

**NORTHERN CHEYENNE  
CLEAN AIR ACT**

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## **CHAPTER 1—GENERAL PROVISIONS**

### **Section 1.1: Short Title**

This title shall be known as the “Northern Cheyenne Clean Air Act” or “NCCAA”.

### **Section 1.2: Purpose and Findings**

The Council makes the following findings in support of the NCCAA:

- (1) Air pollutants, whether emitted on the Northern Cheyenne Reservation or transported to the Reservation from off-Reservation sources, have the potential to adversely affect air quality on the Reservation, the health and wellbeing of the Tribe’s members and other Reservation residents, the economic security of the Tribe, and the traditional way-of-life that the Tribe’s members have practiced since time immemorial;
- (2) It is of upmost importance to the Tribe that air quality on the Northern Cheyenne Reservation is maintained and enhanced, as demonstrated by the Tribe’s designation of the Northern Cheyenne Reservation as a Class 1 air quality region pursuant to the federal Clean Air Act, and the Tribe’s continuing efforts to ensure that off-Reservation sources of air pollutants do not adversely affect air quality on the Northern Cheyenne Reservation; and
- (3) The purpose of the NCCAA is to provide a framework for the Northern Cheyenne Tribe to maintain and enhance air quality on the Northern Cheyenne Reservation in accordance with the federal Clean Air Act and its implementing regulations.

### **Section 1.3: Definitions**

- (1) “Act” means the federal Clean Air Act, 42 U.S.C. §§ 7401-7671q.
- (2) “Air pollutant” means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter 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 EPA Administrator has identified such precursor or precursors for the particular purpose for which the term “air pollutant” is used.
- (3) “Air Quality Administrator” means the Air Quality Administrator for the Northern Cheyenne Tribe’s Department of Environmental Protection and Natural Resources.
- (4) “Ambient air” means the portion of the atmosphere, external to buildings, to which the general public has access.
- (5) “BIA” means the United States Bureau of Indian Affairs.

- (6) “Council” means the Tribal Council of the Northern Cheyenne Tribe, which is vested with the Tribe’s legislative authority pursuant to the Northern Cheyenne Constitution.
- (7) “Department” means the Northern Cheyenne Tribe’s Department of Environmental Protection and Natural Resources.
- (8) “Director” means the Director of the Northern Cheyenne Tribe’s Department of Environmental Protection and Natural Resources.
- (9) “EPA” means the United States Environmental Protection Agency.
- (10) “Equivalent method” means a method of sampling and analyzing the ambient air for an air pollutant that has been designated as an equivalent method in accordance with 40 C.F.R. Part 53; it does not include a method for which an equivalent method designation has been canceled in accordance with 40 C.F.R. § 53.11 or 40 C.F.R. § 53.16.
- (11) “NCCAA” means this Northern Cheyenne Clean Air Act, as hereinafter amended.
- (12) “Open burning” means the burning of a material that results in the products of combustion being emitted directly into the ambient air without passing through a stack. “Open burning” includes burning in burn barrels.
- (13) “Person” means any individual, corporation, partnership, association, foreign government, tribe, state, municipality, political subdivision of a state or tribe, the United States, any subdivision or instrumentality of the United States, the Northern Cheyenne Tribe, and any subdivision or instrumentality of the Northern Cheyenne Tribe.
- (14) “PM<sub>2.5</sub>” means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on Appendix L of 40 C.F.R. Part 50 and designated in accordance with 40 C.F.R. Part 53 or by an equivalent method designated in accordance with 40 C.F.R. Part 53.
- (15) “PM<sub>10</sub>” means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J to 40 C.F.R. Part 50 and designated in accordance with 40 C.F.R. Part 53 or by an equivalent method designated in accordance with 40 C.F.R. Part 53.
- (16) “President” means the President of the Northern Cheyenne Tribe, who is vested with the Tribe’s executive authority pursuant to the Northern Cheyenne Constitution.
- (17) “Primary ambient air quality standards” means the ambient air quality standards which define levels of air quality necessary, with an adequate margin of safety, to protect the public health on the Reservation.
- (18) “Reference method” means a method of sampling and analyzing the ambient air for an air pollutant that has been specified as a reference method in an appendix to 40 C.F.R. Part

50, or a method that has been designated as a reference method in accordance with 40 C.F.R. Part 53; it does not include a method for which a reference method designation has been canceled in accordance with 40 C.F.R. § 53.11 or § 53.16.

- (19) “Reservation” means the Northern Cheyenne Indian Reservation as established by the Presidential Executive Orders of November 26, 1884, and March 19, 1900, all lands of any kind within the exterior boundaries of the Reservation, all lands which are now or hereafter subject to the jurisdiction of the Tribe, and all lands to which the Tribe holds legal or beneficial title.
- (20) “Secondary ambient air quality standards” means ambient air quality standards that define the levels of air quality which the Council judges necessary to protect the public welfare from any known or anticipated adverse effects of an air pollutant.
- (21) “Tribe” means and “Tribal” refers to the Northern Cheyenne Tribe.

#### **Section 1.4: Jurisdiction and Applicability**

- (1) The NCCAA is adopted pursuant to the authority vested in the Council under Article IV of the Northern Cheyenne Constitution as amended.
- (2) The Tribe has inherent sovereignty to exercise civil authority and jurisdiction over the conduct of Tribal members and all other persons on all Reservation lands to maintain the environment, natural resources, health, safety, welfare, political integrity, and economic security of the Tribe.
- (3) Because violations of the NCCAA may seriously impact the environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Tribe, the NCCAA shall apply to all persons within the Reservation including, but not limited to, Tribal members, members of other tribes, and any other person as defined in the NCCAA.

#### **Section 1.5: Sovereign Immunity**

Neither this NCCAA, nor the Tribe’s air quality program, nor any action or agreement of the Director or his or her employees, agents, contractors, subcontractors, or other delegates taken pursuant to the NCCAA shall in any respect constitute waiver or modification of the sovereign immunity of the Tribe or its instrumentalities, officials, employees, or agents.

#### **Section 1.6: Interpretation**

If any provision in the NCCAA conflicts with any other provision of the NCCAA, other Tribal law, or federal law, the most stringent and protective provision shall be controlling.

### **Section 1.7: Severability**

If any provision in the NCCAA, or application of any provision in the NCCAA to any person or circumstance, is determined to be invalid or unlawful, the application of such provision to other persons and circumstances, and the remaining provisions in the NCCAA, shall not be affected.

### **Section 1.8: Incorporation of Federal Regulations**

All parts of the Code of Federal Regulations (“C.F.R.”) referenced in the NCCAA are incorporated by reference and are on file in the office of the Director. Copies of the regulations may be obtained from the Director for the cost of copying.

### **Section 1.9: Effective Date**

The NCCAA shall not be effective until it has been approved by the Council by ordinance.

## **CHAPTER 2—TRIBAL ADMINISTRATION AND IMPLEMENTATION**

### **Section 2.1: Department of Environmental Protection and Natural Resources**

- (1) The Northern Cheyenne Department of Environmental Protection and Natural Resources is designated as the lead Tribal agency for implementation and enforcement of the NCCAA. The Director and the Air Quality Administrator shall be responsible for implementing and enforcing the NCCAA on behalf of the Department.
- (2) The Director has the following duties, subject to available funding, regarding implementation and enforcement of the NCCAA:
  - (a) The Director shall make recommendations to the Council for any revisions to the NCCAA or modifications to the Tribe’s air quality program the Director deems necessary or appropriate for protecting and enhancing air quality on the Reservation.
  - (b) The Director shall make recommendations to the Council for the retention of Department staff, consultants, or contractors the Director deems necessary or appropriate to assist the Department in the implementation or enforcement of the NCCAA.
  - (c) The Director shall establish a civil penalty policy designed to promote consistent and fair assessment of civil penalties for violations of the NCCAA. The Director may issue other policy or guidance documents the Director deems necessary or appropriate for the consistent interpretation, implementation, and enforcement of the NCCAA.

- (d) The Director shall develop a federally enforceable tribal implementation plan approved by EPA that authorizes the Tribe to exercise delegated federal authority to protect and enhance air quality on the Reservation.
  - (e) The Director shall ensure that the Department obtains and operates appropriate devices or systems necessary to monitor, compile, and analyze the quality of the Reservation's ambient air and determine whether that quality attains the Northern Cheyenne Ambient Air Quality Standards prescribed in Chapter 4. The Director may also authorize the Department's acquisition of other equipment and facilities deemed necessary to aid in the implementation or enforcement of the NCCAA.
  - (f) The Director shall notify Reservation residents of any instance in which any of the Northern Cheyenne Ambient Air Quality Standards prescribed in Chapter 4 were exceeded during any portion of the preceding calendar year. Such notice shall include descriptions of any health hazards associated with such exceedance, measures that can be taken to prevent such exceedances in the future, and ways in which the public can participate in regulatory and other efforts to improve air quality.
  - (g) The Director shall apply for grants, financial aid, training, and technical assistance to fund implementation and enforcement of the NCCAA and otherwise support and expand the Tribe's air quality program.
  - (h) The Director shall take any other actions expressly assigned to the Director in the NCCAA.
  - (i) The Director shall review any administrative appeal of an action of the Air Quality Administrator pursuant to Sections 3.4 and make a decision whether to uphold, modify, or rescind such action.
  - (j) The Director is authorized to delegate any duty or authority assigned to the Director under the NCCAA to other employees, consultants, or contractors retained by the Department, provided that the Director shall not delegate his or her duty to review administrative appeals of actions of the Air Quality Administrator pursuant to Sections 3.4.
- (3) The Air Quality Administrator has the following duties, subject to available funding, regarding implementation and enforcement of the NCCAA:
- (a) The Air Quality Administrator shall make a continuing determination of the quality of the Reservation's ambient air and determine whether that quality attains the Northern Cheyenne Ambient Air Quality Standards prescribed in Chapter 4. The Air Quality Administrator shall regularly report such ambient air quality data to the Director and EPA.



- (b) The Air Quality Administrator shall communicate and coordinate with federal, state, and local regulatory agencies and non-governmental entities regarding implementation and enforcement of the NCCAA and other air quality issues that affect the Tribe.
  - (c) The Air Quality Administrator shall consult with and advise the Director in the exercise of air pollution emergency authority pursuant to Section 2.2 and in issuing burn bans pursuant to Section 5.6.
  - (d) The Air Quality Administrator shall, pursuant to Section 5.7, consult with the Bureau of Indian Affairs regarding the issuance of burn permits and promptly respond to any request from the Bureau of Indian Affairs for review of a proposed burn permit.
  - (e) The Air Quality Administrator shall, pursuant to Sections 3.1 and 3.2, issue compliance orders and assessments of civil penalties and damages to any person who is believed to have committed a violation of the NCCAA.
  - (f) The Air Quality Administrator shall take any other actions expressly assigned to the Air Quality Administrator in the NCCAA or delegated to the Air Quality Administrator by the Director.
- (4) Neither the Director, nor the Air Quality Administrator, nor any Department employee, contractor, or consultant shall consent to or otherwise subject the Tribe or any of its instrumentalities, officials, employees, or agents to non-Tribal jurisdiction or in any respect waive the Tribe's sovereign immunity.
  - (5) If, at any time, there is a vacancy in the position of Director or Air Quality Administrator, the President may reassign the authorities and duties assigned to such position by the NCCAA to other Tribal employees or Tribal contractors on an interim basis until the vacancy has been filled.

### **Section 2.2: Air Pollution Emergency Authority**

- (1) If the Director determines that air pollution in any area of the Reservation may constitute an emergency risk to the health of those in the area, or that the Northern Cheyenne Air Quality Standards established in Chapter 4 are likely to be exceeded, the Director may, by written order issued in consultation with the President and the Bureau of Indian Affairs, prohibit any person from engaging in any activity on the Reservation that results in the emission of air pollutants that significantly endanger the public health or welfare or the environment on the Reservation.
- (2) Any violation of an order issued by the Director pursuant to this Section is a violation of the NCCAA.

- (3) The President may rescind an order issued by the Director pursuant to this Section if the President determines that the order is unnecessary to protect air quality on the Reservation or disagrees with the Director's basis for issuing the order.

### **Section 2.3: Public Involvement**

- (1) The Director shall institute a program designed to provide the public with information regarding implementation of the NCCAA. Such program shall meet the requirements for public notification in 40 C.F.R. § 51.285.
- (2) Public hearings required or authorized to be conducted pursuant to 40 C.F.R. Part 51 or the NCCAA shall be conducted in accordance with 40 C.F.R. § 51.102, as currently in effect or thereafter amended.

## **CHAPTER 3—ENFORCEMENT AND APPEALS**

### **Section 3.1: Compliance Orders**

- (1) If the Air Quality Administrator has reasonable cause to believe that any person has violated or is in violation of the NCCAA or a permit signed by the Air Quality Administrator pursuant to Section 5.7, the Air Quality Administrator may issue an order requiring compliance as expeditiously as practicable.
- (2) A compliance order issued pursuant to this Section shall:
  - (a) Describe the nature of the violation with reasonable specificity;
  - (b) Specify the time allowed for compliance if applicable;
  - (c) Specify that the alleged violator is entitled to administrative review of the compliance order by the Director if such administrative review is requested in writing within 30 days of the date of receipt of the compliance order in accordance with Section 3.4.
- (3) A compliance order issued pursuant to this Section shall be transmitted to the alleged violator by certified mail, return receipt requested, or by personal service. A compliance order issued pursuant to this Section is final and unreviewable unless the alleged violator submits a written request to the Director for administrative review within 30 days of the date of receipt of the compliance order in accordance with Section 3.4. The Air Quality Administrator may file an action in Tribal Court pursuant to the Northern Cheyenne Rules of Civil Procedure to enforce a final compliance order issued pursuant to this Section.

### **Section 3.2: Civil Penalties and Costs**

- (1) If the Air Quality Administrator has reasonable cause to believe that any person has violated or is in violation of the NCCAA, a permit signed by the Air Quality Administrator pursuant to Section 5.7, or a final compliance order issued pursuant to Section 3.1, the Air Quality Administrator may issue a civil penalty order to such person that assesses civil penalties of up to \$5,000 per day for each violation. The Air Quality Administrator may include a civil penalty order in a compliance order issued pursuant to Section 3.1.
- (2) The Air Quality Administrator may include in a civil penalty order an assessment of costs reasonably incurred by the Department in investigating a suspected violation or taking enforcement action pursuant to this Chapter. Such costs may include, without limitation, the costs of hiring contractors or consultants to evaluate suspected violations and attorney fees incurred by the Department in support of an enforcement action.
- (3) A civil penalty order issued pursuant to this Section shall:
  - (a) Describe the nature of the violation with reasonable specificity;
  - (b) Specify the amount of the assessed civil penalty, the amount of any assessed costs, and the basis for such assessments; and
  - (c) Specify that the alleged violator is entitled to administrative review of the civil penalty order if such administrative review is requested in writing within 30 days of the date of receipt of the civil penalty order in accordance with Section 3.4.
- (4) A civil penalty order issued pursuant to this Section shall be transmitted to the alleged violator by certified mail, return receipt requested, or by personal service. A civil penalty order issued pursuant to this Section is final and unreviewable unless the alleged violator submits a written request to the Director for administrative review within 30 days of the date of receipt of the civil penalty order in accordance with Section 3.4. The Air Quality Administrator may file an action in Tribal Court pursuant to the Northern Cheyenne Rules of Civil Procedure to enforce a final civil penalty order issued pursuant to this Section.
- (5) Any civil penalties assessed pursuant to this Section shall be based on the following factors:
  - (a) The actual damages incurred by the Tribe as a result of the violation;
  - (b) The size of the business responsible for the violation and the economic impact of the penalty on the business;
  - (c) The violator's history of compliance or non-compliance and good faith efforts to comply;
  - (d) The duration of the violation;

- (e) The economic benefit to the violator of non-compliance;
  - (f) The seriousness of the violation; and
  - (g) Any other factors deemed appropriate by the Director.
- (6) The Air Quality Administrator, in consultation with the Director, shall develop a civil penalty policy, subject to Council approval, to ensure that civil penalties assessed pursuant to this Section are consistent and fair. However, this paragraph does not limit the Air Quality Administrator's authority to issue civil penalties pursuant to this Section prior to approval of a civil penalty policy by the Council.
- (7) Any civil penalties or costs collected pursuant to this Section shall be deposited in the Department's general fund and shall be used for implementation of the NCCAA and other efforts to protect and enhance air quality on the Reservation.

### **Section 3.3: Preliminary Injunctive Relief**

During the pendency of an enforcement action initiated pursuant to Section 3.1 or Section 3.2, the Air Quality Administrator may file an action in Tribal Court for preliminary injunctive relief against any person who is suspected to have violated or caused a violation of the NCCAA or a final compliance order issued pursuant to Section 3.1, or any provision of a permit signed by the Air Quality Administrator pursuant to Section 5.7. The Tribal Court shall review any request for preliminary injunctive relief pursuant to this Section in accordance with the Northern Cheyenne Rules of Civil Procedure.

### **Section 3.4: Administrative Review**

- (1) Any person who is adversely affected by a decision of the Air Quality Administrator made pursuant to Sections 3.1, 3.2, or 5.7 of the NCCAA may submit a written petition for administrative review to the Director within 30 days of receipt of the Air Quality Administrator's decision. A petition for administrative review submitted pursuant to this Section shall clearly detail the reasons why the petitioner believes the Air Quality Administrator's decision was erroneous or should be modified. A petition submitted pursuant to this Section may include additional information not previously reviewed by the Administrator.
- (2) The Director shall promptly review any petition for administrative review submitted in accordance with the requirements of this Section and any additional information submitted with such petition. Upon reviewing the petition, the Director shall issue a written decision that either upholds, vacates, or modifies the decision of the Air Quality Administrator subject to the petition. A decision by the Director pursuant to this Section shall be in writing and shall be served on the petitioner by personal service or certified mail.

### **Section 3.5: Administrative Record**

The Air Quality Administrator shall maintain an administrative record for any decision taken pursuant to Sections 3.1, 3.2, and 5.7 of the NCCAA. An administrative record shall contain all documents and other records that formed the basis for the Air Quality Administrator's decision, any petition for administrative review pursuant to Section 3.4 of the NCCAA, and any additional documents or records included with such a petition. However, records that are privileged shall not be included in the administrative record. Privileged records include but are not limited to records (or parts thereof) that contain confidential business information or are subject to the attorney-client privilege, the attorney work product privilege, or the deliberative process privilege.

### **Section 3.6: Judicial Review**

- (1) Except as provided in this Section, actions taken by the Air Quality Administrator or the Director pursuant to NCCAA are not subject to judicial review.
- (2) Any person may obtain judicial review of a decision by the Director taken pursuant to Section 3.4 of the NCCAA by filing an action in Northern Cheyenne Tribal Court pursuant to the Northern Cheyenne Rules of Civil Procedure.
- (3) The Tribal Court shall uphold any decision by the Director subject to judicial review pursuant to this Section unless the party challenging the Director's decision demonstrates to the Tribal Court, solely on the basis of the administrative record, that the Director's decision was arbitrary and capricious or contrary to law.
- (4) Except as expressly provided in this Section, nothing in NCCAA shall in any respect constitute waiver or modification of the sovereign immunity of the Tribe or its instrumentalities, officials, employees, or agents.

## **CHAPTER 4—NORTHERN CHEYENNE AIR QUALITY STANDARDS**

### **Section 4.1: Scope**

- (1) The Northern Cheyenne primary ambient air quality standards established in this Chapter define the levels of air quality which the Council judges are necessary, with an adequate margin of safety, to protect public health on the Reservation.
- (2) The Northern Cheyenne secondary ambient air quality standards define the levels of air quality which the Council judges necessary to protect the public welfare from any known or anticipated adverse effects of an air pollutant.
- (3) The adoption of Northern Cheyenne ambient air quality standards shall not be considered in any manner to allow significant deterioration of existing air quality on the Reservation.

### **Section 4.2: Reference Conditions**

All measurements of air quality that are expressed as mass per unit volume (e.g., micrograms per cubic meter) other than for PM<sub>2.5</sub> standards contained Section 4.8, and lead standards contained in Section 4.4, shall be corrected to a reference temperature of 25 degrees C and a reference pressure of 760 millimeters of mercury (1,013.2 millibars). Measurements of PM<sub>2.5</sub> for purposes of comparison to the standards contained in Section 4.8, and of lead for purposes of comparison to the standards contained in Section 4.4, shall be reported based on actual ambient air volume measured at the actual ambient temperature and pressure at the monitoring site during the measurement period.

#### **Section 4.3: Primary Ambient Air Quality Standards for Carbon Monoxide**

- (1) The Northern Cheyenne 8-hour primary ambient air quality standard for carbon monoxide is 9 parts per million for an 8-hour average concentration not to be exceeded more than once per year. An 8-hour average shall be considered valid if at least 75 percent of the hourly average for the 8-hour period is available. In the event that only 6 (or 7) hourly averages are available, the 8-hour average shall be computed on the basis of the hours available using 6 (or 7) as the divisor.
- (2) The Northern Cheyenne 1-hour primary ambient air quality standard for carbon monoxide is 35 parts per million for a 1-hour average concentration not to be exceeded more than once per year.
- (3) The levels of carbon monoxide in the ambient air on the Reservation shall be measured by a reference method based on Appendix C of 40 C.F.R. Part 50 and designated in accordance with 40 C.F.R. Part 53 or an equivalent method designated in accordance with 40 C.F.R. Part 53.
- (4) When summarizing data for comparison with the carbon monoxide standards, averages shall be stated to 1 decimal place. Comparison of the data with the levels of the standards in parts per million shall be made in terms of integers with fractional parts of 0.5 or greater rounding up.

#### **Section 4.4: Primary and Secondary Ambient Air Quality Standards for Lead**

- (1) The Northern Cheyenne primary and secondary ambient air quality standards for lead and its compounds, measured as elemental lead by a reference method based on Appendix G to 40 C.F.R. Part 50 or by an equivalent method, are 0.15 micrograms per cubic meter, averaged over a rolling 3-month period.
- (2) The Northern Cheyenne primary and secondary ambient air quality standards for lead are met when the maximum arithmetic 3-month mean concentration for a 3-year period, as determined in accordance with Appendix R to 40 C.F.R. Part 50, is less than or equal to 0.15 micrograms per cubic meter.

#### **Section 4.5: Primary and Secondary Ambient Air Quality Standards for Nitrogen Dioxide**

- (1) The Northern Cheyenne annual primary ambient air quality standard for oxides of nitrogen (measured in the ambient air as nitrogen dioxide) is 53 parts per billion, annual average concentration. The annual primary standard is met when the annual average concentration in a calendar year is less than or equal to 53 parts per billion, as determined in accordance with Appendix S to 40 C.F.R. Part 50 for the annual standard.
- (2) The Northern Cheyenne 1-hour primary ambient air quality standard for oxides of nitrogen (measured in the ambient air as nitrogen dioxide) is 100 parts per billion, 1-hour average concentration. The 1-hour primary standard is met when the three-year average of the annual 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 100 parts per billion, as determined in accordance with Appendix S of 40 C.F.R. Part 50 for the 1-hour standard.
- (3) The Northern Cheyenne secondary ambient air quality standard for oxides of nitrogen (measured in the ambient air as nitrogen dioxide) is .053 parts per million, annual arithmetic mean concentration. The secondary standard is met when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 parts per million, rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm must be rounded up). To demonstrate attainment, an annual mean must be based upon hourly data that are at least 75 percent complete or upon data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter.
- (4) The levels of nitrogen dioxide in the ambient air on the Reservation shall be measured by a reference method based Appendix F to 40 C.F.R. Part 50 or by a federal equivalent method designated in accordance with 40 C.F.R. Part 53.

#### **Section 4.6: Primary and Secondary Ambient Air Quality Standards for Ozone**

The Northern Cheyenne primary and secondary ambient air quality standards for ozone, measured by a reference method based on Appendix D to 40 C.F.R. Part 50 and designated in accordance with 40 C.F.R. Part 53, are 0.070 parts per million, daily maximum 8-hour average. The 8-hour primary and secondary ozone ambient air quality standards are met when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.070 parts per million, as determined in accordance with Appendix U to 40 C.F.R. Part 50.

#### **Section 4.7: Primary and Secondary Ambient Air Quality Standards for PM<sub>10</sub>**

- (1) The Northern Cheyenne 24-hour primary and secondary ambient air quality standards for PM<sub>10</sub> are 150 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), 24-hour average concentration. The standards are met when the expected number of days per calendar year with a 24-hour

average concentration above 150 micrograms per cubic meter, as determined in accordance with Appendix K to 40 C.F.R. Part 50, is equal to or less than one.

- (2) For the purpose of determining attainment of the primary and secondary standards, particulate matter shall be measured in the ambient air as PM<sub>10</sub> by either a reference method based on Appendix J to 40 C.F.R. Part 50 and designated in accordance with 40 C.F.R. Part 53 or an equivalent method designated in accordance with 40 C.F.R. Part 53.

#### **Section 4.8: Primary and Secondary Ambient Air Quality Standards for PM<sub>2.5</sub>**

- (1) The Northern Cheyenne 1-year primary ambient air quality standard for PM<sub>2.5</sub> is 12.0 micrograms per cubic meter annual arithmetic mean concentration. The 1-year primary PM<sub>2.5</sub> standard is met when the annual arithmetic mean concentration, as determined in accordance with Appendix N to 40 C.F.R. Part 50, is less than or equal to 12.0 micrograms per cubic meter.
- (2) The Northern Cheyenne 24-hour primary and secondary ambient air quality standards for PM<sub>2.5</sub> are 35 micrograms per cubic meter 24-hour average concentration. The primary and secondary 24-hour PM<sub>2.5</sub> standards are met when the 98th percentile 24-hour concentration, as determined in accordance with Appendix N to Part 40 C.F.R. 50, is less than or equal to 35 micrograms per cubic meter.
- (3) The Northern Cheyenne 1-year secondary ambient air quality standard for PM<sub>2.5</sub> is 15.0 micrograms per cubic meter annual arithmetic mean concentration. The 1-year secondary PM<sub>2.5</sub> standard is met when the annual arithmetic mean concentration, as determined in accordance with Appendix N to 40 C.F.R. Part 50, is less than or equal to 15 micrograms per cubic meter.
- (4) Concentrations of PM<sub>2.5</sub> shall be measured in the ambient air by either a reference method based on Appendix L of 40 C.F.R Part 50 and designated in accordance with 40 C.F.R. Part 53 or an equivalent method designated in accordance with 40 C.F.R. Part 53.

#### **Section 4.9: Primary and Secondary Ambient Air Quality Standards for Sulfur Dioxide**

- (1) The Northern Cheyenne primary 1-hour annual ambient air quality standard for oxides of sulfur (measured in the ambient air as sulfur dioxide) is 75 parts per billion, measured in the ambient air as sulfur dioxide (SO<sub>2</sub>). The 1-hour primary standard is met at an ambient air quality monitoring site when the three-year average of the annual (99th percentile) of the daily maximum 1-hour average concentrations is less than or equal to 75 parts per billion, as determined in accordance with Appendix T to 40 C.F.R. Part 50.
- (2) The Northern Cheyenne secondary 3-hour ambient air quality standard for oxides of sulfur (measured in the ambient air as sulfur dioxide) is 0.5 parts per million, not to be exceeded more than once per calendar year. The 3-hour averages shall be determined from successive nonoverlapping 3-hour blocks starting at midnight each calendar day and shall be rounded to 1 decimal place (fractional parts equal to or greater than 0.05 ppm



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

- (3) Sulfur dioxide shall be measured in the ambient air by a reference method based on Appendix A or A-1 to 40 C.F.R. Part 50, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

#### **Section 4.10: Table Summarizing Northern Cheyenne Ambient Air Quality Standards**

Pollutant		Primary/ Secondary	Averaging Time	Level	Form
Carbon Monoxide (CO)		primary	8 hours	9 ppm	Not to be exceeded more than once per year
			1-hour	35 ppm	
Lead (Pb)		primary and secondary	Rolling 3 month period	0.15 $\mu\text{g}/\text{m}^3$	Not to be exceeded
Nitrogen Dioxide (NO <sub>2</sub> )		primary	1-hour	100 ppb	98th percentile of 1-hour daily maximum concentrations, averaged over 3 years
		primary and secondary	1 year	53 ppb	Annual Mean
Ozone (O <sub>3</sub> )		primary and secondary	8 hours	0.070 ppm	Annual fourth-highest daily maximum 8-hour concentration, averaged over 3 years
Particle Pollution (PM)	PM <sub>2.5</sub>	primary	1 year	12.0 $\mu\text{g}/\text{m}^3$	Annual mean, averaged over 3 years
		secondary	1 year	15.0 $\mu\text{g}/\text{m}^3$	Annual mean, averaged over 3 years
		primary and secondary	24 hours	35 $\mu\text{g}/\text{m}^3$	98th percentile, averaged over 3 years
	PM <sub>10</sub>	primary and secondary	24 hours	150 $\mu\text{g}/\text{m}^3$	Not to be exceeded more than once per year on average over 3 years
Sulfur Dioxide (SO <sub>2</sub> )		primary	1-hour	75 ppb	99th percentile of 1-hour daily maximum concentrations, averaged over 3 years
		secondary	3 hours	0.5 ppm	Not to be exceeded more than once per year

## CHAPTER 5—OPEN BURNING

### Section 5.1: General Prohibition on Open Burning

Except as otherwise provided in this Chapter, no person shall cause or allow open burning on the Reservation.

### Section 5.2: Exemptions to Open Burning Prohibition

- (1) The general prohibition on open burning in Section 5.1 and the permitting requirements of Section 5.7 shall not apply to burning by a member of the Tribe for cultural, traditional, or spiritual purposes provided that such burning:
  - (a) Is conducted in a safe manner and does not endanger public health or safety on the Reservation;
  - (b) Does not contain any of prohibited materials listed in Section 5.4;
  - (c) Does not cause or contribute to an exceedance of a Northern Cheyenne Ambient Air Quality Standard established in Chapter 4; and
  - (d) Is not subject to a burn ban pursuant to Section 5.6.
  
- (2) The general prohibition on open burning in Section 5.1 and the permitting requirements of Section 5.7 shall not apply to an open burning activity that is less than four feet in diameter and less than three feet in height, so long as such open burning activity:
  - (a) Is attended at all times;
  - (b) Is conducted only during daylight hours, except for cooking and recreational fires;
  - (c) Burns only materials that have been kept as dry as practicable;
  - (d) Burns only materials that have been separated from non-combustible materials as much as practicable;
  - (e) Burns only materials that have been separated from the grass or peat layer as much as practicable;
  - (f) Is capable of being immediately extinguished;
  - (g) Is not allowed to smolder;
  - (h) Is extinguished when the burn is complete;
  - (i) Does not contain any of prohibited materials listed in Section 5.4;
  - (j) Does not cause or contribute to an exceedance of a Northern Cheyenne Ambient Air Quality Standard established in Chapter 4; and
  - (k) Is not subject to a burn ban pursuant to Section 5.6.

### **Section 5.3: Safe Burning**

Any person who commences an open burning activity on the Reservation, including a fire that is exempt from permitting requirements pursuant to Section 5.2, shall ensure that the open burning is conducted in a safe manner and does not endanger public health or safety on the Reservation.

#### **Section 5.4: Prohibited Materials**

- (1) Except as provided in this Section, no person shall burn or allow the burning of the following materials within the Reservation:
  - (a) Structures and human belongings, except as authorized in writing by the Director or the President;
  - (b) Garbage;
  - (c) Dead animals or parts of dead animals not used for food, unless pursuant to the lawful order of a public health official;
  - (d) Junked motor vehicles or any materials resulting from a salvage operation;
  - (e) Tires or rubber materials or products;
  - (f) Plastics, plastic products, or styrofoam;
  - (g) Asphalt or composition roofing, or any other asphaltic material or product;
  - (h) Tar, tarpaper, petroleum products, or paints;
  - (i) Lumber or timbers treated with preservatives;
  - (j) Construction debris or demolition waste;
  - (k) Pesticides, herbicides, fertilizers, or other chemicals;
  - (l) Insulated wire;
  - (m) Batteries;
  - (n) Light bulbs;
  - (o) Materials containing mercury (e.g., thermometers);
  - (p) Asbestos or asbestos-containing materials;
  - (q) Pathogenic wastes;
  - (r) Hazardous wastes, as defined under 40 C.F.R. § 261.3;

- (s) Any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned;
  - (t) Any material from a site other than the parcel number upon which the open burning activity is conducted; or
  - (u) Used fireworks and associated packaging.
- (2) The Air Quality Administrator may authorize a training fire containing prohibited materials, provided that the training fire complies with all other provisions of this Chapter, other applicable provisions of Tribal law, and applicable provisions of federal law.

### **Section 5.5: Exceedances of Northern Cheyenne Ambient Air Quality Standards**

No person shall commence or continue an open burning activity within the Reservation that is determined by the Director, in consultation with the Air Quality Administrator, to cause or contribute to an exceedance of any Northern Cheyenne Ambient Air Quality Standard established in Chapter 4.

### **Section 5.6: Burn Bans**

- (1) Except as provided in this Section, no person shall commence or continue an open burning activity on the Reservation during a burn ban issued by the Director pursuant to this Section.
- (2) The Director is required to issue a burn ban if measured or predicted concentrations of PM<sub>2.5</sub> or PM<sub>10</sub> in the ambient air on the Reservation exceed 75 percent of the Northern Cheyenne Ambient Air Quality Standards for PM<sub>2.5</sub> or PM<sub>10</sub>.
- (3) The Director is authorized to declare a burn ban if, in his or her best judgment, and in consultation with the President, the Air Quality Administrator, and appropriate BIA personnel at the Northern Cheyenne Agency, the Director determines that a burn ban is necessary to protect air quality on the Reservation for the following reasons:
  - (a) Measured or predicted concentrations of any air pollutant in the ambient air on the Reservation exceed any of the other Northern Cheyenne Ambient Air Quality Standards established in Chapter 4.
  - (b) Meteorological conditions indicate impaired air quality conditions on the Reservation; or
  - (c) Moisture levels in biomass on the Reservation indicate a high fire danger.

- (4) Unless otherwise specified by the Director, open burning for cooking or recreational purposes may be commenced or continued during a burn ban provided such open burning is less than four feet in diameter, less than three feet in height, and contained within a fire ring, barbeque, or similar structure.
- (5) Unless otherwise specified by the Director, the ignition and use of unused fireworks may be commenced or continued during a burn ban; however, used fireworks and associated packaging may not be disposed of by burning.
- (6) An open burning activity commenced prior to the declaration of a burn ban may be continued during a burn ban if the Director determines that immediate cessation of the open burning would likely cause greater emissions than allowing the open burning to continue and specifically authorizes in writing the open burning to continue.
- (7) The Director may expand a burn ban to include a prohibition on the use of woodstoves within the Reservation, except in homes in which woodstoves are the primary heating source, upon determining that such a prohibition is necessary to protect air quality on the Reservation.
- (8) The Director may limit the geographical scope of a burn ban to areas on the Reservation where air quality is impaired or there is a high fire danger.
- (9) The Director shall provide notice of a burn ban by placing a sign by the side of each main road providing access to the Reservation, posting notice on the Department's website, and by sending notice to all Tribal departments.

### **Section 5.7: Open Burning Permits**

- (1) Except as provided in this Section or in Section 5.2, no person shall cause or allow an open burning activity on the Reservation that is four or more feet in diameter or three or more feet in height unless such person has obtained a valid open burning permit that has been signed by the Air Quality Administrator and an authorized officer of the BIA Northern Cheyenne Agency prior to commencing such open burning. The Air Quality Administrator may sign such a permit only when the requirements of this Section have been satisfied.
- (2) The Air Quality Administrator shall coordinate with the BIA Northern Cheyenne Agency personnel on the information that must be provided by an applicant for an open burning permit required by this Section. The Air Quality Administrator shall not sign any permit authorizing an open burning activity on the Reservation unless the applicant has provided any information required by the Air Quality Administrator.
- (3) Upon receipt of a complete open burning application submitted pursuant to this Section, the Air Quality Administrator may sign the permit only if he or she determines, in consultation with the appropriate BIA Northern Cheyenne Agency personnel, that the

proposed open burning activity will not cause an adverse impact on Reservation air quality or otherwise endanger public health or welfare on the Reservation.

- (4) The Air Quality Administrator shall not sign an open burning permit unless the permit contains the following permit conditions:
  - (a) The permit shall require the permittee to comply with Sections 5.4 through 5.6 of this Chapter.
  - (b) The permit shall establish the maximum diameter and height allowable for the permitted burn.
  - (c) The permit shall establish requirements for setbacks from structures and standing woody vegetation that minimize fire risk and protect public health and welfare.
  - (d) The permit shall require that adequate equipment and supplies be maintained at the burn site during the open burning activity to ensure that the burn is controlled.
  - (e) The permit shall provide that the permitted burning activity shall not be commenced if wind speeds are greater than 7 miles per hour and shall be extinguished if wind speeds are greater than 15 miles per hour or are gusting to 20 or more miles per hour unless the Air Quality Administrator and BIA Northern Cheyenne Agency personnel agree that such wind speed limits are unnecessary to minimize fire risk.
  - (f) The permit shall provide that the permittee is required to immediately extinguish an open burning activity permitted under this Section if instructed to do so by Department personnel, a law enforcement officer, or a public health or safety official.
- (5) The Air Quality Administrator may, prior to signing an open burning permit required by this Section, require that the permit include additional or more stringent conditions if the Air Quality Administrator determines that additional or more stringent conditions are necessary to minimize the anticipated adverse effects of open burning on Reservation air quality or the public health or welfare on the Reservation.
- (6) The Air Quality Administrator may charge a reasonable fee to the permit applicant for reviewing an open burning permit application pursuant to this Section. The Air Quality Administrator shall publish a fee schedule for any fees for open burning permit review established pursuant to this paragraph and make such fee schedule available to the public during regular business hours.
- (7) A permit authorizing open burning on the Reservation is not valid unless it is signed by the permit applicant and contains the following language, in bold-faced type, immediately above the applicant's signature:

“This permit is non-transferrable. It may only be used by the person named on this permit as the permittee.”

“By signing this permit, I expressly consent to and authorize law enforcement officers of the Northern Cheyenne Tribe to conduct a search of my person and property to investigate suspected violations of the terms of this permit and the Northern Cheyenne Clean Air Act.”

“By signing this permit, I do hereby expressly consent and subject myself to the regulatory and judicial jurisdiction of the Northern Cheyenne Tribe and the Northern Cheyenne Tribal Court for the purposes of implementing and enforcing this permit and the Northern Cheyenne Clean Air Act.”

“By signing this permit, I expressly acknowledge my familiarity with the Northern Cheyenne Clean Air Act, and I expressly agree to comply fully with the Northern Cheyenne Clean Air Act and the terms of this permit.”

- (8) It is a violation of the NCCAA to violate any of the terms or conditions in a valid open burning permit signed by the Air Quality Administrator pursuant to this Section.
- (9) Notwithstanding any language in this Section requiring an open burning permit to be signed by both the Air Quality Administrator and an officer from the BIA Northern Cheyenne Agency, the signature of an officer from the BIA Northern Cheyenne Agency shall not be required on an open burning permit if the Tribe and the BIA Northern Cheyenne Agency have entered into a memorandum of understanding that provides for the Tribe to unilaterally administer the regulation of open burning activities on the Reservation.

### **Section 5.8: Open Burning Notification and Inspection**

For all open burning activities permitted pursuant to Section 5.7, the permittee shall:

- (1) Call the Air Quality Administrator at least two working days prior to commencing an open burning activity to notify the Air Quality Administrator of the planned open burning;
- (2) Comply with any request by Air Quality Administrator to inspect the open burning site prior to ignition; and
- (3) Not less than one hour prior to commencing the open burning activity, and during regular business hours, notify Northern Cheyenne Fire Protection of his or her intent to commence an open burning activity.