



Saint Regis Mohawk Tribe

Chief Ron LaFrance Jr.
Chief Eric Thompson
Chief Beverly Cook
Sub-Chief Michael L. Conners
Sub-Chief Cheryl Jacobs
Sub-Chief Shelley Jacobs

Tribal Council Resolution

2017-24

RESOLUTION OF THE SAINT REGIS MOHAWK TRIBE TO ADOPT UPDATED AMBIENT AIR STANDARDS ON THE SAINT REGIS MOHAWK INDIAN RESERVATION

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

WHEREAS, the Tribal Council has been authorized to act on the Tribe's behalf to protect the natural resources and the environment through enactment of laws, ordinances and regulations, and program development through its Environment Division; and

WHEREAS, it is the policy of the Tribe to maintain a reasonable degree of purity of Tribal Air Resources that is consistent with the public health and welfare and public enjoyment thereof, the industrial development of the Reservation, the propagation and protection of flora and fauna, and the protection of physical property and other resources, and to that end to require the use of all available methods to prevent and control air pollution; and

WHEREAS, the Tribe desires to accomplish this policy through the adoption of tribal laws, rules and regulations under its Tribal Implementation Plan ("TIP") wherein the Tribe has been delegated primary authority under the Clean Air Act ("CAA") to be treated in the same manner as a State under the CAA; and

WHEREAS, the Tribe's TIP includes standards for polychlorinated biphenyls ("PCBs") adopted by Tribal Council Resolution ("TCR") 89-19 (Appendix C of the TIP) that are designated "ambient levels" and "clean-up standards" for soils, lands, vegetation, air, sediment, surface waters or ground waters of the Reservation; and

WHEREAS, EPA's Revised Interim Final Guidance on Indian Involvement in the Superfund Program, OSWER Directive 9375.5-02A (Nov. 28, 1989), provides for recognition of Tribal laws and regulations as Applicable or Relevant and Appropriate Requirements ("ARARs"); and

WHEREAS, the PCB standards set forth in TCR 89-19 were recognized by the U.S. Environmental Protection Agency as ARARs for purposes of remediation of the General Motors Massena Superfund Site; and

WHEREAS, TCR 89-19 established an ambient air standard for PCBs of background or 5 ng/m³;
and

WHEREAS, PCBs are classified by the International Agency for Research on Cancer as known human carcinogens; are documented to cause a reduction in IQ, shorter attention span and ADHD-like symptoms; reduce thyroid function, increasing risk of hypothyroidism; interfere with sex hormones; and increase risk of cardiovascular disease, hypertension and diabetes; and

WHEREAS, scientific health studies conducted on the Reservation have shown PCB exposure among Tribal members to be correlated with reduced memory function in adolescents and adults; reduced thyroid function in adolescents and adults; altered growth and development in children and adolescents; increases in obesity; increased production of serum cholesterol and triglycerides, which are major risk factors for cardiovascular disease; and rates of type 2 diabetes; and

WHEREAS, a major route of exposure to PCBs for persons residing on the Reservation is inhalation of vapor-phase PCB congeners; and

WHEREAS, over the past twenty-seven (27) years since adoption of these standards, the Tribe has learned through studies and research, most recently through a Report prepared by Dr. David O. Carpenter, "Scientific Support Summary for Saint Regis Mohawk Tribe Air Quality Standards for PCBs" (a copy of which is attached to this TCR) that the Tribe's members have been exposed to potentially significant levels of PCBs for many years through a variety of exposure pathways; and

WHEREAS, there is a need to adopt updated ambient air standards for PCBs on the Reservation to take into account information developed since 1989 concerning the adverse human health effects of PCBs, the documented adverse human health effects on Tribal members correlated with past and ongoing PCB exposure on the Reservation, and the identification of inhalation as a major route of potential exposure to PCBs for Tribal members, now, therefore be it

RESOLVED, that the Saint Regis Mohawk Tribal Council by this resolution hereby approves adoption of the following Tribal law governing PCBs in the ambient air:

I. AMBIENT AIR QUALITY STANDARDS FOR PCBs

A. Annual Standard

The concentration of PCBs in ambient air on the Reservation shall not exceed 0.5 ng/m³ as measured on a rolling 12-month basis. Exceedance of this standard during any 12-month period shall be a violation of this standard.

B. Short-Term Standard

The concentration of PCBs in ambient air on the Reservation shall not exceed 5 ng/m³ during any 24-hour period.

II. PROHIBITIONS

A. No person shall cause or contribute to a violation of either the annual standard or the short-term standard.

B. No person shall undertake, create, or maintain a condition, operation, or activity that causes or contributes to a violation of either the annual standard or the short-term standard.

III. ENFORCEMENT AND PENALTIES

A. Notice of Violation

1. Upon determining that reasonable grounds exist for believing that a person may be causing or contributing to a violation of the annual standard, the short-term standard, or both, the Tribe shall issue a written Notice of Violation to such person.

2. The Notice of Violation shall specify the standard or standards alleged to have been violated; the date or dates upon which such alleged violation(s) occurred; and the grounds for determining that the recipient of the Notice has caused or contributed to such alleged violation(s).

3. Except as provided in section IV below (Emergency Abatement Orders), the Notice of Violation shall provide the alleged violator with at least ten (10) business days in which to submit a written response to the Notice.

4. The Notice shall also state that the alleged violator may request a hearing in the Tribal Court or may waive a hearing and resolve the alleged violation by entering into a voluntary Administrative Consent Order with the Tribe. The recipient of a Notice of Violation must specify in the written response to the Notice whether the recipient requests a Tribal Court hearing or resolution through a voluntary Administrative Consent Order.

5. Failure to provide a written response to a Notice of Violation within the time period specified in the Notice shall be deemed an admission of the violations alleged in the Notice.

6. Failure to request either a Tribal Court hearing or resolution through a voluntary Administrative Consent Order within the time period specified in the Notice of Violation shall be deemed a waiver of both and grounds for issuance of a Unilateral Administrative Order as provided for in section III.C.

B. Administrative Consent Order

1. Violations of the PCB ambient air quality standards may be resolved through an Administrative Consent Order, which is a written order executed by a person alleged to have violated a standard and the Tribe which resolves the violation by imposing corrective measures, requiring payment of a civil penalty, or both.

2. In the event that the Tribe and alleged violator fail to agree on the terms of, and execute, an Administrative Consent Order, the alleged violator may request a Tribal Court hearing concerning the alleged violation(s).

C. Unilateral Administrative Order

1. In the event that a person issued a Notice of Violation fails to provide a written response to the Notice within the time period specified in the Notice, or fails to request either a Tribal Court hearing or resolution through a voluntary Administrative Consent Order, the Tribe may issue a Unilateral Administrative Order.

2. A Unilateral Administrative Order shall specify the corrective actions to be taken by the recipient of the Notice of Violation, require payment of a civil penalty, or both.

3. The terms of a Unilateral Administrative Order shall be enforceable in Tribal Court.

D. Penalties

1. Either the Tribal Court, after a finding that a violation has occurred, or the Tribe, in an Administrative Consent Order or Unilateral Administrative Order, may impose a civil penalty for each violation.

2. For a violation of the annual standard, the civil penalty shall not exceed two hundred fifty thousand dollars (\$250,000) for each 12-month period during which the annual standard was violated.

3. For a violation of the short-term standard, the civil penalty shall not exceed twenty-five thousand dollars (\$25,000) for each violation.

IV. EMERGENCY ABATEMENT ORDER

A. Emergency Finding

Upon finding that reasonable grounds exist for believing that a violation or violations of a PCB standard may pose an imminent and substantial endangerment to public health or the environment, the Tribe may issue a written emergency abatement order to any person causing or contributing to such violation(s).

B. Emergency Abatement Order

An emergency abatement order shall include the information contained in a Notice of Violation issued pursuant to section III.A. An emergency abatement order shall also identify:

1. The grounds for believing that the violation or violations may pose an imminent and substantial endangerment to public health or the environment;

2. The actions to be taken by the person issued the order to cease, control, or abate emissions of PCBs that may pose an imminent and substantial endangerment to public health or the environment and the date or other deadline for such actions to be taken or completed; and

3. The date, which shall be no later than ten (10) business days after the date the emergency abatement order is issued, when the person issued the order may appear at a hearing in Tribal Court and offer proof that the violation or violations do not pose an imminent and substantial endangerment to public health or the environment.

4. A person duly served with an emergency abatement order who refuses or fails to comply with the terms of such order shall be subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each day of such refusal or failure to comply with the order.

5. The terms of an emergency abatement order shall be enforceable in Tribal Court.

6. In addition to the civil penalty for refusal or failure to comply with the terms of an emergency abatement order specified in paragraph 4, failure to comply with an order of the Tribal Court concerning an emergency abatement order shall be punishable as a contempt of court.


V. DEFINITIONS

A. "Tribe" means the Saint Regis Mohawk Tribe and its departments, divisions and agencies.

B. "Person" means an individual, corporation, authority, trust, government agency, or any other entity.

C. "Tribal Court" means the Saint Regis Mohawk Tribal Court as established under the Saint Regis Mohawk Tribal Court and Judiciary Code (TRC 2008-22, as amended by TRC 2012-13), or any successor tribal court of competent jurisdiction.

THE SAINT REGIS MOHAWK TRIBAL COUNCIL



Ron LaFrance, Jr.
Tribal Chief

Eric Thompson
Tribal Chief



Beverly Cook
Tribal Chief

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



Betty Roundpoint, Tribal Clerk



Date