

**CHAPTER 4-18 INTERIM CONTROL CHAPTER TO REGULATE THE
CONSTRUCTION/OPERATION OF AIR EMISSION SOURCES**

DECLARATION AND DEFINITIONS

4-18-1

Legislative Declaration

(a) The Colville Business Council finds that the beneficial stewardship of the land, air, and waters of the Colville Reservation is a solemn obligation of the tribal government of the Confederated Tribes of the Colville Reservation, and of the present generation for the benefit of future generations. The potential for the emission of pollutants into the air has created an emergency threatening the reserved natural resources of the Tribe, including the right to clean air. The purpose of this Chapter is to provide for the regulation of air emissions, facilitate the development and implementation of effective emissions control techniques, and to prevent harmful results to the reservation environment and reservation population due to emission of pollutants into the air.

(b) The Tribe enacts this Chapter on an interim emergency basis for the specific purpose of regulating the construction of air pollution sources at the CIPV facility, to provide for the control of pollutants from the CIPV facility, and to provide for the implementation of effective emission control technologies at the CIPV facility. This Chapter is also intended to assure that the CIPV facility is in compliance with the Clean Air Act, 42 U.S.C. 7661 *et. seq.*

4-18-2

Definitions

(a) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

(b) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or may be, injurious to human health, plant or animal life, or property, or which interferes with enjoyment of life and property.

(c) "Ambient air" means the portion of the atmosphere, external to buildings (to which the general public has access).

(d) "CAA" means the Clean Air Act, 42 U.S.C. § 7401 *et. seq.*

(e) "CIPV" means Colville Indian Power & Veneer, a subsidiary of the Colville Tribal Enterprise Corporation ("CTEC").

(f) "CIPV facility" means the Colville Indian Power & Veneer facility, formerly known as the Quality Veneer & Lumber ("QVL") facility, owned by CIPV and located in Omak, Washington.

(g) "Construction" means the process of design, permitting, actual on-site construction, or entering into binding agreements or contractual obligations to undertake construction of the source which cannot be canceled or modified without substantial loss to the owner or operator.

(h) "Control equipment" means any device which prevents or controls the emission of any air contaminant.

(i) "Emission" means a direct or indirect release of any dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof into the ambient air.

(j) "Environmental Trust" or "Department" means the Tribes' Environmental Trust Department, also sometimes referred to as the Office of Environmental Trust (or OET). Any reference to the Office or Environmental Trust or OET elsewhere in this Ordinance or in any permit or order issued hereunder shall be deemed to refer to the Department, and the validity of such permit or order shall not in any way be affected by the use of the term Office of Environmental Trust or OET.

(k) "EPA" means the United States Environmental Protection Agency.

(l) "Facility" means the sum total of all of the pollutant emitting activities that belong to the same industrial grouping or are located on one or more contiguous or adjacent properties, and are owned or operated by the same person or persons under common control.

(m) "Installation" means the placement, assemblage, or construction of equipment or control equipment at the premises where the equipment or control equipment will be used, and includes all preparatory work at such premises.

(n) "Modification" means any physical change in, or change in the method of operation of, a source, except the use of an alternative fuel or raw material that the source is approved to use by the Environmental Trust that increases the amount of any air contaminant emitted or that results in the emission of any air contaminant not previously emitted.

(o) "Reservation" means the Colville Reservation as defined in CTC § 1-1-362.

(p) "Owner" or "Operator" means the person that owns, leases, supervises, or operates the equipment or control equipment.

(q) "Particulate matter" or "PM" means any material, except water in an uncombined form, that is, has been, or is likely to become airborne and exists as a liquid or a solid at standard conditions.

(r) "Person" means and includes any individual, firm, public or private corporations, association, partnership, political subdivision, municipality, or governmental agency.

(s) "Potential to emit" means the maximum capacity of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the facility to emit an air contaminant, including control equipment and restrictions on the hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable.

(t) "Source" means a building, structure, equipment, control equipment, or facility that emits or may emit any air contaminant into the atmosphere.

(u) "Tribe" or "Tribes" means the Confederated Tribes of the Colville Reservation.

(v) "Volatile organic compound" or "VOC" means an organic compound that participates in atmospheric photochemical reactions. This excludes all compounds determined to have negligible photochemical reactivity by the U.S. Environmental Protection Agency and listed in 40 CFR 51.100.

4-18-3 through 4-18-9 reserved.

REGULATION OF CIPV

4-18-10 Duties and Powers of the Environmental Trust Department

(a) It is the responsibility of Environmental Trust (the Department) to observe and enforce the provisions of this Chapter and all orders, rules, and regulations issued or enacted pursuant thereto. The Department is empowered to issue citations, issue stop work orders, apply for injunctive relief, initiate court suits, issue permits, establish and collect fees, and use any legal means to enforce the provisions of this Chapter.

(b) The Department is authorized to request technical assistance from EPA in the enforcement of this Chapter, and may request other assistance from EPA with regard to the direct enforcement of this Chapter as necessary to facilitate compliance with the CAA.

4-18-11 General Regulations and Orders

(a) Construction of Veneer Dryers: Upon written request by CIPV, the Department may authorize CIPV to replace the existing three direct wood fired dryers at the CIPV facility with two new Coe M62 steam heated Jet Dryers. The Department's authorization shall include limitations on emissions of VOC and PM. Emissions from the new dryers shall continue to be routed to the existing boilers. The Department may authorize CIPV to take action to construct and to install the new dryers; provided that CIPV shall not begin regular operation of the new dryers until and unless CIPV receives further written authorization from the Department as provided for in subsections (d) through (f), below, of this section.

(b) Administration and Permit Fees: Should CIPV seek the Department's approval for the construction and subsequent operation of the proposed veneer dryers, CIPV shall within thirty (30) days of the effect date of this Chapter transfer the sum of \$75,000.00 into the Department's Hazardous Waste Account #422 (HWA), established under the authority of the Hazardous Substances Control Act (HSCA), CTC § 4-16-7. These funds shall be used by the Department to cover its oversight costs associated with CIPV's compliance under this Chapter, including the Department's costs for the administration of orders or permits for construction and/or operation of the veneer dryers. The Department may assess such additional fees against CIPV as may be necessary if the Department reasonably expects that its costs may exceed \$75,000 during the period of time that elapses before a final EPA Title V permit is issued to CIPV. Funds transferred to the HWA by CIPV pursuant to this Chapter shall be expended pursuant to a budget approved under the HSCA, CTC § 4-16-7(c).

(c) Application for EPA Permit: The Department's assistance to CIPV is discretionary and may be suspended or withdrawn if CIPV is not diligently pursuing approval from EPA of CIPV's outstanding permit application under Title V of the Clean Air Act, 42 U.S.C. 7661 *et seq.*, or if CIPV is not promptly submitting information as requested by EPA (or as required by 40 C.F.R. Part 71), or if CIPV is not fully cooperating with the Department.

(d) Operating Permit and Public Involvement Process: If CIPV requests that the Department issue an Order permitting CIPV to begin regular operation of the new dryers, the Department may issue a regulatory order after complying with the following public involvement process:

(1) Public notice of the proposed order shall be published in the Colville Tribal Tribune or in two other newspapers of general circulation in Okanogan and Ferry counties, and copies of the notice mailed to all persons who have made timely requests to the OET for information concerning the proposed Order. Notice shall also be sent to the U.S. Environmental Protection Agency Regional Administrator. The public notice shall include, at a minimum, the following information:

(A) The name and address of the owner or operator and the source;

(B) A brief description of the purpose of the proposed order and the requirements included in the proposed order;

(C) The deadline for submitting written comments to the Department; and

(D) The opportunity for a public hearing if the Department determines that there is significant public interest in the proposed order.

(2) The initial public comment period shall be at least thirty (30) days.

(3) During the initial thirty (30) day public comment period, any person may request a public hearing be held. Any such request shall be submitted in writing to the Department, shall indicate the interest of the entity filing it, and shall describe why a hearing is warranted. The Department may, at its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held before a hearing officer and upon such notice and at a time and place as the Department deems reasonable. The hearing officer shall hear testimony at the public hearing

and prepare a written summary of the testimony received at the hearing. The Department shall provide at least thirty (30) days prior notice of any hearing. If a public hearing is held, the public comment period shall extend through the hearing date.

(e) Environmental Trust Action: The Department shall only issue an order under section 4-18-11 (d)(1)(D), to provide for operation of the dryers, after:

- (1) The public comment period has ended;
- (2) Any public hearing scheduled has been held; and
- (3) The Department has considered all information and data related to the proposed order, including all written comments received and any summary of testimony prepared by the hearing officer.

(f) Effective Date: Unless otherwise ordered by the Department, an order issued under this section shall be effective on the date the Department approves the order.

(g) Appeals: Any order issued by the Department under this section may be appealed to Tribal Court only by a party who is aggrieved by the Department's order, and provided that such party participated in the public comment period. The Tribal Court shall have jurisdiction of such appeal only to the extent that it may determine whether the Department followed the procedures set forth in this Chapter and correctly applied the provisions of this Chapter to its order.

4-18-12 Compliance Monitoring

(a) Cooperation with Requests for Information: The Department may require CIPV to provide prompt and complete responses to requests by the Department for documentation or information concerning location, size, and height of contaminant outlets at CIPV, processes employed, nature and quantity of the air contaminant emission, compliance with applicable permits and regulations, and other information related to the CIPV facility as may be required by the Department.

(b) Operation and Maintenance Plan: CIPV shall develop and implement an operation and maintenance plan to assure the CIPV facility continues to comply with applicable permits and regulations. A copy of the plan shall be filed with the Department. The plan shall reflect good industrial practice and shall include, but not be limited to, the following:

- (1) Periodic inspection of all equipment and control equipment;
- (2) Monitoring and recording of equipment and control equipment performance;
- (3) Prompt repair of any defective equipment or control equipment;
- (4) Procedures for start up, shut down, and normal operation;
- (5) The control measures to be employed to assure compliance with this Chapter; and
- (6) A record of all actions required by the plan.

The plan shall be reviewed and updated as required by the Department to reflect any changes in good industrial practice.

(c) Inspection: For the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the reservation environment, a duly authorized representative of the Department shall have the power to enter at reasonable times upon the CIPV facility. CIPV shall not refuse access to the duly authorized representative of the Department who requests entry for the purpose of inspection, and who

presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection.

(d) Testing: For the purpose of determining compliance with an emission standard, a duly authorized representative of the Department shall have the authority to conduct testing at CIPV or to order the owner or operator of the source to have it tested and to report the results to the Department. In the event the Department conducts the test, the Department shall provide the owner or operator an opportunity to observe the sampling and to obtain a sample at the same time.

(e) Methods: Testing of sources for compliance with emission standards shall be performed in accordance with current U.S. Environmental Protection Agency-approved methods unless specific methods have been adopted by the Department. Where there is no federally-approved or Department-approved method, testing shall be performed in accordance with a method approved in writing by the authorized representative of the Department.

4-18-13 through 4-18-19 reserved.

NOTICE—FINES—INJUNCTION

4-18-20 Violations—Notice

(a) Not less than ten (10) days prior to the commencement of any formal or informal enforcement action under this Chapter, the Department shall serve written notice upon the alleged violator. The notice shall specify the provisions of the this Chapter or the orders issued by the Department hereunder, alleged to be violated, and the facts alleged to constitute a violation thereof, and may include a unilateral order directing that necessary corrective action be taken within a reasonable time. The Department may require that the alleged violator or violators appear before the Department for a hearing to determine whether violation has occurred. Every notice of violation shall offer to the alleged violator an opportunity to meet with the Department prior to the commencement of an enforcement action.

(b) In case of a continuing violation, whether or not knowingly committed, each day's continuance shall be a separate and distinct violation.

4-18-21 Civil Fines

(a) Any person who violates any of the provisions of this Chapter may incur a civil fine in an amount not to exceed \$15,000.00 per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to this Chapter shall be liable for a civil fine of not more than \$15,000.00 for each day of continued noncompliance.

(c) Any civil fine may be appealed to the Tribal Court if such appeal is filed with the Tribal Court and served on the Department within thirty (30) days after receipt by the person who received the notice imposing the penalty.

(d) Fines received shall be deposited in the Tribal Hazardous Waste Account #422 and held there to be spent only for the purposes of funding the Department's air pollution program, subject to approval by the Colville Business Council of an appropriate budget pursuant to CTC § 4-16-7(c).

4-18-22 Injunctive Enforcement

(a) Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this Chapter, the Department, after notice to such person and an opportunity to comply, may petition the Tribal Court for a restraining order, a temporary or permanent injunction, or another appropriate order.

(b) As an additional means of enforcement, the Department may accept an assurance of discontinuance of any act or practice deemed in violation of this Chapter or of any order issued pursuant thereto, from any

person engaging in, or who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute *prima facie* proof of a violation of this Chapter or the orders issued pursuant thereto, which make the alleged act or practice unlawful for the purpose of securing any injunction or other relief from the Tribal Court.

(c) Upon failure to comply with any final order of the Department, the Department may bring an action in the Tribal Court to enforce such final order, prevent a potential violation of this Chapter or order of the Department, and to obtain such other relief as necessary.

4-18-23 through 4-18-29 reserved.

CONSTRUCTION

4-18-30 Liberal Construction

The provisions of this Chapter are to be liberally construed to effectuate the policies and purposes of this Chapter.

4-18-31 Severability

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter or the application of the provision to other persons or circumstances is not affected.

EFFECTIVE DATE; TERM

4-18-32 Effective Dates

The effective date of this Chapter shall be the date this Chapter is enacted and adopted by the Council. This Chapter shall apply retroactively.

4-18-33 Term

All provisions of this Chapter shall remain in full effect until the earlier of the following:

(a) This Chapter is duly amended by the Business Council; or

(b) EPA issues a permit to CIPV as provided for by Title V of the Clean Air Act, 42 U.S.C. 7661 *et seq.*, 40 C.F.R. Part 71, which, as determined by the Department, provides for control of all emissions from the CIPV facility no less stringently than provided for by this Chapter.

4-18-34 Sovereign Immunity

Nothing in this Chapter shall be construed to constitute a waiver of the sovereign immunity of the Tribe, or of any instrumentality of the Tribe, except to the extent necessary for the Department to enforce the provisions of this Chapter.

(Chapter 4-18 Enacted 1/24/03, Resolution 2003-28)