at a refuse disposal area (See Tribal Solid Waste Plan);
- (g) of rubbish for salvage;
- (h) of rubbish generated by residential activities as a means of on-site disposal;
- (i) of rubbish generated by industrial or commercial activities other than agricultural as a means of on-site disposal;
- (j) of rubbish generated by land clearing or demolition for the erection of any structure; for the construction or modification of any highway, railroad, power or communication line, or pipeline; or for the development or modification of a recreational area or park;
- (k) Broadcast Fire, an area with continuous fuel cover, including but not limited to hayfields, crop-fields, grasslands, and lawns;
- (l) of refuse during an air pollution episode, in an area for which such air pollution has been designated. The Environment Division will, from time to time, inform the Community of air pollution episodes to which this section applies; or
- (m) of tires for any reason, including night-time shoreline fishing.

(2) Creation of Nuisances Not Allowed. No entity may cause the emission, from any source whatsoever, of air pollutants, contaminants or other substances that cause injury or detriment to any person, persons, property or the public, nor may any entity cause or contribute to emissions that create or constitute a nuisance.

**1.3 Burning Allowed by Permit Issued by the Environment Division.** Burning in an open fire is allowed as follows only in accordance with a permit issued by the Director after written application as provided in Section 1.5 of this regulation, provided it is not contrary to other Tribal law:

- (1) Land Clearing Materials. Burning of organic, non-hazardous material generated by land clearing or demolition; for the construction or modification of, including but not limited to, any highway, railroad, pipeline, or power or communication line; or for the development or modification of a recreational area or park; provided that such burning is done on-site or at an appropriate designated burning area;
- (2) Community Burning Allowed by Permit. Burning of yard wastes consisting of trees, tree trimmings, leaves, and brush;
- (3) Specifically Designated Burning Areas. Burning at an appropriate designated burning area serving the community, of tree trimmings, leaves, or lawn and garden debris in areas of the reservation to be designated by the Director.
  - (a) Residents' Request. The Director will consider whether to designate such an area only after receiving a request by residents of the area within which such burning would be conducted. The request must include a general description of the geographical boundaries of the area, the names of all residents within ½ mile;

the material to be burned; the proposed control methods; and the reasons why burning in an open fire should be allowed in such area;

(b) Such designation, if made, shall be by rule or regulation adopted in accordance with Tribal Emergency Pollution Authority Resolution # 89-34. In designating such an area, the Director will set forth any conditions deemed appropriate to protect Tribal health, safety and welfare;

(c) The Director shall, from time to time, review air pollution safeguards in each designated area to determine whether the designation should be rescinded.

(4) Burning at an appropriate designated site of toxic, explosive, or dangerous materials; provided that such burning is done only in accordance with a permit that will be issued by the Director after written application. Such permit may only issue after the Director determines that there is no other safe or economical method of disposal. Such permit will be for a specific period and shall contain such conditions as are deemed necessary in the interest of health or safety.

(5) Planned Burns. Outdoor Open Burning Permits are required for Planned Burns set or supervised by a Public Official in the performance of official duties. Such Planned Burns include those that are set:

(a) For the purpose of weed abatement;

(b) For the prevention of fire hazard;

(c) For the purpose of disease and pest prevention;

(d) Fires that are necessary for the training of governmental officials in criminal-enforcement.

**1.4 Burning Without a Permit Allowed.** Outdoor Open Burning Permits are not required for the following (Prohibited materials, Sec. 1.2, may not be used to start or fuel fires):

(1) The cooking of food;

(2) The providing of warmth for human beings;

(3) Fires for recreational purposes;

(4) Fires for religious or ceremonial purposes;

(5) Orchard heaters for the purpose of frost protection in farming or nursery operations.

(6) Fire for fire department and criminal enforcement training.

(7) Emergency control fires.

**1.5 Burning Permits.** All open burning activities requiring a written permit must be obtained from the SRMT, Environment Division prior to burn activity. The Environment Division Offices are open from 8:00-4:00, daily, except legal holidays. There is no charge for permits issued to individual residences or agriculture. Business and commercial permits are \$50.00 U.S. dollars payable at the time of issuance.



(1) Burning Permit Applications. An application for a burning permit shall include the reasons why such burning should be permitted and such other information as may be required by the Director to insure that such burning will be unlikely to result in the violation of Tribal air quality standards or to cause unreasonable air pollution. Burning Permit Application forms are available from the Environment Division, and at the Tribal Offices.

(a) If the Director approves such application he will issue a permit that shall be for a specified period and shall contain such conditions as are deemed necessary to prevent unreasonable air pollution and the contravention of Tribal air quality standards.

(2) Revocation of Permit. The permit may be revoked by the Director if there is:

- (a) failure to comply with its conditions;
- (b) a violation of Tribal law in connection with the burning;
- (c) the burning creates a public nuisance; or
- (d) the burning is found to cause or contribute to a contravention of Tribal air quality standards.
- (e) High fire danger as determined by the Environment Division by humidity, temperature, precipitation and other factors.

(3) Right to a Hearing. Before revocation of a permit, the permittee shall have the right to be heard; but where, in the opinion of the Director, prompt action is necessary because of danger to the public health or safety, or to prevent serious air pollution, the permit may be suspended pending a hearing. In the event that the Director is required to revoke a permit without a hearing, he/she will explain to the permittee, in writing, the reasons supporting such immediate action;

(4) All Burning Permits are valid for dates specified on permit.

(5) Three (3) copies of the permit will be made:

- (a) the original will be kept by the Environment Division;
- (b) a copy will be retained by the permittee for the duration of the permitted burn and must be made available at the burn site upon demand by appropriate officials;
- (c) a copy will be forwarded to the Hogansburg Akwesasne Volunteer Fire Department.

(6) All permits for burns will have conditions that must be met otherwise the burn must not be set or must be extinguished. All permitted burning activities must conform to the guidelines that are issued with the permit.

1.6 **Enforcement.** In concert with community values, efforts to educate people with regard to the many hazards associated with open burning and the benefits of proper waste disposal to the greatest extent possible will be made prior to initiating enforcement

actions. It is only when education, awareness or any other reasonable means to prevent prohibited open burning activities have failed that enforcement will be considered.

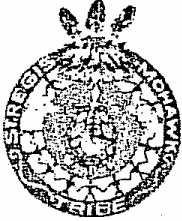
The provisions of this ordinance shall be enforceable by the SRMT Environment Division, the St. Regis Mohawk Tribal Police Department, and delegated Conservation Officers and/or Peacemakers in accordance with rules and regulations promulgated by the Environment Division. Such rules and regulations shall include as a last resort provisions for the imposition of civil penalties, and/or injunctive relief in the event of non-compliance with this regulation.

(1) Procedures. Procedures for bringing about a violation of this ordinance shall follow those established by the SRMT for investigations, summons, and appearance before the Court.

1.7 Burning Bans. The SRMT retains the authority to declare burning restrictions.

1.8 Penalties/Fines. Financial penalties and fines and/or other form of penalty, such as restitution, may be levied by the Tribal Court against those who violate any section of this ordinance. Penalties and fines will be assessed according to the Tribal Court.

**Appendix K-TCR2003-06**  
**Appendix A-Tribal Burn Regulation-TCR2002-59**



# Saint Regis Mohawk Tribe

412 State Rt. 37  
Akwasasne, New York 13655  
Tel. 518-358-2272  
Fax 518-358-3203

## Tribal Council Resolution Resolution 2003-06 Appendix A - Tribal Burn Regulation

WHEREAS, the Saint Regis Mohawk Tribal Council is the duly recognized governing body of the Saint Regis Mohawk Tribe and is responsible for the health, safety, education and welfare of all community members; and,

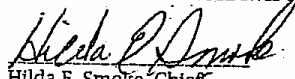
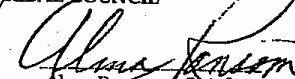

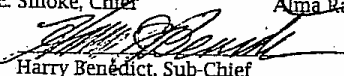
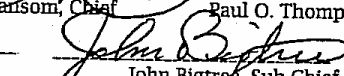
WHEREAS, the Saint Regis Mohawk Tribe is vested with the authority and responsibility for the health, safety, education, and welfare of the residents of the Akwasasne Mohawk Indian Territory; and,

WHEREAS, the Tribal Council has determined that the Saint Regis Mohawk Tribe Environment Division shall have primary responsibility for administering an air program which monitors and regulates Tribal air quality, subject to review and approval by the Tribal Council in accordance with Tribal law; and,

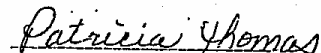
WHEREAS, the Tribal Council has reviewed the proposed "Clean Air Program - Tribal Burn Regulations" and the proposed Appendix A; and,

THEREFORE BE IT RESOLVED THAT. The Saint Regis Mohawk Tribe hereby approves the proposed Appendix - A to the Tribal Burn Regulations submitted by the Environment Division.

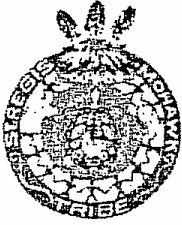
### THE SAINT REGIS MOHAWK TRIBAL COUNCIL

 Hilda E. Smoke, Chief	 Alma Ransom, Chief	 Raul O. Thompson, Chief
 Harry Benedict, Sub-Chief	 John Bigtree, Sub Chief	

CERTIFICATION: This is to certify that the above resolution was duly passed by the Saint Regis Mohawk Tribal Council pursuant to the authority vested therein

  
Patricia Thomas, Tribal Clerk

1-13-03  
Date



# Saint Regis Mohawk Tribe

412 State Rt. 37  
Akwesasne, New York 13655  
Tel. 518-358-2272  
Fax 518-358-3203

CIVIL PENALTIES AND FINES

ST. REGIS MOHAWK TRIBE  
TRIBAL COURT

## APPENDIX A TRIBAL BURN REGULATION, TCR 2002-59

Congruent with the Tribal Burn Regulation Tribal Council Resolution 2002-59 the following civil penalties and fines will be implemented for residential and commercial violations associated with the non-compliance of this regulation including \*violations of the Burn Permit Conditions, pg.2.

### Residential Violations of Prohibited Burning

**First Violation** – Education, awareness and counseling with regard to waste disposal practices and open burning as arranged with the Clean Air Program, no less than 2-hours in duration. After completing the Clean Air Program Education Session, a site visit to area of violation to see if education awareness and counseling is complied with and noted as to the degree of compliance. In the event of non-compliance, the violation will be returned to the Tribal Court calendar and the defendant will be subject to reappear by written notification. *Court Fees/Surcharges per ticket may apply.*

**Second Violation** – No less than 4 hours community service with the Environment Division, court fees and proper clean up and disposal of materials.

**Third Violation** - \$150, plus no less than 4 hours community service with the Environment Division, court fees and proper clean up and disposal of materials and court fees.

**Subsequent Violations** – Fine in an amount that is at least equal to the estimated cost for disposal of waste materials burned as estimated by the Environment Division, no less than 4 hours community service with the Environment Division and proper clean up and disposal of materials and court fees.

**Any Residential or Commercial Violations resulting in damages to another persons' property shall require restitution of damages to the satisfaction of the Tribal Court and property owner who incurred damages and will be determined case-by-case.**

**ADDITIONALLY, Uncontrollable Fire: Any violation of the ordinance that results in an Uncontrollable Fire that requires the response of the fire department(s) will result in penalties and fines that are no less than the costs incurred by the fire department(s) for their response, payable directly to the fire department(s); and/or restitution of any property damaged by such fire.**

### **Commercial/Business Violation of Prohibited Burning**

**First Violation** – The Licensee of the Business must attend education, awareness and counseling with regard to waste disposal practices and open burning as arranged with the Clean Air Program, no less than 2-hours in duration. After completing the Clean Air Program Education Session, a site visit to area of violation to see if education awareness and counseling is complied with and noted as to the degree of compliance. *Court Fees/Surcharges per ticket may apply.*

**Second Violation** - \$100 per violation, court fees and proper clean up and disposal of materials within a stipulated time limit advised by the Environment Division and set by the Court, *late fees of \$25 per day will incur after the time limit has elapsed.*

**Third Violation** - \$150 per violation, court fees and proper clean up and disposal of materials within a stipulated time limit advised by the Environment Division and set by the Court, *late fees of \$25 per day will incur after the time limit has elapsed.*

**Subsequent Violations** - \$300 per day of violation, court fees and proper clean up and disposal of materials within a stipulated time limit advised by the Environment Division and set by the Court, *late fees of \$25 per day will incur after the time limit has elapsed. The clean-up costs will be the responsibility of the business in violation and liable for the disposal of materials.*

~\*~

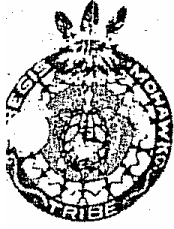
**\*Violation of Burn Permit Conditions will be in addition to any (Residential or Commercial) violation of Prohibited Burning Regulations penalties and fees in Appendix A.**

**All Violations** – Revocation of permit at discretion of Director of Environment.

**First Violation** – Warning in writing identifying conditions violated and offering advice on how to comply in the future, court fees.

**Second Violation** - \$100 and court fees.

## **Appendix L-TCR2001-04**



# Saint Regis Mohawk Tribe

412 State Route 37  
Hogansburg, New York 13655  
Tel. 518-358-2272  
Fax 518-358-3203

## TRIBAL COUNCIL RESOLUTION TCR 2001-04

### An Act Relating to Maintaining the Peace, Well-Being and Safety of the Community

WHEREAS, the Saint Regis Mohawk Tribal Council is the duly recognized governing body of the Saint Regis Mohawk Tribe; and,

WHEREAS, the Saint Regis Mohawk Tribal Council is responsible for the health, safety, education and welfare of all Tribal members; and,

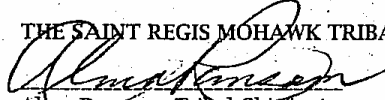
WHEREAS, the Saint Regis Mohawk Tribe has been provided a draft entitled, "An Act Relating To Maintaining The Peace, Well-Being and Safety of the Community" by Vaughn Aldrich; and,


WHEREAS, the draft document is an Act to ensure the safety and well-being of the Mohawk Community and to maintain the peace on the St Regis Mohawk Indian Territory and to protect the health, safety, and welfare of both the members of the Saint Regis Mohawk Tribe and the general public within the territory, and to prescribe conduct which unjustifiably and inexcusably causes or threatens to cause substantial harm to individuals or public interests; and,

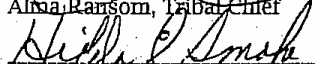
WHEREAS, after review and discussion of the draft "Act" the Saint Regis Mohawk Tribal Council deems the draft document to be satisfactory in covering all areas of concern in regards to maintaining community peace and well-being and safety of it's tribal members and the overall general public.

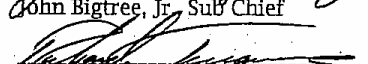
THEREFORE BE IT RESOLVED THAT, the Saint Regis Mohawk Tribal Council hereby accepts the draft "An Act to Maintaining the Peace, Well-being and Safety of the Community" as prepared by Vaughn Aldrich and with minor changes in terminology and is prepared to adopt and ratify a final copy when changes satisfactorily completed.

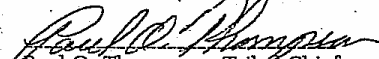
### THE SAINT REGIS MOHAWK TRIBAL COUNCIL


  
Alhaa Ransom, Tribal Chief

  
John Bigtree, Jr., Sub Chief

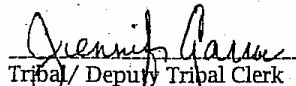
  
Hilda E. Smoke, Tribal Chief

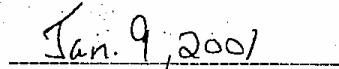
  
Richard Terrance, Sub Chief

  
Paul O. Thompson, Tribal Chief

  
Harry Benedict, Sub Chief

CERTIFICATION: This is to certify that the above resolution was duly passed by the Saint Regis Mohawk Tribal Council pursuant to the authority vested therein.

  
Tribal / Deputy Tribal Clerk

  
Date



## **Appendix M-TCR2001-26**



# Saint Regis Mohawk Tribe

412 State Route 37  
Akwesasne, New York 13655  
Tel. 518-358-2272  
Fax 518-358-3203

## TRIBAL COUNCIL RESOLUTION TCR 2001-26

### Amendment to the Saint Regis Mohawk Tribal Act Related to Maintaining the Peace, Well-Being and Safety of the Community

WHEREAS, the Saint Regis Mohawk Tribal Council is the duly recognized governing body of the Saint Regis Mohawk Tribe; and,

WHEREAS, the Saint Regis Mohawk Tribal Council is responsible for the health, safety, education and welfare of all Tribal members; and,

WHEREAS, the Saint Regis Mohawk Tribal Council has authorized the development of a comprehensive law development program to establish revised laws needed for effective governance on the Saint Regis Mohawk Reservation; and,

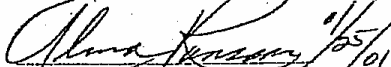
WHEREAS, a law known as the Saint Regis Mohawk Tribal Act Relating to Maintaining the Peace, Well-being and Safety of the Community has been enacted by TCR#2001-04; and,

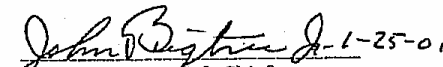
WHEREAS, there is a need to amend said Law and add a provision to allow for alternative sentences of counseling, treatment, rehabilitation and community service.

THEREFORE BE IT RESOLVED THAT, the Saint Regis Mohawk Tribal Law, TCR#2001-04, "An Act Relating to Maintaining the Peace, Well-Being and Safety of the Community" is hereby amended to include provision (G) Alternative Civil Judgment and Sentence relating to counseling, treatment, rehabilitation and/or community service; and,

BE IT FURTHER RESOLVED THAT, this Amendment to the Saint Regis Mohawk Tribal Law, TCR#2001-04, is codified in accordance with the procedures provided for in the Tribal Law Development, Interpretation and Codification Procedures Act of 1994.

### THE SAINT REGIS MOHAWK TRIBAL COUNCIL

  
Alma Ransom, Tribal Chief

 1-25-01  
John Bigtree, Jr., Sub Chief

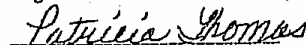
Hilda E. Smoke, Tribal Chief

Richard Terrance, Sub Chief

 1/25/01  
Paul O. Thompson, Tribal Chief

 1/25/01  
Harry Benedict, Sub Chief

CERTIFICATION: This is to certify that the above resolution was duly passed by the Saint Regis Mohawk Tribal Council pursuant to the authority vested therein.

  
Patricia Thomas  
Tribal/ Deputy Tribal Clerk

01-26-01  
Date

## **Appendix N- Safety and Civil Obedience Plan**

**AN ACT RELATING TO MAINTAINING THE PEACE, WELL-BEING  
AND SAFETY OF THE COMMUNITY**

**TITLE: SAFETY AND CIVIL OBEDIENCE CODE**

**PURPOSE:**

The purpose of this act is to ensure the safety and well-being of the Mohawk Community and to maintain the peace on the St. Regis Mohawk Indian Territory and to protect the health, safety, and welfare of both the members of the St. Regis Mohawk Tribe and the general public within the territory, and to prescribe conduct which unjustifiably and inexcusably causes or threatens to cause substantial harm to individuals or public interests.

**DEFINITIONS:**

There are no words or phrases in this Act that require further elaboration than what is provided for in this act.

**JURISDICTION:**

The St. Regis Mohawk Tribal Police are hereby authorized and given jurisdiction within the external boundaries of the Mohawk Territory to respond to complaints, requests for assistance, reports of problems and/or any other type of inquiry reasonably related to their official duties as police officers.

The St. Regis Mohawk Tribal Police are hereby authorized to investigate and inquire into any and all situations including, but not limited to, incidents of domestic disputes and disturbances, harassment, disorderly conduct, trespass, disturbance of the peace, dangerous animals, feral animals, medical emergencies, motor vehicle accidents, dangerous or noxious materials, littering and the profusion of garbage or trash, assaults, public congestion, alleged criminal conduct, illegal alien reports. Provided further: The St. Regis Mohawk Tribal Police may respond to any and all complaints, reports, requests or incidents which have or may have any effect, directly or indirectly, on the health, safety or well being of the St. Regis Mohawk Community.

**OFFENSES:**

The following acts engaged in by any person(s) or organization shall constitute a violation of this act:

**ARTICLE 1:**

**(A) Domestic Dispute/Disturbance:** Any conduct resulting in the disruption of the family unit evidenced by the verbal or physical abuse of one family member toward another family member, including extended family, minors and infants.

**(B) Harassment:** Intentional conduct which harasses, annoys or alarms another person, which in character or circumstances involves striking, kicking, subjecting another person to unconsented physical contact or attempts or threatens to do same, or conduct involving repeated acts which alarm or annoy another and which serve no legitimate purpose.

**(C) Disorderly Conduct:** Verbal or physical conduct intending to cause public or individual inconvenience, annoyance or alarm by means of violent, tumultuous, or threatening behavior, unreasonable noise, abusive or obscene language or gestures, impeding vehicular or pedestrian traffic, disruptive public congregation, failure to comply with lawful police orders, creating hazardous or physically offensive condition by any act serving no legitimate purpose.

**(D) Trespass:** Conduct wherein a person knowingly enters and remains unlawfully in or upon premises

**(E) Dangerous and/or Feral Animals:** The inadequate, improper, negligent or abusive care and maintenance of domestic or Feral animals that adversely effect or threatens to adversely effect the health, safety or well-being of individuals or the community at large.

**(F) Disturbing the Peace:** Intentional conduct which in character or circumstances results or threatens to result in the disruption of the general peace and quiet enjoyment of individuals or the public in their privacy and properties, or which results or threatens to result in causing unlawful assembly.

**(G) Dangerous or Noxious Materials:** Any negligent or inadequate use, storage or disposal of dangerous or noxious materials or substances that effect or may affect the health, safety or general well-being of individuals or the community.

**(H) Littering:** The unlawful disposal or dumping of trash or unwanted materials in or upon public or private lands or roadways.

**(I) Profusion of Garbage or Trash:** The inadequate and/or improper containment or storage of common garbage, trash or debris generated from the day by day household business or commercial activities of an individual, family or organization<sup>1</sup>

#### **PROCEDURE:**

- 1. Authorized Enforcement Agency:** The St. Regis Mohawk Tribal Police are the only Tribal entity authorized to execute and enforce this Tribal Code.
- 2. Procedure on Violation:** Any person charged with violating a provision(s) of this act must first be advised of their conduct giving rise to the violation. After being so advised, the violator will be issued a Civil Disobedience summons in the form prescribed by the St. Regis Mohawk Tribal Police Commission. The summons must contain at a minimum sufficient detail to advise the violator of the exact provision of this Code which was allegedly violated, the date and time of the violation, an exact date and time the

violator must appear at the Peacekeepers Court, Civil Disobedience Division.

3. **Right to Long Form Complaint:** Prior to a person's initial appearance before the Court, a violator may request a long form Complaint from the complainant officer
  - a) the long form complaint provided for in this section must contain sufficient factual allegations in narrative form, describing with sufficient detail the violator's conduct alleged to have been engaged in which constituted a violation of this Code. Such complaint shall be sworn to or affirmed under penalty of perjury.
4. **Hearing upon the Filing of Civil Disobedience Summons and/or Long Form Civil Disobedience Complaint:** The Peacemakers Court, Civil Disobedience Division shall be the arbiter of all summons and complaints filed under the act.

*(A) Peacemakers Court, Civil Disobedience Division:*

The Peacemakers Court Civil Disobedience Division shall be comprised of two (2) members of the St. Regis Mohawk Tribe who shall sit as Peacemakers.

1. Initial composition (effective 2000, to July 2003)

The initial arbiters on the Peacemakers Court Civil Disobedience Division shall be appointed to the position upon majority vote of the St. Regis Mohawk Tribal Council. Said arbiters shall serve until July 2003, at which time the positions shall be posted for election at the annual June election of the Tribe, and said positions shall be voted upon by members of the St. Regis Mohawk Tribe. Removal of either of the appointed Peacemakers of the Peacemakers Court Civil Disobedience Division can only be done by unanimous consent of the elected Tribal Chiefs AND Sub-Chiefs of the St. Regis Mohawk Tribal Council.

2. Composition (effective July 2003)

There shall be elected from the membership of the St. Regis Mohawk Tribe two persons to serve as Peacemakers of the Peacemakers Court Civil Disobedience Division. Each shall serve a term of three years. Eligibility to hold this position, and removal from office, shall be made pursuant to the established rules, ordinances, resolutions, and customs of the St. Regis Mohawk Tribe for the election of Tribal officials.

*(B.) Compensation:*

Persons elected to this position shall be entitled to monetary compensation set by the St. Regis Mohawk Tribal Council.

*(C) Hearing and deciding a summons and/or long form complaint filed pursuant to this Act:*

1. Order of presentation.

The complainant, after being administered an oath by the Peacemaker, shall be the first to address the Peacemakers Court Civil Disobedience Division. The complainant shall describe to the Peacemaker the violation of this Act and the conduct engaged in which resulted in the person violating this act. The complainant may also submit additional relevant evidence to support the charge(s). Upon finishing this presentation, the alleged violator shall then be given the opportunity to rebut the evidence presented in support of the summons and/or long form complaint, and the presentation made by the complainant.

2. Burden of Proof.

It is the burden of the complainant officer to prove by a preponderance of evidence, the allegations made in the summons and/or complaint.

3. Evidentiary issues.

The Peacemaker is free to accept or deny the presentation of any relevant material evidence or testimony to be presented to the Peacemakers Court Civil Disobedience Division by either the complainant officer or the alleged violator.

4. Decision Making.

The Peacemaker shall make a determination only after an adequate period of time to review all the material before him or her and upon testimony given to him or her. The Peacemaker shall then make a determination either written or orally to the complainant and the alleged violator.

4a. *Determination in favor of Complainant Officer*

After making this determination the Peacemakers Court Civil Disobedience Division may assess a monetary judgment, within the parameters provided for in this act, upon the violator and based solely upon the evidence before it.

The violator has the opportunity to appeal this decision to the St. Regis Mohawk Tribal Council by delivering within thirty days to the St. Regis Mohawk Tribal Council a copy of all

papers before the Peacemakers Court Civil Disobedience Division including a receipt evidencing the satisfaction of judgment.

*4b. Determination in favor of the violator.*

After making this determination the Peacemaker shall so advise the violator that the evidence is insufficient to find against him or her and the violation is unfounded. The complainant has no right to Appeal this decision to the St. Regis Mohawk Tribal Council.

*4c. Dismissal determination.*

The Peacemaker, upon grounds which he or she must include in written form and –make part of the record, may dismiss a summons and/or long form complaint on its own motion for reasons therein stated. Either party may appeal this determination.

*(D) Issuance of Determination of Judgment:*

The Peacemaker Court Civil Disobedience Division, after making its determination, shall cause to be provided to the violator and complainant a written copy, or if done orally, a spoken directive, of its determination. If the determination is against the violator, and requires the payment of a monetary amount to satisfy the judgment, the Peacemakers Court Civil Disobedience Division shall so advise the violator of said amount and the means upon which to satisfy the judgment.

*(E) Satisfaction of Judgment:*

A violator upon whom a determination of judgment has been issued, which requires the payment of a monetary amount, shall cause to be paid the amount of judgment to the Peacemakers Court Civil Disobedience Division, Upon the receipt of these monies, the Peacemakers Court Civil Disobedience Division shall cause to be delivered to the violator a receipt which at a minimum acknowledges the receipt of the monetary amount, it shall also clearly indicate if any balance is due and owing. Upon the full payment of judgment, the Peacemakers Court Civil Disobedience Division shall cause to be attached to the receipt a Satisfaction of Judgment Statement signed by a Peacemaker.

Nothing in this Act should be construed as preventing a violator, upon whom a summons and/or long form complaint has been issued, from advising the Peacemakers Court Civil Disobedience Division of their intent to waive the opportunity for a hearing before the Peacemaker, and consent to the Peacemaker to set the amount of judgment to be paid by the violator, Such a waiver shall be in the form of a no contest submission in writing.



*(F) Failure to satisfy judgment, or if applicable, judgments:*

Should a violator fail to satisfy a judgment lawfully issued by the Peacemakers Court Civil Disobedience Division, the St. Regis Mohawk Tribal Council shall, by written notice, notify the violator that the St. Regis Mohawk Tribal Council is pursuing their claim against the violator by all lawful means available to the St. Regis Mohawk Tribe.

*(G) Alternative Civil Judgment and Sentencing:*

After presentation of a matter pursuant to the above procedure and after the peacemakers Court Civil Disobedience Division, has made its decision, in appropriate circumstances a request can be made by the presenting officer or the respondent violator for an alternative sentence of counseling, rehabilitation, treatment or community service.

If such request is made the Peacemakers Court Civil Disobedience Division shall make a factual determination on the record whether such alternative is appropriate or not. If such alternative is found appropriate then any fine imposed shall be suspended and an appropriate alternative sentence of counseling, rehabilitation, treatment, or community service may be imposed and monitored by the Court. Written evidence of successful completion of any alternative sentence shall be required and upon receipt the Judgment of the Peacemakers Court Civil Disobedience Division shall be deemed satisfied.

### **MONETARY JUDGMENT**

Upon a finding by the Peacemaker's Court Civil Disobedience Division that a person violated one or more applicable provisions of this Act a Peacemaker is hereby authorized to levy a civil monetary judgment against such violator in an amount of at least fifty (\$50.00) dollars but in no case more than two hundred fifty (\$250.00) dollars.

### **AMENDMENTS**

This act may be amended pursuant to the regulatory procedures of the St. Regis Mohawk Tribe at any time the Tribal Council deems such amendments to be necessary for the proper function of the governmental and administrative entities of the Tribe.

## **Appendix O-Press Release of Formation of MANE-VU**

FOR IMMEDIATE RELEASE  
Tuesday, July 24, 2001

For additional information, contact:  
Bruce S. Carhart  
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## IMPROVED VISIBILITY IS FOCUS OF NEW EFFORT BY STATES AND TRIBES IN MID-ATLANTIC AND NORTHEAST REGION

(Newport, Rhode Island) Eleven States, the District of Columbia, and two Indian Tribes, today announced they would work together to reduce regional haze, which adversely affects national parks and wilderness areas. The newly organized Mid-Atlantic/Northeast Visibility Union (MANE-VU) will address the causes of regional haze and ways to reduce related pollutants, thereby improving visibility in the atmosphere.

“Regional haze is a major air quality problem in our region,” stated Christopher Recchia, new Chair of the organization and Deputy Commissioner of the Vermont Department of Environmental Conservation. “Improving visibility by reducing air pollution will have public health and economic benefits as well as improving scenic vistas.”

Regional haze limits visibility in the most scenic areas of the country, as well as in urban areas. It is caused by fine particles suspended in the air that at high concentrations can cause significant detrimental human health effects. Sources of pollution contributing to regional haze include burning of fossil fuels and emissions of volatile organics. Current data suggests that the pollutants that cause regional haze can be transported long distances over State and Tribal borders, thereby making regional cooperation essential. The pollutants that cause regional haze are also linked to other regional air pollution problems, such as ground-level ozone, acid and nutrient deposition, as well as fine Particles. MANE-VU has been established to support its members as they address the requirements of the Federal regional haze rule, finalized in 1999, to improve visibility at national parks and wilderness areas.

As a Section of its first meeting, MANE-VU released a new report, entitled “A Basis for Control of BART-Eligible Sources,” produced by the Northeast States for Coordinated Air Use Management (NESCAUM) to support MANE-VU. In this report, NESCAUM analyzes potential sources of air pollution which may contribute to regional haze in the Mid-Atlantic and Northeast region, and which could be the subject of a rule proposed by the U.S. Environmental Protection Agency (EPA) to reduce emissions from such sources. The report can be found at [www.nescaum.org](http://www.nescaum.org).

Participating State and Tribal members include Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, the Penobscot Indian Nation, Rhode Island, the St. Regis Mohawk Tribe, and Vermont. Participating Federal members include the U.S. Environmental Protection Agency, National Park Service, U.S. Fish and Wildlife Service, and U.S. Forest Service.