

**TECHNICAL AMENDMENTS TO PART II OF THE 2006 AIR QUALITY  
MANAGEMENT PROGRAM PLAN, TITLE 17 CHAPTER 9 OF THE GILA RIVER  
INDIAN COMMUNITY LAW AND ORDER CODE**

1. Part II, Chapter 5.1 is amended by adding the following as paragraph C:

**“A significant permit revision shall be subject to the public participation requirements of subsection 4.6 of this Part.”**

2. Part II, Chapter 5.4(A)(2) is amended by changing the paragraph

2. **Increasing operating hours or rates of production above the permitted level unless the increase otherwise creates a condition that requires a significant permit revision;**

to the following:

2. **“Increasing operating hours or rates of production above the permitted level unless the increase otherwise creates a condition that would require a significant permit revision under Section 5.5 (that is, a minor permit revision is appropriate when the permit does not establish a limit on an increase in operating hours or rates of production).”**

3. Part II, Chapter 5.5(A)(3) is amended by changing the paragraph

3. **A change to or addition of an emissions unit that will result in a net emission increase of a regulated pollutant greater than either twenty-five (25) tons per year or the significant level defined in Section 1.0 of this Part, whichever is less;**

to the following:

3. **“A change to or addition of an emissions unit that will result in an increase in the potential to emit a regulated pollutant equal to or greater than either twenty-five (25) tons per year or the significant level defined in Section 1.0 of this Part, whichever is less;”**

*(Note: The amendment to 5.5(A)(3) changes from the “net emission increase” standard to the “potential to emit” standard, thus rendering the “net emission increase” definition in Part II*

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*unnecessary. The technical amendment thus removes the "net emissions increase" definition.)*

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Technical Support Document For The  
Gila River Indian Community Air Quality Management Program

*Interpretational Issues Raised by EPA*

The purpose of this Technical Support Document ("TSD") for the Gila River Indian Community ("GRIC") Air Quality Management Program ("AQMP") is to provide guidance as to the meaning and implementation of ordinance provisions related to non-Title V sources and specifically address those issues raised by EPA concerning those provisions. The topics covered by this TSD are:

1. Director Discretion under Section 4.4.B; and
2. Permit revision procedures under Section 5.0, including:
  - a. Replacement of air pollution control equipment
  - b. Effective date and enforceability of changes under Section 5.2
  - c. Recordkeeping requirements to verify compliance

**1. Director Discretion Under Section 4.4.B**

The EPA's adoption of the Tribal Authority Rule, under 40 C.F.R. Part 49, provided eligible tribes with the authorization to exercise the same rights and have the same responsibilities as states under the Clean Air Act ("CAA"). GRIC received authority in 1998 to implement applicable elements of the CAA for air quality management within the Community. Under such authorization, GRIC has the discretion to create a minor source (non-Title V) permitting program tailored to the needs and circumstances of the Community.

In line with that discretion, GRIC has included a provision in Section 4.4.B of Part II of the AQMP that gives the Director discretion to waive a requirement or condition in a permit issued under the non-Title V provisions of the ordinance. The waiver must be in writing stating the basis for the waiver. The waiver is also subject to public notice and comment under Section 4.6. A significant point that should be noted is that the Director may only waive provisions in a minor source permit that is Community-enforceable only and is designated as such in the permit. Thus, no requirement or condition that is derived from a provision in the EPA-approved Tribal Implementation Plan ("TIP") can be waived by the Director.

The purpose of allowing such discretion to the Director under Section 4.4.B is that the GRIC AQMP is a new program under which new permits will be issued to entities that have never been permitted before. Likewise, the GRIC permit writers and enforcers will be administering and enforcing these permits for the first time. If there are permit provisions that are found to be unworkable or otherwise problematic, GRIC feels it would be helpful to allow the Director to waive such provisions immediately, rather than having those provisions be

subject to the delay of the permit revision process and thereby create a situation in which a source is in continuing noncompliance with an unworkable permit condition. As the program progresses and experience is gained by both permittees and GRIC, it is anticipated that waiver of provisions will occur infrequently if at all.

## **2. Permit Revision Procedures Under Section 5.0**

A regulated facility may undergo changes monthly or, depending on the nature of the facility, even weekly or daily. Most of these changes do not have "regulatory significance," in that they are of such minimal or no environmental impact that it would make no sense to have a permittee be required 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 many changes do have regulatory significance, the AQMP describes those changes that require an action by the permittee, what action the permittee must take in response to the change and when the action must be taken. As the ordinance is structured, unless a change is specifically described in the ordinance as requiring a specific act, it can be implemented without any regulatory obligation.

Under the AQMP for non-Title V sources, permit revisions are governed by Section 5.0. The general types of changes requiring a permit revision are set forth under Section 5.1.A. The purpose of Section 5.1.A is simply to alert permittees of the more significant types of changes that require a permit revision. The specific requirements related to those permit revisions, including public participation requirements, are set forth in different sections as follows: (i) changes that require notice or logging, but do not require a permit revision (Section 5.2), (ii) changes and procedures that require a minor permit revision (Section 5.4), and (iii) changes and procedures that require a significant permit revision (Section 5.5). More specific guidance regarding these procedures as applied to changes affecting air pollution control equipment is set forth below.

### **a. Changes to air pollution control equipment**

There are essentially four paradigms addressing replacement of or change to an item of air pollution control equipment at a non-Title V source. Each paradigm has a different regulatory consequence.

#### **(1) Paradigm 1 – Logging (Section 5.2.B(4))**

When a source replaces an item of air pollution control equipment listed in the permit with an *identical* piece of equipment (same model, same specifications; but because it is a replacement, it will have a different serial number), only logging is required. The source may be required to conduct performance tests to verify the efficiency of the new equipment.

(2) Paradigm 2 – 7 Day's Notice (Section 5.2.C(1))

When a source replaces an item of air pollution control equipment listed in the permit with one that is *not identical, but that is substantially similar and has the same or better pollutant removal efficiency*, the source must provide at least seven days advance written notice of the change. This will provide sufficient time for DEQ to confirm whether it is substantially similar in technology, has similar if not identical specifications, etc. and is likely to have the same or better control efficiency. However, the source may be required to conduct performance tests to verify efficiency of the new equipment.

(3) Paradigm 3 – 30 Days' Notice (Section 5.2.C(3))

When a source replaces an item of air pollution control equipment listed in the permit with one that is *not substantially similar, but that has the same or better efficiency*, the source must provide thirty days advance written notice of the change. Such equipment employs the same technology but may be from a different vendor and, therefore, may not be substantially similar in design or may have different specifications. Because this change has potentially greater environmental significance, the Community must receive a longer advanced warning of its installation and, therefore, a longer period to confirm the basis for not requiring a permit revision. Again, the source may be required to conduct performance tests to verify efficiency of the new equipment.

(4) Paradigm 4 – Minor Permit Revision (Section 5.4.A(5))

Under Section 5.2.E, a source may implement the replacements listed above in Paradigms 3 and 4 without the required notice by applying for and complying with the requirements for a minor permit revision. This option is reflected in the language of Section 5.4.A(5), which requires a source to use the minor permit revision procedures to replace an item of air pollution control equipment listed in the permit with one that has *the same or better efficiency*. Under a minor permit revision, Section 5.4.D specifies that the source may make the change immediately once the complete application is submitted. These types of permit revisions are meant for situations where the source is implementing a new technology that is not similar or even substantially similar to that already in operation but, as in the other cases, is at least as good as the current technology. If the source proceeds with the installation immediately after the application is filed, it runs the risk that the new technology does not perform as advertised and it may be determined to be noncompliant from the date the equipment begins operation. Because of this risk, it has been our experience that sources do not typically make substantial investments in the new technology until the revision has received at least the informal approval of the DEQ. The source may be required to conduct performance tests to verify efficiency of the new equipment.

**b. Effective date and enforceability of changes under Section 5.2**

When changes are made at a non-Title V source under Section 5.0 that involves the installation and replacement of air pollution control equipment, the date the changes can be implemented depends on the regulatory requirements applicable to the change. In general, all changes subject to logging under Section 5.2.B may be made without preconstruction review. All changes, including the installation of air pollution control equipment, that require notice, however, are subject to preconstruction review and may be denied if the Director determines they do not qualify for notice only treatment.

In the Community's view, the changes permissible under Sections 5.2.B and 5.2.C that require logging or prior notice are typically too *de minimis* environmentally to warrant reopening the permit for a revision. Therefore, under Section 5.3.A, those changes become effective upon compliance with the logging or notice requirements, and may be incorporated into the permit annually on the anniversary date of the permit.

Savings clauses have been added under Sections 5.2.F and 5.4.E in order to prevent a source's circumvention of the permit revision process by breaking a single project into phases or individual components so that each phase does not trigger a permit revision requirement but the project would. Under these sections, the Director may require a permit revision for any change that, when considered with other changes submitted by the source during the term of the permit, constitute a change requiring a permit revision under Section 5.0.

**c. Recordkeeping requirements to verify compliance**

GRIC may verify a source's compliance with permit conditions in general and specifically those that pertain to the sources emissions, by reviewing the information provided in the permit procedures under Section 5. One source of that information is the annual emissions inventory submitted pursuant to Section 4.4.A(7). In addition, there may be specific monitoring, testing, reporting and recordkeeping requirements imposed pursuant to the broad authority in Section 4.4.A.3 that are incorporated into the source's permit to provide the information to allow GRIC to evaluate compliance with specific permit conditions. The nature of these requirements is determined on a case-by-case basis depending on the source's compliance record, the complexity of its operations, typical frequency of physical or operational changes, pollution control technology employed by the source, and other relevant factors.