

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	1 of 20

## SECTION SUMMARIES

### **I. Part I: General Provisions**

The Gila River Indian Community (GRIC) Air Quality Management Program (AQMP) consists of an air quality plan currently being developed by GRIC Department of Environmental Quality (DEQ) following the U.S. Environmental Protection Agency (EPA) guidelines. The purpose of the plan is for the protection of outdoor air within the boundaries of the Community. The GRIC AQMP will allow Gila River to exercise its sovereignty over air quality within the Community. Without the GRIC AQMP, the EPA would remain the regulating authority.

#### **A. General Authority.**

Part I gives GRIC the authority to implement the GRIC AQMP. The GRIC AQMP will meet the requirements of the Federal Clean Air Act to protect and preserve air quality within the Community. This shall be accomplished by regulating sources of air pollution (primarily industrial) within the Community and will continually monitor the quality of the outdoor air for six key pollutants to be sure that health standards for air are met. Community members will be notified if air quality is unhealthy due to high levels of pollution. Air monitoring information collected by DEQ and copies of Federal Regulations referenced in the ordinance are available to the public.

#### **B. Emergency Authority.**

Part I also authorizes emergency authority to the Director, in coordination with the GRIC Office of Emergency Management, to determine whether air pollution in any area constitutes an emergency risk to human health. In the unlikely event that the Director of DEQ determines that air quality poses a threat to human health, the Governor will be informed and may declare an emergency. Measures will then be taken to protect Community members and control the problem.

#### **C. Procedures for Preparation, Adoption, and Submittal of the GRIC AQMP.**

This ordinance sets forth the procedures for adopting the GRIC AQMP. DEQ will provide notice to the Community of any public hearings on the GRIC AQMP and provide an opportunity for comment prior to submission of the GRIC AQMP to the EPA. In addition, the Natural Resources Committee and Community Council will have input and final authority to approve each of the ordinances in the GRIC AQMP. Copies of each proposed ordinance and revisions will be available for public review in each district.

#### **D. Adoption of National Ambient Air Quality Standards as Community Standards.**

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	2 of 20

This ordinance adopts the National Ambient Air Quality Standards (NAAQS) for six key pollutants: sulfur dioxide, ozone, lead, carbon monoxide, nitrogen oxide, and particulate matter. These standards were set by the Environmental Protection Agency to protect human health and welfare. Concentrations of these pollutants above the national standard levels are considered to be harmful to human health and the environment.

## **II. Part II: Permit Requirements**

### **A. Overview.**

Most of the Community's AQMP consists of standards or limits on air emissions from industrial facilities. The primary mechanism for ensuring that these standards and limits are met is a permit. The permit ordinance of the GRIC AQMP describes how permits will be issued, what they will contain and how they will be enforced.

A permit is a kind of contract between the Community and the owners or operators of sources of air pollution. The permit contains the conditions under which the Community will "permit" an air pollution source to use a Community resource (its air). The permit requires the industrial source to meet conditions that will prevent it from creating a risk to human health.

The permit ordinance is intended to achieve the following results:

1. The issuance of a single document (the permit) that describes in detail all of the requirements that apply to a source. The permit decreases the likelihood that there will be any misunderstanding between the source (business/facility owner or operator) and the Community as to how the source is expected to operate.
2. By complying with the permit application requirements and permit monitoring, record-keeping and reporting requirements, the source provides the information the Community needs to regulate the source. It also ensures that the source maintains compliance with its permit conditions. In addition, it provides the information and data needed for the GRIC DEQ to inform Community members and other interested entities regarding the status of air pollution sources located on Community lands. As a result, Community members are in a better position to know and understand the requirements applicable to each source and comment upon the appropriateness or stringency of those requirements. It also allows the Community to monitor the compliance status of individual facilities.
3. The permit provides an effective means of enforcing the GRIC AQMP requirements that apply to individual sources.

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	3 of 20

4. The permit structure described in this ordinance is generally consistent with the EPA federal permit structure, the permit structure adopted by the State of Arizona, and other states, as well as the limited permit program within the Navajo Nation.
  
5. A permit is by its nature a consensual document: the source voluntarily consents to the conditions in the permit and the jurisdiction of the Community in exchange for permission to operate on Community land. As a result, the permit is enforceable against permitted sources whether they are owned or operated by Community members or nonmembers for either of two reasons, each largely supported by one United States Supreme Court decision<sup>1</sup> (and later Supreme Court rulings interpreting that decision). First, the Supreme Court has recognized that Indian tribes may, as expressions of their inherent sovereign powers, exercise civil jurisdiction over non-Indians in certain narrowly-defined scenarios.<sup>2</sup> Secondly, an Indian tribe may exercise civil jurisdictional authority if Congress delegated such authority to the tribe. The EPA's position is that the Clean Air Act is "an explicit delegation of federal authority to eligible [Indian] tribes."<sup>3</sup> In other words, by adopting this permit program, the Community creates the legal structure courts have said is necessary for tribes to exercise their authority over individuals and entities located on Community land.

**B. The Structure of the Permit Requirements.**

The Permit ordinance has three characteristics:

First, there is a single air quality permit for all regulated activities. This "unitary" permit structure has been adopted by the State of Arizona. Under the ordinance, all changes at a source can be accommodated by revising the source's existing permit. Without a unitary permit structure, certain changes to a facility or changes in the method of operation that significantly increase emissions would require the source to obtain a separate permit before the change could

---

<sup>1</sup> *Montana v. United States*, 450 U.S. 544 (1981). *Montana* has been described by another United States Supreme Court case as "the pathmarking case concerning tribal civil authority over nonmembers." *Strate v. A-1 Contractors*, 520 U.S. 438, 445 (1997).

<sup>2</sup> In *Montana*, the Supreme Court identified two scenarios in which an Indian tribe may assert civil jurisdiction over non-Indians. Under the so-called "Montana exceptions", an Indian tribe may exercise civil jurisdiction over non-Indians on its reservation, if either: (1) a non-Indian voluntarily consents to tribal jurisdiction via "commercial dealings, contracts, leases, or other arrangements" *Montana*, 450 U.S. at 565, or (2) when the non-Indian conduct sought to be regulated "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Montana*, 450 U.S. at 566. This permit program easily falls under the first exception. Later rulings have refined the scope of *Montana's* second exception to require much more immediate and severe threats to an Indian tribe health or welfare in order to justify tribal jurisdiction under the second *Montana* exception

<sup>3</sup> Indian Tribes: Air Quality Planning and Management; Final Rule, 63 Fed. Reg. 7254, 7257 (Feb. 12, 1998).

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	4 of 20

occur. In other words, the source must obtain both a permit to construct and a permit to operate. In contrast, with the unitary approach, a facility is issued a single permit by the Community before it is constructed. The single permit regulates its construction and operation, as well as any subsequent changes to the facility.

There is one significant exception to the “one permit regulates all changes” structure in the draft ordinance. An existing source can only make a change that will result in a significant increase in emissions and a new, large air pollution source can only start construction by obtaining a separate “New Source Review” permit from the EPA. Currently EPA has this authority and this ordinance does not propose that GRIC take over this particular program at this time. However, it will be rare that large sources are proposed on Community land. Importantly, the permitting process that large sources are required to follow is extremely complex and resource intensive. With the other authorities the Community proposes to take under the GRIC AQMP, new source review seemed to be one task that is better left to EPA at this time.

The second characteristic of the ordinance is the difference between the standards that apply to sources already operating on Community land and the standards that would apply to new facilities that may wish to locate to the Community in the future. It is much more cost-effective to design air pollution control equipment before a facility is built or when a facility is being substantially modified than to add or retrofit controls to an operating facility. Therefore, for both the federal government and the states, the requirements for new facilities and the requirements for existing facilities that need modifications that significantly increase overall emissions are more stringent than the operating requirements of existing facilities.

Thirdly, sources with larger emissions of pollutants (major sources) are typically subject to more stringent permit requirements than smaller sources. Many of the more stringent requirements have to do with monitoring, record keeping and reporting. The thought here is that when a source is large, it is more important to monitor its pollution and ensure consistent compliance with the requirements. In addition, the added stringency of requirements for “major sources” provides an incentive to industry to control air pollution to avoid major source status in the first place. Many facilities add air pollution controls in order to get below the level of pollutant emissions that trigger major source status and requirements.

### C. General Concepts in the Permit Ordinance.

Because the permit ordinance regulates complex industrial activities, the ordinance is detailed. However, there are certain guiding concepts on which the ordinance is based.

1. Emissions from a source cannot cause a violation of an outdoor (ambient) air quality standard.

The Council enacted Phase I of the GRIC AQMP in 2002 as an ordinance. In that ordinance, the Community adopted the National Ambient Air Quality Standards (NAAQS) developed by

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	5 of 20

EPA. They are the pollution standards that must be met to assure that outdoor (ambient) air does not pose a risk to human health. If the pollutant that a source emits may cause a violation or contribute to a violation of a NAAQS, the source must install air pollution control equipment or institute the work practices necessary to eliminate the threat.

2. Public participation is a key part of issuing permits.

The public participation process in Section 4.6 of the permit ordinance is triggered by one of four actions: (1) the initial issuance of a permit; (2) the renewal of that permit; (3) a significant revision to a non-Title V permit; and (4) a significant revision to a Title V permit that does not trigger major source new source review by EPA. In the case of a significant revision to a Title V source that does trigger major source new source review by EPA, the public participation process will continue to be administered by EPA under its regulations.

The public participation process begins with notice to the public. In the ordinance, notice takes two forms. Notice of the proposed action on a permit must be published in a newspaper. Notice is also sent to people on a mailing list maintained by the Department of Environmental Quality (DEQ). The mailing list has persons who have requested notice as well as persons identified by the Department as having a potential interest in the permit. Potentially interested persons would include policy makers such as the members of the Natural Resources Standing Committee, Council and the district in which the facility is located. The contents of the notice are specified in the ordinance. Among other things, the notice will inform interested individuals of their right to submit written comments on the permit and request a hearing for the purpose of providing oral comments. If a hearing is requested, a separate notice is required for the hearing stating the hearing location, date, time and subject matter. The Department must respond in writing to all oral and written comments when it issues a permit (or if it decides to deny a permit).

3. In a few sections of the ordinance, permit procedures and requirements are included by “referring” to specific federal regulations rather than repeating the federal requirement word-for-word in the ordinance.

Parts of the ordinance are taken word-for-word from EPA rules because they fit at GRIC. Also, after thirty years of implementation of the federal Clean Air Act, there has developed a permitting structure that has proven to be generally effective and enforceable. That structure is built upon certain terms that have federal definitions and a history of interpretation by EPA and the federal courts. This track record reduces unnecessary ambiguity and uncertainty.

However, referring to federal regulations rather than putting the entire, specific regulatory language in an ordinance requires a person trying to comply to have the ordinance as well as the EPA regulation that had been “incorporated by reference.” For most companies or individuals in business, this sort of juggling act between the ordinance and federal rules is not unusual since other jurisdictions including states and EPA routinely use incorporation by reference to shorten regulations. However, smaller businesses and the public may find it more difficult. Therefore,

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	6 of 20

we tried to find a balance of incorporation by reference and inclusion of all federal language in the ordinance. Incorporation by reference is most frequently applied in the Title V permit requirements in Section 3.0. Incorporation by reference of the EPA Title V requirements makes sense since the Clean Air Act requires the permit program be identical to EPA Title V regulations. Since these regulations only apply to larger sources which presumably have more resources, referring to a federal document is less burdensome in that situation.

4. Emission limits and emission standards are generally based on the technology available to control emissions.

The goals of the source specific ordinances are to 1) establish emission limits for new facilities that require the best control technology reasonably available, and 2) ensure that other facilities that are already in operation on Community land are using control technologies that are comparable to what is required of similar operations in other parts of the country – this approach is called “Reasonably Available Control Technology” or “RACT.”

For example, when developing emission limits for a source category, such as aluminum processing facilities, the first step is to determine what control technologies or operating practices are being used by aluminum processors in other parts of the county. This survey of the source category usually takes two forms: (1) What technologies are being used and what is their effectiveness; and (2) what emissions limits are various jurisdictions imposing on aluminum processing facilities based on those technologies?

How the proposed emission limits for aluminum processing were reached and how they compare with the limits being imposed in other parts of the country are discussed in “Technical Support Documents” for each source category. The Technical Support Documents (TSD’s) will be presented with the specific source ordinances in the near future. The specific source ordinances do not dictate that facilities install a particular technology. Instead, the ordinances establish emission limits or work practice standards that meet air emission limits, but leave it up to the source owner to choose the most cost-effective method of meeting those limits or standards based on their individual circumstance. As an example, the ordinance may establish a limit for a category of existing sources for the emission of volatile organic compounds, the chemicals that cause ozone. A source may choose to meet that limit by using materials, such as paints, in its product that contain very low concentrations or no volatile organic compounds. Another source owner may decide to use a technology that “captures” the volatile organic compounds in a stack and destroys them using a high temperature catalyst technology. Under the source specific ordinances, sources can choose among different options.

5. The permit ordinance assumes that the Community will be classified as attainment or unclassifiable for the ozone NAAQS.

The federal Clean Air Act requirements differ depending on whether an area is or is not attaining specific NAAQS. For example, if Community lands are found to be attaining the one-hour

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	7 of 20

NAAQS for ozone, a source can emit up to 100 tons per year of volatile organic compounds without being classified as a major source of those pollutants and, therefore, subject to having to obtain a federal Title V permit with all the costs and additional requirements associated with such a permit. If the source were located in South Phoenix, it would be in a nonattainment area for ozone and could only emit 50 tons per year of volatile organic compounds and still remain a minor source. The difference in legal treatment between areas that attain and do not attain a particular NAAQS can affect the kind of gasoline that can be sold in the area, the stringency of requirements that are imposed on the construction of new roads and highways, the kinds of conditions that will apply to construction activities, and a host of other matters.

It has been the Community's position that Community lands either attain the NAAQS, or there is insufficient data on which to base a determination such that the lands should be "unclassifiable" until that data is available. For regulatory purposes, an unclassifiable area is considered as having attained the standard for which it is unclassifiable. The permit structure described in the draft ordinance is for an area that is currently "attaining" the NAAQS.

6. The permit ordinance regulates two broad categories of air pollutants.

A permit issued under the permit ordinance will have limits on the emissions of two categories of pollutants – "criteria" and hazardous air pollutants. Criteria air pollutants are the six air pollutants for which the NAAQS have been adopted under the Clean Air Act. The Community adopted these standards under Phase I of the GRIC AQMP. Criteria pollutants are the air pollutants that the public is most likely to breathe. In addition, EPA has listed approximately two hundred particularly toxic chemicals as hazardous air pollutants under the Clean Air Act. The ordinance regulating hazardous air pollutants is in Part VI of the GRIC AQMP.

In general, the proposed permit structure regulates emissions of both categories of pollutants – criteria pollutants and hazardous air pollutants – based on technology requirements and whether the source is an existing or new source. The requirements fall into the following categories:

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	8 of 20

**Level of Technology**

	<b>CRITERIA POLLUTANTS</b>	<b>HAZARDOUS AIR POLLUTANTS</b>
Existing Minor Source	Reasonably Available Control Technology <sup>1</sup>	Reasonably Available Control Technology <sup>1</sup>
New Minor Source or Change that Results in Significant Increase in Emissions at Existing Minor Source	Best Reasonable and Demonstrated Technology or Reasonably Available Control Technology <sup>2</sup>	Best Reasonable and Demonstrated Technology or Reasonably Available Control Technology <sup>2</sup>
Existing Major Source	Reasonably Available Control Technology <sup>1</sup>	Reasonably Available Control Technology or Maximum Achievable Control Technology <sup>3</sup>
New Major Source or Significant Increase in Emissions from Existing Major Source	Best Available Control Technology (for source in attainment area) or Lowest Achievable Emission Rate (for source in nonattainment area) <sup>4</sup>	Maximum Achievable Control Technology <sup>4</sup>
<sup>1</sup> Expressed as source category (specific) emission limits or work practice standards. <sup>2</sup> Applicability of standard depends on size of new source or increase in emissions at an existing source. <sup>3</sup> If EPA has adopted MACT for the source's category. <sup>4</sup> Determined by EPA.		

In addition to criteria and hazardous air pollutants, the ordinance identifies a special sub-group of hazardous air pollutants which are “ultra-hazardous air pollutants.” These are hazardous air pollutants that EPA has designated for additional regulation because of their serious potential health effects. For these ultra-hazardous pollutants, the ordinance establishes a lower threshold (300 lbs/year) for triggering a requirement that the source install Best Reasonable and Demonstrated Technology (BRDT) (discussed below).

**D. Section by Section Discussion of the Draft Ordinance.**

**1. Section 1.0 - Definitions.**

The definitions are essentially identical to those used by EPA and by the Navajo Nation in its air quality program. Again, using terms with well-accepted meaning and long-standing use will make the Community's program more understandable, predictable and more likely to be complied with by the regulated community. Also, it will facilitate approval by EPA of the permit ordinance as part of the GRIC AQMP, since it is based on EPA's own rules. The exception to use of EPA definitions is “Best Reasonable and Demonstrated Technology” (BRDT). The draft ordinance requires BRDT for changes in existing minor sources or new minor sources that trigger new source review and are above thresholds listed in the ordinance.



GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	9 of 20

Because EPA does not have regulations for ‘minor source’ new source review conducted by states or tribes, the Community has the flexibility in the GRIC AQMP to determine which requirements it wants to impose on minor sources that emit hazardous air pollutants. The draft ordinance’s definition of BRDT is very similar to the federal definition of “Best Available Control Technology.”

2. Section 2.0 - Permit Applicability.

The draft ordinance requires every stationary source that creates air pollution within the boundaries of the Community to obtain either an individual or general air quality operating permit from the GRIC DEQ. However, any facility that has emissions below all of the thresholds listed in subsection 2.1(C)(1) is considered too small to require a permit. The thresholds for the exemption and the categories of exempt activities should be examined carefully to determine if some sources listed should not be exempted from permitting or if some are listed and should be exempt.

3. Section 3.0 - Permit Requirements for Title V Sources.

When the Clean Air Act was amended in 1990, Congress added a program called “Title V” that required major sources of air pollution to obtain an operating permit from EPA. In those same 1990 amendments and in EPA’s Tribal Authority Rule (40 CFR Part 49), authority was granted to qualifying tribes to exercise the same Title V authority as states. The permit ordinance contains the EPA rules that states and tribes must comply with to get Title V permit authority.

Importantly, the ordinance regulates how a major source is operated. The ordinance does not cover the requirements for a new major source before it can be built (or an operating major source that proposes a significant emissions increase or operating change of the facility). Those changes will continue to be approved by EPA under the new source review program for large sources. Whatever conditions EPA places on a facility will be automatically incorporated in the Community-issued Title V permit for that facility.

4. Section 4.0 - Permit Requirements for Non-Title V (Smaller) Sources.

The requirements that a tribe or state must meet to get delegated authority from EPA to issue permits for the operation of large sources of air pollution are dictated by the Clean Air Act and the associated regulations that this draft ordinance incorporates by reference. The Clean Air Act does not dictate the requirements that apply to smaller sources (non-Title V); states and tribes have more flexibility in establishing these requirements. However, with a few significant exceptions noted below, the permit structure for non-Title V permits is very much like that for Title V permits.

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	10 of 20

There are three categories of non-Title V permits:

- a. Specific Source (individual) Permits.
- b. “Synthetic Minor” Permits. These are permits for sources that would otherwise have to obtain a Title V permit but agree to accept limits on operating hours, raw materials used or operating conditions that will ensure that the source will not have emissions above the major source thresholds that trigger the need for a Title V permit.
- c. General Permits. For some categories of sources, the individual facility emissions are small and there are many similar facilities. In this situation, the most effective form of regulation is to require all sources in the category to “register” with the DEQ and comply with general requirements. Sources that are subject to a general permit need not obtain a specific, individual permit unless they continuously violate the ordinance’s requirements.

The permit application requirements and minimum permit conditions for non-Title V sources have become standardized for air quality permits over the last thirty years. The draft ordinance generally contains these standard application requirements and permit conditions. However, in the draft ordinance, sources with permits are required to provide an annual “certification” of facility compliance. Annual compliance certification has proven to be an effective tool for Title V permits nationwide. Certification forces company officials to examine company records to verify a facility’s compliance status before certifying that the source is in compliance.

The administrative and permit transfer requirements for non-Title V sources are modeled after those adopted by the State of Arizona and Maricopa County. However, in the ordinance, the permit transfer notice is somewhat more detailed. These details will provide additional opportunity for the Community to review proposed business changes, particularly in the case of sub leases (or sub-sub leases at the industrial parks).

5. Section 5.0 - Facility Changes That Require Revisions to Non-Title V Permits.

A regulated facility may undergo changes monthly or, depending on the nature of the facility, even weekly or daily. Few of the changes have “regulatory significance.” In other words, these are not changes that require a permittee to get a revised permit, seek the Department’s permission to implement the change, inform the Department of the change or even record the change on the facility’s records. However, because certain changes do have regulatory significance, it is important that the draft ordinance clearly describe those changes, what action the permittee must take in response to the change and when the action must be taken. In general, changes with regulatory significance fall into the following categories:

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	11 of 20

CATEGORY OF ACTION	DESCRIPTION OF NATURE OF CHANGE	WHAT IS REQUIRED OF PERMITTEE
1. Permit Revision  <u>Significant Revision</u>          <u>Minor Revisions</u>	<u>See generally Section 5.0</u>  Changes listed in Section 5.5       Changes listed in Section 5.4	Change cannot occur without prior approval of revision by Department. Same public participation process as when permit issued. May require BRDT review of applicable threshold exceeded.       Change can occur when application for revision submitted to Department [ <u>See Subsection 5.4(D)</u> ].
2. Contemporaneous Notice to Department	Changes listed in Subsection 5.2(C)	Requirements for the notice including its contents are described in Subsection 5.2(D)
3. Contemporaneous Logging of the Change at the Facility	Changes listed in Subsection 5.2(B)	A copy of the log listing and describing the changes must be filed annually with the Department.

Note that unless a change is specifically described in the ordinance as having regulatory significance, it is presumed not to have significance and can be implemented without any regulatory consequences. Therefore, it is important that the ordinance be carefully reviewed with particular attention to:

- Whether there are other kinds of changes at a facility that should have regulatory significance but have not been listed.
- Whether the changes that are listed are sufficiently clear.
- Are the regulatory consequences (permit revision, notice or logging) appropriate to the change?
- Should there be other regulatory consequences applicable to the changes?
- Are the regulatory consequences sufficiently clear?

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	12 of 20

6. Section 6.0 - Continuous Source Emission Monitoring.

The continuous source emissions monitoring (CEMs) requirements apply to four types of industrial sources including fossil fuel fired steam generators (power plants), fluid bed catalytic cracking unit catalyst regenerators (coal fired power plants), sulfuric acid plants (copper mines etc.) and nitric acid plants. This section contains standard federal language that will apply only to Title V sources that may propose to locate at GRIC in the future. Although none of these sources currently are located within the Community, discussions have been entertained concerning locating a fossil fuel fired power plant within the Community. Including the CEMs requirement in this ordinance at this time will prevent GRIC from having to revise the GRIC AQMP at a later date to allow for permitting of a proposed power plant in the future.

This section requires that any of the large industrial plants listed in subsection 6.1 install, operate, maintain and keep records on the specific constant emission monitor(s) required for the source type. This section also contains the minimum monitoring requirements, performance specifications and data reporting requirements for CEMs.

7. Section 7.0 - Standards of Performance for New Stationary Sources.

The federal New Source Performance Standards (NSPS) are adopted by reference in this section. Rather than including several hundred pages of the complete federal rules in the ordinance, it is common practice to adopt rules by reference. The rules are in 40 CFR Part 60. This section applies to stationary sources that have industrial processes or equipment covered under the federal New Source Performance Standards.

8. Section 8.0 - National Emission Standards for Hazardous Air Pollutants (NESHAPs).

This section adopts the federal National Emission Standards for Hazardous Air Pollutants (NESHAPs) by reference. The federal regulations are in 40 CFR Part 61 and Part 63. There are several NESHAPs that currently apply to sources at GRIC. In the event that GRIC decides to establish specific requirements for hazardous air pollutants that are more stringent than the federal requirements, the more restrictive requirement will apply.

9. Section 9.0 - Stack Height Requirements.

This section has the requirements for the design and construction of exhaust stacks for large industrial facilities. Older power plants and smelters typically have very tall stacks to disperse air pollutants high into the air. This section details how high stacks can be built and requires sources to follow good engineering practices (GEP) when building stacks.

10. Section 10.0 - Confidentiality of Information.

This section explains that all records, reports or information obtained from a source, including reports or information prepared by the GRIC DEQ will be available to the public. However, information which is a trade secret or would be detrimental to an ongoing civil or criminal

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	13 of 20

enforcement action will not be made public. In addition, this section describes the process that a source must follow to request that specific information be considered a trade secret or confidential.

### III. Part III: Enforcement Ordinances

#### A. Overview.

If necessary, the AQMP allows the GRIC DEQ to take enforcement action against businesses that emit air pollution at GRIC. The DEQ may take enforcement actions when businesses violate the GRIC AQMP ordinances or violate their air quality permits. The enforcement ordinance covers both civil enforcement and criminal enforcement and is very similar to federal, state and other tribal laws. Its goals are to:

- eliminate or reduce risks to public health and the environment;
- encourage noncompliant businesses to return to compliance;
- deter other businesses from noncompliance;
- preserve a level playing field for companies that abide by the Community's ordinances.

#### B. Civil Enforcement.

The ordinance is intended to give the DEQ a wide range of enforcement options to match enforcement to the nature and extent of the violation. Civil enforcement actions can be:

1. Administrative compliance orders [DEQ orders facility to comply with law];
2. Civil penalties [DEQ fines of up to \$5,000 per day of violation; Tribal Courts can fine up to \$10,000 per day];
3. Temporary restraining order, preliminary injunction or permanent injunction [Tribal court order to stop a business activity, if necessary to protect health];
4. DEQ denial or taking away of an operating permit.

If necessary, the ordinance has criteria for calculating civil penalties. The criteria ensure that DEQ and the Tribal Courts will assess civil penalties in a fair and consistent manner and in accordance with the federal Clean Air Act. The Clean Air Act authorizes up to \$25,000 per day per violation. The GRIC AQMP ordinance allows up to a \$10,000 per day penalty. This penalty level was felt to be more appropriate given the size and type of facilities located on Community lands. Also, it is consistent with level of civil penalties being imposed in neighboring

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	14 of 20

jurisdictions. The civil penalty amounts in the GRIC ordinance are high enough to adequately deter violations of Community ordinances.

C. Criminal Enforcement.

In rare cases, businesses knowingly or deliberately break the law; these violations may lead to criminal, rather than civil, enforcement actions. In 1978, the U.S. Supreme Court said that tribal courts do not have criminal jurisdiction over non-Indians for crimes committed on a reservation. Because of the Supreme Court's decision, the Community lacks the authority to take *criminal* enforcement actions against businesses located at GRIC that are owned by non-Indians, if they knowingly violate air quality ordinances.

The DEQ will work with the GRIC Law Office and refer criminal violations to federal criminal prosecution. GRIC DEQ intends to enter into a Memorandum of Agreement with EPA Region IX that will outline the referral process.

D. Citizen Suit Provisions.

1. No Citizen Suits Against the Community or Community Officials Acting Within the Scope of Their Duties.

The GRIC AQMP Enforcement Ordinance states that citizen suits (lawsuits filed by members of the public) are not authorized against the Community or Community officials acting within the scope of their duties. Under the Tribal Authority Rule, EPA listed citizen suits as a provision of the Clean Air Act for which it would not be appropriate to treat a tribe in the same manner as a state. The DEQ has seriously considered the citizen suit issue because of the Community's commitment to a regulatory approach that is responsive to the concerns of all affected parties. The Community also considers its sovereign immunity as the most important element of its governmental authority and it will not waive that immunity for purposes of subjecting the tribe or its officials to citizen suit. However, the Community has a long-standing, strong tradition of individuals working with elected GRIC officials to review departmental actions.

2. Citizen Suits Against Businesses (Regulated Entities).

The enforcement ordinance prohibits lawsuits filed by members of the public (citizen suits) against the Community, Community officers or officials acting within the scope of their duties. However, a citizen suit may be brought against businesses that are regulated by the GRIC AQMP. The citizen suit provisions are in Section 3.0 of the GRIC AQMP Enforcement Ordinance and are taken from Section 304 of the federal Clean Air Act.

A member of the public who feels he or she is affected by a DEQ action, may bring a civil lawsuit in Tribal Court against a business that (1) has violated or is alleged to have violated an

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	15 of 20

emission standard, or (2) proposes to construct or constructs a new or modified facility that emits a major amount of air pollution without a permit.

#### **IV. Part IV: Administrative Appeals Procedures and Judicial Review**

Part IV of the GRIC AQMP lays out an appeals process in situations where industry or members of the public can ask for a review of a decision made by the GRIC DEQ. The appeals process has two sections: (1) the administrative appeals procedures, and (2) review by tribal court of final DEQ actions.

The first section outlines the procedures for an appeal through an administrative hearing. At the hearing, industry or members of the public who object to a DEQ decision may present evidence to an Administrative Law Judge appointed by the Community's Governor. Based on the evidence and laws, the Administrative Law Judge will issue a recommended decision to the Director of the DEQ. The Director may accept the decision, reject it or modify it. The Director's decision becomes a Final Administrative Decision. This decision can then be appealed to the GRIC Tribal Court. Only members of the public that have commented on a decision during a public comment period can make an appeal.

The second section states that the Tribal Court may only reverse the DEQ Director's Final Administrative Decision if it is clearly erroneous or not supported by facts. The Tribal Court's decision may be appealed to the Gila River Appellate Court for final review.

This type of appeals process is used by the federal government, states and Indian Tribes. The same appeals process is in the GRIC Chemical Emergency Planning Ordinance (GR-01-02) and the Medical Waste Management Ordinance (GR-04-02).

State, tribal and federal laws follow this appeals model for several reasons:

- Appeals provide a fair opportunity for businesses and members of the public to seek review of DEQ decisions.
- Administrative appeals lack the formality, cost and delay of full-blown proceedings in Court.
- Administrative Law Judges are skilled at sorting through facts and testimony but do not have the same level of technical, environmental expertise as departmental staff.
- Implementing laws (ordinances) is an executive branch responsibility involving policy decisions. Departments are key elements of the executive branch of government and the implementation of policy.

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	16 of 20

V. **Part V: Area Source Emission Limits**

A. **Overview.**

The Community's Tribal Implementation Plan contains ordinances in Part V that have requirements for area sources of air pollution that are not from a smokestack. These are often called "area sources." These ordinances focus on cutting down on the amount of dust in the air caused by human activity. These ordinances include Open Burning (Section 1.0) and General Requirements for Fugitive Dust-Producing Activities (Section 2.0). "Fugitive," in this case, means dust that does not come from a smokestack.

In general, these ordinances reduce dust from earthmoving operations and land clearing larger than 1 acre in size as well as large and small scale burns within the Community. The requirements of Section 2.0 do not apply to general agricultural operations, but they will apply to the initial clearing of land for agricultural purposes and for development.

The "Area Source" ordinances of the GRIC AQMP are the ones that are most likely to affect Community member's activities (for example, members would need a permit to burn landscape waste).

The "Open Burning" ordinance is consistent with the GRIC Solid Waste ordinance that was passed by the Community Council in 1995. Both ordinances do not allow burning of trash but do allow burning of landscape waste, ditch banks, fence rows, etc. The GRIC DEQ, in coordination with the GRIC Fire Department, has been issuing simple burn permits for burning of landscape waste since 1995. Some changes are being proposed in the ordinance for larger scale burns such as clearing of land for agricultural fields, large housing developments and construction sites. The proposed changes include more expanded notification to residents in the area, a requirement for fire suppression equipment and special notification of the Fire Department. The GRIC DEQ developed a questionnaire to gather information from Community members concerning open burning. The Air Program is using the information from the questionnaires as a guide for developing open burning requirements.

B. **Specific Provisions.**

The two area source ordinances are geared toward reducing dust and limiting the health affects of open burning (smoke) on GRIC residents. To achieve this goal, Section 1.0 (Open Burning) requires a permit for both small burns (households) and non-residential burns (land clearing, commercial development, or other large scale burns). The permits contain requirements designed to limit Community member's exposure to smoke and odors from open burning.

Section 1.0 (Open Burning) contains requirements that should be followed to reduce the exposure of Community members to smoke and odors from burning. These requirements



GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	17 of 20

include burning smaller piles, notifying any neighbors within ¼ mile and burning during prescribed hours. Additional requirements apply to non-residential burns and large scale burns. The ordinance also contains a list of fires that do not require a permit including fires for cooking, cultural, religious or ceremonial fires, fires for heating, recreation and branding of animals. This ordinance also lists materials that are prohibited. These items include garbage, asphalt shingles, tar paper, plastic and rubber, oils, pesticide containers, tires, debris from demolished homes and materials containing asbestos.

Section 2.0 (General Requirements for Fugitive Dust-Producing Activities) is designed to reduce the amount of dust produced from earthmoving operations, land clearing, demolition activities, unpaved parking lots at industrial plants, and other activities that generate dust. Agricultural activities are not subject to this ordinance. This ordinance requires that anyone conducting earthmoving operations (leveling/moving dirt for an industrial facility or large housing development) or land clearing over an area greater than 1 acre must first get an earth moving permit through the Department. As a requirement of the earthmoving permit, a dust control plan must be developed describing how dust will be controlled. In addition, any industrial facility with an unpaved parking lot with traffic exceeding 20 vehicle trips per day must acquire a permit. Sources or activities that cause dust are required to limit the amount of dust by watering, applying certain chemicals, using covers or by installing control equipment on dusty operations.

The Dust Control Plan must be submitted to the Department as part of the Earthmoving Permit Application or as part of an Individual Industrial Sources Permit Application. The Dust Control Plan Application contains a list of dust control options that can be chosen by the applicant. In addition, the ordinance contains work practices for hauling and controlling dust from stockpiles.

Section 2.0 also sets record keeping requirements to ensure that dust control measures are being properly used and to document how often measures are implemented. These records document how often a water truck is filled, how often water is applied to a site or how often other control measures are applied.

## **VI. Part VI: Generally Applicable Individual Source Requirements For Existing and New Sources**

### **A. Overview.**

The Community's AQMP contains ordinances in Part VI that set requirements for Visible Emissions (Section 1.0), VOC (volatile organic compound) Usage, Storage and Handling (Section 2.0) and Degreasing and Solvent Metal Cleaning (Section 3.0).

In general, these ordinances apply to all sources within the Community that store, handle or use gasoline, solvents or other VOC-containing materials or that conduct degreasing or metal

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	18 of 20

cleaning using solvents. In addition, any facility or operation that may emit air pollutants that can be seen by the human eye is subject to the requirements of section 1.0.

**B. Specific Provisions.**

Section 1.0 (Visible Emissions) sets an opacity limit (20%) on sources that emit air pollutants through a stack or that have fugitive emissions from leaks in piping or duct work. GRIC air quality personnel receive certifications to read smoke in accordance with EPA Method 9 which allows enforcement of the 20% opacity limit.

Section 2.0 (VOC Usage, Storage and Handling) sets requirements for the usage, storage and handling of materials that contain VOCs. These materials include gasoline, solvents, paints and adhesives. This ordinance establishes daily limits on emissions from different types of VOCs used in specific industrial processes or process lines. In addition, this ordinance sets levels of control and/or reductions for air pollution control equipment used to reduce VOC emissions from specific processes or process lines.

Section 3.0 (Degreasing and Solvent Metal Cleaning) sets work practices for facilities that use solvents to clean metal parts. This includes auto/equipment repair shops including public works and BIA, manufacturers of aerospace parts, and manufacturers of aluminum products. The work practices are designed to reduce VOC emissions from the usage of solvents for metal cleaning. Most of the work practice requirements are simple and include keeping the lid closed on solvent trays, storing solvent soaked rags in closed containers, fixing leaks and labeling requirements. Most businesses follow these practices already. Certain types of degreasers (open top vapor degreasers and conveyORIZED degreasers) require more complicated work practices due to the heating and spraying of solvents.

Sections 2.0 and 3.0 establish record keeping requirements to ensure that solvents are being disposed of properly. The records also keep track of air pollution emissions from the use of solvents and other VOC-containing materials. Records must also be kept to ensure that daily emission limits for process lines are not exceeded. Several industrial facilities may be required, through their individual permits, to have personnel certified to read smoke in accordance with Section 1.0 and EPA Method 9.

**VII. Part VII: Source/Category Specific Emission Limits for Existing and New Sources**

**A. Overview.**

The Community's AQMP contains ordinances in Part VII that establish operating requirements and emission limits for air pollutants. The ordinances are broken down into specific categories of air pollution sources that include: Secondary Aluminum Production (Section 1.0) (melting scrap aluminum), Aerospace Manufacturing and Rework Operations (Section 2.0) (applying

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	19 of 20

coatings to rebuilt aerospace parts), Nonmetallic Mineral Mining and Processing (Section 3.0) (rock crushing and aggregate mining, concrete batch plants and asphalt batch plants).

B. Specific Provisions.

Section 1.0 sets requirements for facilities that produce/process secondary aluminum. More specifically, facilities that receive scrap aluminum and melt the aluminum for the purpose of producing aluminum parts are subject to this ordinance. This ordinance sets limits on visible emissions from the melt furnaces (20% opacity) (opacity is the amount of visibility blocked by particles exiting a source), requires a 15% reduction of VOCs (solvents) over 5 years from the large solvent cleaning operations and sets limits on certain hazardous air pollutants (dioxin/furans and hydrochloric acid) from melting operations. This ordinance also establishes limits on what types of aluminum can be charged to the furnaces (no painted aluminum, oil soaked aluminum or aluminum cans). In addition, the ordinance requires that each furnace be labeled (type of furnace, operational standards/limits, types of charge), that performance testing be conducted on the furnaces to ensure emissions limits are not exceeded and an Operation and Maintenance Plan (O&M Plan) be submitted to the GRIC DEQ for approval to ensure air pollution controls and operational requirements are maintained. Many of the requirements contained in Section 1.0 are the same as the federal government requirements.

Section 2.0 (Aerospace Manufacturing and Rework Operations) sets work practices, operating requirements and VOC limits on coatings for aerospace manufacturing and rework facilities. This ordinance is directed at reducing VOC emissions from the numerous coatings used in the aerospace manufacturing and rework industry. The ordinance lists the maximum VOC content that topcoats, primers, maskants and other coatings can contain. In addition, the ordinance contains requirements on spray gun cleaning, application techniques and housekeeping requirements.

Sections 3.0 (Nonmetallic Mineral Mining and Processing) sets emission limits, operating requirements and performance testing requirements for nonmetallic mineral mining operations, concrete batch plants, vermiculite and perlite expansion furnaces and hot mix asphalt plants. The ordinance also prohibits the use of “off specification fuel oil” in hot mix asphalt plants and the sale or manufacture of cutback asphalt. The ordinance contains specific (particulate matter/dust) emission limits for different operations at nonmetallic mineral mining operations including material handling systems (7% opacity), transfer points (7% opacity) and crushing operations (15% opacity). In addition, emission limits for fugitive sources of dust (emission not from a stack) have been established for operations such as truck dumping, vehicle traffic and operation of front loaders (20% opacity). The ordinance requires that hot mix asphalt plants, vermiculite and perlite expansion furnaces and other pollution control units be tested to meet the emission limits contained in the ordinance. Each facility using an Emission Control System (ECS) to control air pollution emissions from one of the above operations is required under the ordinance

GRIC Code – Title 17, Chapter 9	Gila River Indian Community Air Quality Management Program Section Summaries	
<b>Revised 2008 Air Quality Ordinance</b>	8/20/08	20 of 20

to develop and submit to the GRIC DEQ, an O&M Plan describing how the control system will be operated including operating parameters and maintenance schedule.

The above three ordinances contain record keeping requirements that apply to each specific operation. Each ordinance requires records to be kept documenting the amount of basic raw materials used, the quantity of fuel burned, hours of operation, VOC contents of coatings etc. Records must also be kept to ensure that air pollution control equipment is operated as designed.