

TITLE 47. CLEAN AIR PROGRAM

CHAPTER 1. GENERAL PROVISIONS

47 M.P.T.L. ch. 1 § 1

§ 1. Title

a. Collectively, this law and regulations adopted under this title are to be known as the Mashantucket Pequot Tribal Clean Air Program (CAP).

b. The CAP consists of three distinct elements:

- (1) A Tribal Implementation Plan (TIP) consisting of federally enforceable preconstruction permitting programs that:
 - (a) address attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) pursuant to section 110 of the Clean Air Act (42 U.S.C. § 7410), and
 - (b) allows a Source that otherwise has the Potential to Emit (PTE) Hazardous Air Pollutants (HAPs) in amounts at or above those for major sources of HAPs (40 C.F.R. § 63.2) to request federally enforceable permit limitations to restrict the Source's PTE to below those of a major HAPs source;
- (2) Tribal only rules that are intended ensure facility compliance with other obligations under the Clean Air Act; and other,
- (3) Delegated or approved programs that the Administrator has delegated to or approved implementing and regulatory authority to the Mashantucket Pequot Tribal Nation (MPTN) Air Quality Program (AQP).

47 M.P.T.L. ch. 1 § 2

§ 2. Purpose

MPTN has an interest in providing for the sound regulation and control of all present and future Sources of air pollution within the boundaries of Mashantucket. This law and attendant regulations provide for the regulation of air pollution Sources in a manner that ensures the health, safety and general welfare of all residents, employees, and guests of Mashantucket, and protects the natural resources of MPTN.

47 M.P.T.L. ch. 1 § 3

§ 3. Applicability

The CAP is applicable to any Person who owns, operates or intends to construct a Source of air pollution within Mashantucket.

47 M.P.T.L. ch. 1 § 4

§ 4. Revisions

a. The AQP may revise the CAP from time to time consistent with the requirements of chapter 2, § 4 this title and any directly applicable federal regulation(s).

b. Revisions to the MPTN TIP portion of the CAP must further be consistent with the requirements of 40 C.F.R. Parts 51 and 52, as amended from time to time, and be submitted to the Administrator no later than sixty (60) Days after they are adopted with a certification that the applicable public participation procedures outlined in ch. 3, § 1 of this title were followed.

c. The MPTN TIP portion of the CAP is revised when the underlying federal regulations, incorporated by reference into the CAP, are amended by the Administrator from time to time.

47 M.P.T.L. ch. 1 § 5

§ 5. Severability

If any provision of this CAP, or the application of it to any person or circumstance, is held invalid, the remainder of this CAP and the application to other persons or circumstances are not affected.

47 M.P.T.L. ch. 1 § 6

§ 6. Definitions

a. For purposes of this title, all terms not defined herein will have the meaning given within applicable sections of the Clean Air Act.

b. Definitions

- (1) "The Act" or "Clean Air Act" means 42 U.S.C. 7401 et seq., as amended.

- (2) "Administrator" means the Administrator of the United States Environmental Protection Agency (EPA) or an authorized representative.
- (3) "Air Pollutant" means any pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product material) substance or matter that is regulated under the Clean Air Act and which is emitted into or otherwise enters the Ambient Air. Such term includes any precursors to the formation of any Air Pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term Air Pollutant is used.
- (4) "Air Quality Program" or "AQP" means the regulatory body within the Mashantucket Pequot Tribal government which has been delegated authority over air pollution.
- (5) "Ambient Air" means that portion of the atmosphere external to buildings to which the general public has access.
- (6) "Building, Structure, Facility, or Installation means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U. S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).
- (7) "Day" means calendar day.
- (8) "Director" or "Director of the AQP" shall mean the MPTN employee responsible for administering the MPTN CAP. Unless otherwise appointed by Tribal Council, the Director shall be the MPTN Land Use Commissioner responsible for regulatory review for natural resources protection compliance.
- (9) "General Permit" means a pre-approved permit that covers a specific class of Sources. The specific class of Sources may cover Sources that involve the same or substantially similar types of operation of substances; require the same type of pollution control equipment or other operating conditions, standards, or limitations; or, require the same or similar monitoring.

- (10) "Mashantucket" means lands that are part of the Mashantucket (Western) Pequot Reservation and trust lands validly set aside for use of the Mashantucket Pequot Tribe.
- (11) "Owner or Operator" or "Owner/Operator" means any person who owns, leases, operates, controls, or supervises a facility, building, structure, or installation, which, directly or indirectly, results or may result in the emission of any Air Pollutant for which a national standard is in effect.
- (12) "Person" means any Tribal Member, employee, individual, partnership, firm, company, contractor or subcontractor, corporation, association, organization, estate, governmental entity or any other legal entity or its representative, agents or assigns. Use of the singular shall also include the plural.
- (13) "Person with a Financial Interest" means any individual who is compensated or receives anything of value from a regulated entity, including one whose compensation is directly related to or in proportion to the financial success or profitability of the regulated entity.
- (14) "Source" means each separate operation or activity that results, or may result in, the emission of any Air Pollutant.
- (15) "Tribe" or "Tribal Nation" or "MPTN" means the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation. "Tribal" refers to this Tribe.

CHAPTER 2. PROGRAM ADMINISTRATION

47 M.P.T.L. ch.2 § 1

§ 1. MPTN Air Quality Program

The Mashantucket Pequot Tribal Nation shall maintain proper qualified staffing of the AQP.

(1) The Director will be responsible for administration of the MPTN CAP, including issuing permits, drafting regulations, and taking appropriate enforcement actions as specified within this Title.

(2) The Director may utilize other staff as needed to assist with administration of the MPTN CAP.

(3) No Person with a Financial Interest, including the Director, in any entity affected or potentially affected by the application of the

MPTN CAP shall participate in any manner in any action by the Air Quality Program as to that entity.

- (a) This prohibition shall be applicable to an individual who receives distributions, dividends, or similar payment where the amounts are affected by the financial performance of the regulated entity, but it shall not disqualify an employee of the tribal government not receiving such payments despite the fact that the regulated entity may be the primary funding source for government operations.
- (b) In the event of a disqualification, the disqualified individual shall not participate in any proceedings either directly or indirectly, and any decisions shall be rendered by such disqualified individual's deputy or in the absence of a formal deputy, the next qualified person in charge within the AQP.
- (c) In event that no qualified person is available to fill said role within the Air Quality Program a qualified person will be assigned to the AQP:
 - (i) from the MPTN department or tribal entity responsible for administering the AQP by the Director;
 - (ii) from the MPTN Land Use Commission by the presiding officer of that commission; or,
 - (iii) if still no such person is available, Tribal Council shall, in accordance with its inherent authority, appoint a neutral special master to assume the necessary duties of the AQP.

47 M.P.T.L. ch.2 § 2

§ 2. Authority to Adopt Air Quality Standards

The AQP shall have the authority to adopt and incorporate into the MPTN CAP any air quality standard for Mashantucket which would otherwise be enforceable by the Administrator under the Clean Air Act.

47 M.P.T.L. ch.2 § 3

§ 3. Authority to Request Delegation or Approval

a. The AQP, with the approval of Tribal Council, shall have the authority to request delegation or approval to administer applicable federal programs under the Clean Air Act otherwise administered by the EPA.

b. Notwithstanding the provisions within Chapter 4, § 1 of this Title, any federal requirements under a delegated or approved program

administered by the AQP will be subject to enforcement by EPA under federal law.

47 M.P.T.L. ch.2 § 4

§ 4. Authority to Develop Regulations

a. The CAP may be amended through the adoption of standards, regulations, or by the Administrator delegating or approving regulatory authority to the AQP to administer, or assist with administration, specific federal programs under the Clean Air Act.

b. The AQP, in the manner provided in this section, shall have the authority to formulate, adopt, amend and repeal regulations in order to control and prohibit Air Pollutants from Sources throughout Mashantucket, provided that such regulations pertain to activities for which the federal government has adopted standards or procedures under the Clean Air Act; and are implemented to:

- (1) ensure the AQP's continued regulatory authority to issue permits, registrations or notifications required under the Clean Air Act, which otherwise would be issued by EPA;
- (2) ensure the ability of the AQP to comply, or monitor facility compliance, with any provision of the Clean Air Act.; or,
- (3) make available, without adding substantial burden on the regulated community, additional funding sources to support air quality enhancements or programs within Mashantucket.

c. Regulations, once adopted, will become part of the MPTN CAP and codified within the appropriate title of MPTN Land Use Regulations. Implementation, compliance and enforcement of such regulations shall be in accordance with the provisions of this Title.

d. Tribal procedures for approval

- (1) The AQP shall prepare a draft regulation package which is to include:
 - (a) a statement of the principal reasons in support of its intended action;
 - (b) specific references to the applicable provisions of the Clean Air Act which the regulation is intended to address; and
 - (c) a draft of the regulation, wherein all provisions which differ from applicable federal standards or procedures are made clearly distinguishable either on the face of the proposed regulation or through supplemental documentation accompanying the proposed regulation.
 - (d) These materials will be forwarded to the Office of Legal Counsel, which will review the package for legal

sufficiency. The Office of Legal Counsel will have fifteen (15) calendar days to provide a written opinion on whether:
(i) the draft Air Quality regulation addresses the principal reason it was drafted; and,
(ii) it conflicts with any Tribal or federal law or regulation.

(e) If the AQP makes substantive changes after receiving an opinion from the Office of Legal Counsel, the draft Air Quality regulation will be forwarded to the Office of the Legal Counsel for further review.

(2) When the Office of Legal Counsel renders an opinion that the regulation is legally sufficient, the AQP shall prepare a preliminary regulation package consisting of:

- (a) the original draft regulation package submitted to Office of Legal Counsel;
- (b) a copy of the preliminary regulation, as modified through consultation with the Office of Legal Counsel; and,
- (c) any final written comments or opinions provided by the Office of the Legal Counsel.

(3) The proposed regulations or amendment will be submitted to Tribal Council. The proposed regulation or amendment shall be approved for public participation, as specified within chapter 3, after thirty (30) Days, unless Tribal Council has taken action.

(4) Following the public participation process, the regulation shall be deemed final and adopted if, after consultation with the Office of Legal Counsel, the AQP determines:

- (a) that public participation process, if required, did not result in changes being made to the Regulation;
- (b) that revisions made to the Regulation, as a result of the public participation process, were not substantial and do not require further review by Tribal Council; or,
- (c) upon conclusion of a subsequent Tribal Council review period, no substantial comments were received which necessitated further revision, or such revisions were not substantial enough to warrant a subsequent public participation process.

e. The AQP may make administrative changes to an existing regulation provided that they are necessary to:

(1) correct typographical errors; or

(2) clarify requirements, if it is determined through consultation with the Office of Legal Counsel that such changes do not alter any requirement or provision with the regulation.

§ 5. Authority to Permit

a. The AQP shall have the authority, in accordance with regulations adopted, to:

- (1) require an Owner or Operator, before undertaking construction, modification, or operation of a Source emitting an Air Pollutant, to apply for and be granted a permit by the AQP;
- (2) issue synthetic minor permits limiting a source's emissions below major source levels for pollutants under sections 110 and 112 of the CAA.
- (3) require periodic inspection and maintenance of combustion equipment and other Air Pollutant-emitting Sources;
- (4) require that a person in control of an Air Pollutant Source who is not required to obtain a permit, register with the AQP and provide such information as deemed necessary to maintain an inventory of Air Pollution Sources within Mashantucket;
- (5) refuse to issue a permit if the Administrator objects to its issuance in a timely manner; and,
- (6) notwithstanding any regulation adopted under this chapter, require that any permitted Source comply with all applicable standards set forth in the Code of Federal Regulations, Title 40, Parts 49, 51, 52, 59, 60, 61, 62, 63, 68, 70, 72 to 78, inclusive, and 82, as amended from time to time.

b. The AQP shall have the authority, in accordance with regulations adopted, to issue General Permits with respect to categories of new or existing Sources of air pollution provided the General Permits are not inconsistent with the Clean Air Act.

- (1) A General Permit covering an activity regulated under this Air Quality Program shall contain such additional conditions as may be required by that Act, and shall be issued for a term of no more than five years.
- (2) The General Permit may require that any person proposing to conduct any activity under the General Permit register such activity including obtaining approval from the AQP before the General Permit becomes effective, and may include such other conditions as the AQP deems appropriate, including but not limited to, management practices and verification and reporting requirements.
- (3) Subsequent to the issuance of a General Permit, the AQP may require a person, whose activity is or may be covered by the General Permit, to apply for and obtain an individual permit

pursuant to this chapter if it determines that an individual permit would better protect the air quality of Mashantucket.

- (a) The AQP may require an individual permit in cases including, but not limited to, the following:
 - (i) the permittee is not in compliance with the conditions of the General Permit;
 - (ii) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollution applicable to the permitted activity;
 - (iii) circumstances have changed since the time the General Permit was issued so that the permitted activity is no longer appropriately controlled under the General Permit, or a temporary or permanent reduction or elimination of the permitted activity is necessary; or
 - (iv) a relevant change has occurred in the applicability of the federal Clean Air Act.
- (b) In making the determination to require an individual permit, the AQP may consider the location, character and size of the Source and any other relevant factors.
- (c) The AQP may require an individual permit only if the person whose activity is covered by the General Permit has been notified in writing that an individual permit is required. The notice shall include a brief statement of the reasons for requiring an individual permit, an application form, a statement setting a time for the person to file the application, an opportunity for the person to challenge the AQP's decision to require an individual permit under ch. 5 of this Title, and a statement that the General Permit, as it applies to such person, shall automatically terminate on the effective date of the individual permit. Such person shall forthwith apply for, and use best efforts to obtain, the individual permit.

(4) Any Person may petition the AQP to take action under this paragraph.

c. The AQP, in accordance with regulations adopted, shall not issue any permit until the applicable public participation process is completed.

d. The AQP shall require, by regulations adopted, the collection of fees to cover the reasonable cost associated with permit review and issuance, or review and approval of coverage under a General Permit; and compliance monitoring of the terms and conditions of any permit, approval or order issued by the AQP.

e. The AQP shall provide all necessary application forms to be submitted. Application forms concerning activities regulated under the Clean Air Act shall require that the applicant provide such information as may be required by that Act.

f. No permit may be issued unless the AQP determines that it assures the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

g. An applicant, and any other person entitled under ch. 5, has the right to appeal and obtain judicial review of the AQP's final action on such application, or permit issuance, in accordance with the provisions of Chapter 5 of this title.

47 M.P.T.L. ch.2 § 6

§ 6. Authority to Inspect and Enforce

a. Authority to Inspect

- (1) Upon presentation of proper credentials, the AQP shall have the authority to:
 - (a) enter a facility, or upon any property, within Mashantucket where a Source is located, or an emissions-related activity is conducted, or where records are required to be kept under the conditions of the permit;
 - (b) have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
 - (c) inspect, during normal business hours or while the source is in operation, any Facility's, equipment (including monitoring and air pollution control equipment), practice or operation regulated, or required, under the permit;
 - (d) sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or other applicable requirements; and,
 - (e) record any inspection by use of written, electronic, magnetic and photographic media.
- (2) The AQP shall make reasonable efforts to provide adequate notice prior to the inspection; however, lack of notice shall not prevent the representative from gaining access to the Facility or the property.
- (3) Where access to the property or Facility is restricted by any security measure or device, the Person or Owner shall promptly allow access to the AQP upon presentation of proper identification.
- (4) The AQP shall have the right to install or require the installation of such devices, as are necessary, to conduct sampling, metering, and/or monitoring of the Air Pollutant Source at the expense of the Owner. The sampling, metering and

monitoring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the Owner.

- (5) The AQP shall have the right to obtain records of utility usage for any non-residential customer of the MPTN Utilities Department.

b. Authority to Enforce

- (1) The AQP shall have the authority to enforce compliance with the MPTN CAP or any enforcement order issued pursuant to it.
- (2) When exercising their enforcement authority the AQP shall follow the procedures established within Chapter 4 of this Title.

CHAPTER 3. PUBLIC PARTICIPATION

47 M.P.T.L. ch.3 § 1

§ 1. Initial TIP Issuance and TIP Revisions

a. The AQP will provide an opportunity for comment on the initial TIP issuance and TIP revisions.

- (1) The AQP must provide public notice of the opportunity for the public to comment and request a public hearing.
- (2) The public notice must be provided at least thirty (30) days prior to the scheduled date of the public hearing that will be held if requested.
- (3) The notice shall be made as specified within paragraph b(1) and contain, at minimum, the information specified with in paragraph b(2) of this section.
- (4) A copy of the notice and all initial TIP or TIP revision documents, will be sent to the EPA Region 1 Administrator.
- (5) A copy of the notice must also be sent to the state and local air pollution control agencies in the Connecticut Air Quality Control Region.

b. Public Notice

- (1) Public notice shall be provided by one of the following methods:
 - (a) posting, on a publicly accessible website, the information specified within paragraph b(2) of this section; or

- (b) publishing a notice of availability of the information, specified within paragraph b(2) of this section, in a newspaper of general circulation in the area affected and the surrounding area.
- (2) A notice shall consist of, at minimum, the following information:
- (a) a statement of purpose for which the initial TIP or TIP revision is proposed with a reference to the statutory authority for the proposed initial TIP or TIP revision;
 - (b) a description of the proposed TIP or TIP revision sufficiently detailed so as to apprise Persons likely to be affected of the issues and subjects involved;
 - (c) a brief description of the comment procedures required pursuant to paragraph c. of this section, and details addressing how interested Persons can submit comment on the proposed initial TIP or TIP revision and the period for which comments shall be accepted;
 - (d) the name, address, and telephone number of a Person whom interested Persons may contact for instructions on how to obtain additional information;
 - (e) details concerning the public hearing; including,
 - (i) how to request that the hearing be held;
 - (ii) the place time and date that such a hearing shall take place if requested;
 - (iii) a brief description of the nature and purpose of the hearing, including the applicable hearing rules and the comment procedures; and,
 - (iv) information concerning how the public can confirm that the hearing had been requested and will be held.
 - (f) details on how to view the draft TIP or TIP modification.
 - (i) Website postings shall include access to electronic versions.
 - (ii) Newspaper notices shall include the location and hours of availability of the public place where interested Persons may view the TIP or TIP modification.

c. Public comments

- (1) The public comment period shall extend until the close of the public hearing or, if a hearing is not requested, until the end of the day that the hearing had been scheduled.
- (2) During the public comment period any interested person may submit written comments;
- (3) All relevant comments shall be considered in making the final decision;

- (4) A record of the comments made and relevant comments answered during the public participation process shall be maintained by the AQP, made available to the public upon request, and submitted to the EPA Region 1 Administrator;
- (5) If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions warranting changes to the TIP or TIP revision, the AQP may:
 - (a) Prepare a new draft TIP or TIP modification, appropriately modified; and,
 - (b) Reopen or extend the comment period to give interested Persons an opportunity to comment on the modified TIP.
 - (c) Comments filed during the reopened comment period shall be limited to the revisions that required the reopening of the comment period.

d. Public hearings

- (1) When requested, the public hearing will be held as specified within the notice.
- (2) The AQP shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.
- (3) Any Person may submit oral or written statements and data applicable to the purpose of the hearing. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period shall be automatically extended to the close of any public hearing under this section. The Presiding Officer may also extend the comment period further by so stating at the hearing.
- (4) A record will be kept of the hearing which will contain a list of witnesses, a summary of verbal comments of each witness, and any written statements or data submitted during the proceeding.

47 M.P.T.L. ch.3 § 2

§ 2. Tribal Only Rules

Public participation procedures for the adoption of Tribal only rules shall be the same as specified within 14 M.P.T.L., Land Use Law, for Land Use Regulation.

47 M.P.T.L. ch.3 § 3

§ 3. Permit Issuance

Requirements and procedures for public participation prior to the issuance of air quality permits shall be specified within regulations adopted pursuant ch. 2, § 4 of this title.

CHAPTER 4. ENFORCEMENT

47 M.P.T.L. ch.4 § 1

§ 1. Enforcement Procedure

a. General

- (1) Whenever the AQP determines, following an inspection, investigation or examination, that reasonable grounds exist to find that a Facility or Person has violated the MPTN CAP, the AQP may issue an appropriate order against the Facility or Person responsible for the violation.
- (2) If a Person to whom an order has been issued fails to comply with the terms of the order within the time specified within the order, the Air Quality Program is authorized to:
 - (a) issue additional orders which may include additional penalties,
 - (b) revoke the Facility's permit, and/or
 - (c) file a complaint, pursuant to Chapter 5, § 3 of this title, in the Mashantucket Pequot Tribal Court seeking injunctive relief and Court enforcement of the order, including payment of any penalties owed thereunder.
- (3) The Air Quality Program is authorized to issue orders and assess penalties for a period of five (5) years following the date of a violation of the CAP, or a permit or order issued pursuant to the MPTN CAP.
 - (a) If the violation is continuing in nature, penalties may be assessed for a period greater than five (5) years.
 - (b) The Air Quality Program is authorized to issue compliance orders (for injunctive relief) for any and all violations regardless of whether the violation occurred more than 5 years from the date the order would be issued.

b. Show Cause Order

- (1) Unless the AQP believes that imminent and substantial harm to the environment, or the general health, safety, and welfare of the Tribe, employees, or general public is likely to occur without the prompt initiation or cessation of an activity, the AQP shall issue a Show Cause Order whenever it is established that reasonable grounds exist to suspect that a certain action or inaction may have resulted in a violation of this CAP, or any

permit or enforcement order issued under it. The Show Cause Order shall order the appropriate Person to:

- (a) respond to the order by supplying all information requested or otherwise necessary to determine the validity of the alleged violation; or,
 - (b) appear before the AQP to review the status of the alleged violation, respond to and explain the alleged violation, and determine whether any remediation or additional permit terms and conditions are necessary, or any enforcement measure should be applied.
- (2) Show Cause Hearings shall follow the procedures specified within Chapter 5, § 2 of this title, with the Director serving as the Hearing Official.
- (3) If the Person issued a Show Cause Order fails to respond within the time frame noted within the Order, or fails to appear before the AQP or make a reasonable effort to reschedule before the time specified, there is a presumptive conclusion that the alleged violation has occurred and a Compliance Order or Cease and Desist Order will be issued.

c. Consent Order

- (a) Following the issuance of a Show Cause Order, the AQP may issue a Consent Order whenever the Person is willing to resolve the matter. A Consent Order creates a conclusive presumption that the activity, or lack of activity in question, presents a violation of a permit term or condition, this CAP, or enforcement order.
- (b) A Consent Order shall specify the agreed upon compliance actions and may:
 - (i) require the performance of necessary remediation, other reasonable action, or enforcement measure as part of the Consent Order;
 - (ii) levy a penalty in accordance with § 2 of this chapter; and,
 - (iii) include additional Show Cause Orders to facilitate review of the status of compliance with the Consent Order.
- (c) Consent Orders shall be maintained by the AQP and shall be admissible as evidence and enforced by the Tribal Court.

d. Compliance Orders

- (1) Following the issuance of a Show Cause Order and a hearing, the AQP may issue a Compliance Order whenever it is determined that an activity or lack of activity violates a permit term or

condition, this CAP, or an enforcement order requiring compliance.

- (2) Compliance Orders will be issued in writing and will specify the nature and extent of the violation, the basis for the AQP's finding of a violation, the action required for the Source to come into compliance, the amount of a penalty, if any, and the date by which the Person is ordered to complete the required action.

e. Cease and Desist Order

- (1) Notwithstanding any other provisions of the CAP, the AQP, upon receipt of evidence that a pollution Source or combination of Sources is presenting an imminent and substantial endangerment to public health, safety or welfare, or the environment, may issue a Cease and Desist Order to immediately restrain any person causing or contributing to the alleged pollution, to stop the emission of air pollutants causing or contributing to such pollution, or to take such other action as may be necessary.
- (2) The AQP, or designated representative, shall deliver the Cease and Desist Order to the Owner, or Person in control of the Source and mail a copy of the Order to the Owner.
- (3) The Order shall be effective upon issuance and shall remain in effect for a period of not more than 60 Days.
- (4) The Cease and Desist Order shall specify the date for a hearing to determine the status of the alleged violation, any necessary remediation, or whether any other action or enforcement measure should be applied. The hearing shall be conducted as specified within Chapter 5, § 2 of this title.

47 M.P.T.L. ch.4 § 2

§ 2. Penalties

a. The AQP shall have the authority to issue penalties to any Person who is found to have violated the CAP, or any order, or permit term or condition issued under it.

b. Penalties assessed outside of an enforcement order shall be issued by a written notice of a penalty assessment. Orders and notices assessing penalties shall indicate the nature and extent of the violation for which the penalty was assessed, the basis for the AQP's finding of a violation, the amount of the penalty, and the date by which the penalty must be paid.

c. In determining the amount of the penalty, the AQP shall consider the following factors:

- (1) the reasonable costs and expenses of the AQP in investigating, controlling, and abating such violations;
- (2) the penalties established by applicable programs within the CAP;
- (3) the actual and potential impact or damages to the environment or the general health, safety, and welfare of the Tribal Nation;
- (4) any measures taken to prevent or mitigate the violation, including whether the Owner has implemented reasonable policies and procedures for compliance with the CAP;
- (5) any previous violations or failure to comply with any CAP requirement, permit term or condition, or a compliance order;
- (6) making compliance less costly than non-compliance (e.g.: the financial gain, if any, derived by the Source as a result of operating out of compliance);
- (7) the deterrence of future potential violations;
- (8) whether the failure to comply was intentional, willful, or knowing and not the result of an error;
- (9) whether the noncompliance was discovered and reported by the Owner or Person in control of the Source; and,
- (10) any other factor(s) that may be relevant to determining the amount of the penalty, provided that such factor shall be set forth in the written notice of assessment of the fine.

d. If a Person is assessed a penalty, payment shall be made to the general fund of the Tribe:

- (1) the Person shall pay the penalty to the AQP within thirty (30) Days from the date the penalty is assessed; and,
- (2) if the penalty is not paid within thirty (30) Days and the Person is a Tribal entity, the Tribe shall be authorized to automatically withdraw the amount of the penalty from the Tribal entity's budget; or,
- (3) if the penalty is not paid within thirty (30) Days and the Person is an individual or a non-Tribal entity, an additional rate of 1% per month of the original penalty (without proration during the month of payment). After ninety (90) Days, the AQP may seek an order from the Mashantucket Pequot Tribal Court in accordance with Title 40 of the M.P.T.L. or pursue other steps that the law may allow to collect the penalty, and may be

entitled to seek reasonable collection costs and attorney's fees.

e. Funds collected may be utilized by the AQP to mitigate violations related to the penalty but only up to the amount of the penalties collected in the current fiscal year.

47 M.P.T.L. ch.4 § 3

§ 3. Federal Enforcement

a. In accordance with the Memorandum of Agreement between the Mashantucket Pequot Tribe of Connecticut and the U.S. Environmental Protection Agency Region 1, effective July 1, 2008, as amended from time to time, MPTN shall provide investigative leads to the federal government when the Air Quality Program has reason to suspect that:

- (1) a non-native has committed, within Mashantucket, an act or omission potentially punishable by a criminal penalty, as provided by § 113(c) of the Clean Air Act, U.S.C § 7431(c); or,
- (2) a Native American has committed, within Mashantucket, an act or omission potentially punishable by a criminal penalty, resulting in a fine greater than \$5,000.00, a term of imprisonment greater than one year, or both, as provided by § 113(c) of the Clean Air Act, U.S.C § 7431(c).

b. Whenever the Tribe has reason to suspect the circumstances described in paragraph a. of this section the Tribe will immediately notify the EPA Criminal Investigation Division, Boston Area Office and/or the appropriate U.S. Attorney's Office by telephone or telefax and provide initial investigative leads supporting such suspicion within 24 hours.

c. After providing the initial investigative lead, the Tribe will, when requested, continue to assist the Criminal Investigation Division in collecting additional evidence to support the investigation, and will make available inspectors or other employees of the Tribe who witnessed the suspected violations or who are otherwise in the chain of custody for evidence of the violation.

d. Nothing in this section shall be construed as limiting EPA's enforcement jurisdiction.

CHAPTER 5. HEARING AND JUDICIAL REVIEW

47 M.P.T.L. ch.5 § 1

§ 1. Right to a Hearing

a. A Person may request a hearing before the AQP if an enforcement action has been issued against them, they have been denied a permit or they seek relief from a specific permit condition.

b. A request for a hearing must be filed with the AQP within thirty (30) Days of the issuance of the enforcement order, denial of a permit (including denial of a request for a modification), or imposition of a permit condition.

47 M.P.T.L. ch.5 § 2

§ 2. Hearing Procedure

Unless there are other applicable procedures specified within a Regulation adopted under this Title, the Hearing shall follow the procedures established within the Tribal Administrative Procedures Act ("APA 40 M.P.T.L), with the Director serving as the Hearing Official.

47 M.P.T.L. ch.5 § 3

§ 3. Right of Judicial Review

After exhausting the available administrative remedies, a Person dissatisfied with a final decision of the AQP is entitled to Tribal Court review provided that a complaint is filed pursuant to the procedures set forth in the Tribal Administrative Procedures Act ("APA" - 40 M.P.T.L.).

- (1) Petitions for review must be filed in accordance with the APA.
- (2) If an enforcement hearing is requested pursuant to Chapter 5, § 1 and the APA, and the appealing party has reached a tolling agreement with the AQP prior to the deadline for appeal, then the time for appeal shall be extended in accordance with the tolling agreement.

b. Jurisdiction

- (1) The Tribal Court is hereby granted jurisdiction to review a final decision of the AQP in accordance with this chapter. The Tribe hereby expressly waives its sovereign immunity for the limited purpose of actions in the Tribal Court founded upon a review of the actions of the AQP as provided herein, provided that all administrative remedies have been exhausted. A Person does not need to file a request for reconsideration to exhaust administrative remedies.

- (2) An appeal to the Tribal Court pursuant to this chapter shall be the exclusive cause of action under Tribal Law for any Person receiving an order or an administrative penalty, or otherwise aggrieved under this title.
- (3) When it is alleged that the liability of AQP is based upon the action of an officer, agent, servant, or employee of the AQP acting within the scope of his or her employment, there shall be no separate cause of action against said officer, agent, servant or employee, and nothing in this law shall be construed to waive the sovereign immunity of the Tribe or the AQP to the extent that it extends to such an individual.

Historical and Statutory Notes

Derivation.

Effective October 11, 2018, TCR101118-04 of 06 enacted 47 M.P.T.L., Clean Air Program.