Because EPA does not have regulations for 'minor source' new source review conducted by states or tribes, the Community has the flexibility in the GRIC AQMP to determine which requirements it wants to impose on minor sources that emit hazardous air pollutants. The draft ordinance's definition of BRDT is very similar to the federal definition of "Best Available Control Technology."

2. Section 2.0 - Permit Applicability.

The draft ordinance requires every stationary source that creates air pollution within the boundaries of the Community to obtain either an individual or general air quality operating permit from the GRIC DEQ. However, any facility that has emissions below all of the thresholds listed in subsection 2.1(C)(1) is considered too small to require a permit. The thresholds for the exemption and the categories of exempt activities should be examined carefully to determine if some sources listed should not be exempted from permitting or if some are listed and should be exempt.

3. Section 3.0 - Permit Requirements for Title V Sources.

When the Clean Air Act was amended in 1990, Congress added a program called "Title V" that required major sources of air pollution to obtain an operating permit from EPA. In those same 1990 amendments and in EPA's Tribal Authority Rule (40 CFR Part 49), authority was granted to qualifying tribes to exercise the same Title V authority as states. The permit ordinance contains the EPA rules that states and tribes must comply with to get Title V permit authority.

Importantly, the ordinance regulates how a major source is operated. The ordinance does not cover the requirements for a new major source before it can be built (or an operating major source that proposes a significant emissions increase or operating change of the facility). Those changes will continue to be approved by EPA under the new source review program for large sources. Whatever conditions EPA places on a facility will be automatically incorporated in the Community-issued Title V permit for that facility.

4. Section 4.0 - Permit Requirements for Non-Title V (Smaller) Sources.

The requirements that a tribe or state must meet to get delegated authority from EPA to issue permits for the operation of large sources of air pollution are dictated by the Clean Air Act and the associated regulations that this draft ordinance incorporates by reference. The Clean Air Act does not dictate the requirements that apply to smaller sources (non-Title V); states and tribes have more flexibility in establishing these requirements. However, with a few significant exceptions noted below, the permit structure for non-Title V permits is very much like that for Title V permits.

There are three categories of non-Title V permits:

a. Specific Source (individual) Permits.

b. "Synthetic Minor" Permits. These are permits for sources that would otherwise have to obtain a Title V permit but agree to accept limits on operating hours, raw materials used or operating conditions that will ensure that the source will not have emissions above the major source thresholds that trigger the need for a Title V permit.

c. General Permits. For some categories of sources, the individual facility emissions are small and there are many similar facilities. In this situation, the most effective form of regulation is to require all sources in the category to "register" with the DEQ and comply with general requirements. Sources that are subject to a general permit need not obtain a specific, individual permit unless they continuously violate the ordinance's requirements.

The permit application requirements and minimum permit conditions for non-Title V sources have become standardized for air quality permits over the last thirty years. The draft ordinance generally contains these standard application requirements and permit conditions. However, in the draft ordinance, sources with permits are required to provide an annual "certification" of facility compliance. Annual compliance certification has proven to be an effective tool for Title V permits nationwide. Certification forces company officials to examine company records to verify a facility's compliance status before certifying that the source is in compliance.

The administrative and permit transfer requirements for non-Title V sources are modeled after those adopted by the State of Arizona and Maricopa County. However, in the ordinance, the permit transfer notice is somewhat more detailed. These details will provide additional opportunity for the Community to review proposed business changes, particularly in the case of sub leases (or sub-sub leases at the industrial parks).

5. Section 5.0 - Facility Changes That Require Revisions to Non-Title V Permits.

A regulated facility may undergo changes monthly or, depending on the nature of the facility, even weekly or daily. Few of the changes have "regulatory significance." In other words, these are not changes that require a permittee to get a revised permit, seek the Department's permission to implement the change, inform the Department of the change or even record the change on the facility's records. However, because certain changes do have regulatory significance, it is important that the draft ordinance clearly describe those changes, what action the permittee must take in response to the change and when the action must be taken. In general, changes with regulatory significance fall into the following categories:

CATEGORY OF ACTION	DESCRIPTION OF NATURE OF CHANGE	WHAT IS REQUIRED OF PERMITTEE
1. Permit Revision	See generally Section 5.0	
Significant Revision	Changes listed in Section 5.5	Change cannot occur without prior approval of revision by Department. Same public participation process as when permit issued. May require BRDT review of applicable threshold exceeded.
Minor Revisions	Changes listed in Section 5.4	Change can occur when application for revision submitted to Department [See Subsection 5.4(D)].
2. Contemporaneous Notice to Department	Changes listed in Subsection 5.2(C)	Requirements for the notice including its contents are described in Subsection 5.2(D)
3. Contemporaneous Logging of the Change at the Facility	Changes listed in Subsection 5.2(B)	A copy of the log listing and describing the changes must be filed annually with the Department.

Note that unless a change is specifically described in the ordinance as having regulatory significance, it is presumed not to have significance and can be implemented without any regulatory consequences. Therefore, it is important that the ordinance be carefully reviewed with particular attention to:

- Whether there are other kinds of changes at a facility that should have regulatory significance but have not been listed.
- Whether the changes that are listed are sufficiently clear.
- Are the regulatory consequences (permit revision, notice or logging) appropriate to the change?
- Should there be other regulatory consequences applicable to the changes?
- Are the regulatory consequences sufficiently clear?

6. Section 6.0 - Continuous Source Emission Monitoring.

The continuous source emissions monitoring (CEMs) requirements apply to four types of industrial sources including fossil fuel fired steam generators (power plants), fluid bed catalytic cracking unit catalyst regenerators (coal fired power plants), sulfuric acid plants (copper mines etc.) and nitric acid plants. This section contains standard federal language that will apply only to Title V sources that may propose to locate at GRIC in the future. Although none of these sources currently are located within the Community, discussions have been entertained concerning locating a fossil fuel fired power plant within the Community. Including the CEMs requirement in this ordinance at this time will prevent GRIC from having to revise the GRIC AQMP at a later date to allow for permitting of a proposed power plant in the future.

This section requires that any of the large industrial plants listed in subsection 6.1 install, operate, maintain and keep records on the specific constant emission monitor(s) required for the source type. This section also contains the minimum monitoring requirements, performance specifications and data reporting requirements for CEMs.

7. Section 7.0 - Standards of Performance for New Stationary Sources.

The federal New Source Performance Standards (NSPS) are adopted by reference in this section. Rather than including several hundred pages of the complete federal rules in the ordinance, it is common practice to adopt rules by reference. The rules are in 40 CFR Part 60. This section applies to stationary sources that have industrial processes or equipment covered under the federal New Source Performance Standards.

8. Section 8.0 - National Emission Standards for Hazardous Air Pollutants (NESHAPs).

This section adopts the federal National Emission Standards for Hazardous Air Pollutants (NESHAPs) by reference. The federal regulations are in 40 CFR Part 61 and Part 63. There are several NESHAPs that currently apply to sources at GRIC. In the event that GRIC decides to establish specific requirements for hazardous air pollutants that are more stringent than the federal requirements, the more restrictive requirement will apply.

9. Section 9.0 - Stack Height Requirements.

This section has the requirements for the design and construction of exhaust stacks for large industrial facilities. Older power plants and smelters typically have very tall stacks to disperse air pollutants high into the air. This section details how high stacks can be built and requires sources to follow good engineering practices (GEP) when building stacks.

10. Section 10.0 - Confidentiality of Information.

This section explains that all records, reports or information obtained from a source, including reports or information prepared by the GRIC DEQ will be available to the public. However, information which is a trade secret or would be detrimental to an ongoing civil or criminal

enforcement action will not be made public. In addition, this section describes the process that a source must follow to request that specific information be considered a trade secret or confidential.

III. Part III: Enforcement Ordinances

A. Overview.

If necessary, the AQMP allows the GRIC DEQ to take enforcement action against businesses that emit air pollution at GRIC. The DEQ may take enforcement actions when businesses violate the GRIC AQMP ordinances or violate their air quality permits. The enforcement ordinance covers both civil enforcement and criminal enforcement and is very similar to federal, state and other tribal laws. Its goals are to:

- eliminate or reduce risks to public health and the environment;
- encourage noncompliant businesses to return to compliance;
- deter other businesses from noncompliance;
- preserve a level playing field for companies that abide by the Community's ordinances.

B. Civil Enforcement.

The ordinance is intended to give the DEQ a wide range of enforcement options to match enforcement to the nature and extent of the violation. Civil enforcement actions can be:

1. Administrative compliance orders [DEQ orders facility to comply with law];

2. Civil penalties [DEQ fines of up to $5,000 per day of violation; Tribal Courts can fine up to $10,000 per day];

3. Temporary restraining order, preliminary injunction or permanent injunction [Tribal court order to stop a business activity, if necessary to protect health];

4. DEQ denial or taking away of an operating permit.

If necessary, the ordinance has criteria for calculating civil penalties. The criteria ensure that DEQ and the Tribal Courts will assess civil penalties in a fair and consistent manner and in accordance with the federal Clean Air Act. The Clean Air Act authorizes up to $25,000 per day per violation. The GRIC AQMP ordinance allows up to a $10,000 per day penalty. This penalty level was felt to be more appropriate given the size and type of facilities located on Community lands. Also, it is consistent with level of civil penalties being imposed in neighboring

jurisdictions. The civil penalty amounts in the GRIC ordinance are high enough to adequately deter violations of Community ordinances.

C. Criminal Enforcement.

In rare cases, businesses knowingly or deliberately break the law; these violations may lead to criminal, rather than civil, enforcement actions. In 1978, the U.S. Supreme Court said that tribal courts do not have criminal jurisdiction over non-Indians for crimes committed on a reservation. Because of the Supreme Court's decision, the Community lacks the authority to take *criminal* enforcement actions against businesses located at GRIC that are owned by non-Indians, if they knowingly violate air quality ordinances.

The DEQ will work with the GRIC Law Office and refer criminal violations to federal criminal prosecution. GRIC DEQ intends to enter into a Memorandum of Agreement with EPA Region IX that will outline the referral process.

D. Citizen Suit Provisions.

1. No Citizen Suits Against the Community or Community Officials Acting Within the Scope of Their Duties.

The GRIC AQMP Enforcement Ordinance states that citizen suits (lawsuits filed by members of the public) are not authorized against the Community or Community officials acting within the scope of their duties. Under the Tribal Authority Rule, EPA listed citizen suits as a provision of the Clean Air Act for which it would not be appropriate to treat a tribe in the same manner as a state. The DEQ has seriously considered the citizen suit issue because of the Community's commitment to a regulatory approach that is responsive to the concerns of all affected parties. The Community also considers its sovereign immunity as the most important element of its governmental authority and it will not waive that immunity for purposes of subjecting the tribe or its officials to citizen suit. However, the Community has a long-standing, strong tradition of individuals working with elected GRIC officials to review departmental actions.

2. Citizen Suits Against Businesses (Regulated Entities).

The enforcement ordinance prohibits lawsuits filed by members of the public (citizen suits) against the Community, Community officers or officials acting within the scope of their duties. However, a citizen suit may be brought against businesses that are regulated by the GRIC AQMP. The citizen suit provisions are in Section 3.0 of the GRIC AQMP Enforcement Ordinance and are taken from Section 304 of the federal Clean Air Act.

A member of the public who feels he or she is affected by a DEQ action, may bring a civil lawsuit in Tribal Court against a business that (1) has violated or is alleged to have violated an

emission standard, or (2) proposes to construct or constructs a new or modified facility that emits a major amount of air pollution without a permit.

IV. Part IV: Administrative Appeals Procedures and Judicial Review

Part IV of the GRIC AQMP lays out an appeals process in situations where industry or members of the public can ask for a review of a decision made by the GRIC DEQ. The appeals process has two sections: (1) the administrative appeals procedures, and (2) review by tribal court of final DEQ actions.

The first section outlines the procedures for an appeal through an administrative hearing. At the hearing, industry or members of the public who object to a DEQ decision may present evidence to an Administrative Law Judge appointed by the Community's Governor. Based on the evidence and laws, the Administrative Law Judge will issue a recommended decision to the Director of the DEQ. The Director may accept the decision, reject it or modify it. The Director's decision becomes a Final Administrative Decision. This decision can then be appealed to the GRIC Tribal Court. Only members of the public that have commented on a decision during a public comment period can make an appeal.

The second section states that the Tribal Court may only reverse the DEQ Director's Final Administrative Decision if it is clearly erroneous or not supported by facts. The Tribal Court's decision may be appealed to the Gila River Appellate Court for final review.

This type of appeals process is used by the federal government, states and Indian Tribes. The same appeals process is in the GRIC Chemical Emergency Planning Ordinance (GR-01-02) and the Medical Waste Management Ordinance (GR-04-02).

State, tribal and federal laws follow this appeals model for several reasons:

- Appeals provide a fair opportunity for businesses and members of the public to seek review of DEQ decisions.
- Administrative appeals lack the formality, cost and delay of full-blown proceedings in Court.
- Administrative Law Judges are skilled at sorting through facts and testimony but do not have the same level of technical, environmental expertise as departmental staff.
- Implementing laws (ordinances) is an executive branch responsibility involving policy decisions. Departments are key elements of the executive branch of government and the implementation of policy.

V. Part V: Area Source Emission Limits

A. Overview.

The Community's Tribal Implementation Plan contains ordinances in Part V that have requirements for area sources of air pollution that are not from a smokestack. These are often called "area sources." These ordinances focus on cutting down on the amount of dust in the air caused by human activity. These ordinances include Open Burning (Section 1.0) and General Requirements for Fugitive Dust-Producing Activities (Section 2.0). "Fugitive," in this case, means dust that does not come from a smokestack.

In general, these ordinances reduce dust from earthmoving operations and land clearing larger than 1 acre in size as well as large and small scale burns within the Community. The requirements of Section 2.0 do not apply to general agricultural operations, but they will apply to the initial clearing of land for agricultural purposes and for development.

The "Area Source" ordinances of the GRIC AQMP are the ones that are most likely to affect Community member's activities (for example, members would need a permit to burn landscape waste).

The "Open Burning" ordinance is consistent with the GRIC Solid Waste ordinance that was passed by the Community Council in 1995. Both ordinances do not allow burning of trash but do allow burning of landscape waste, ditch banks, fence rows, etc. The GRIC DEQ, in coordination with the GRIC Fire Department, has been issuing simple burn permits for burning of landscape waste since 1995. Some changes are being proposed in the ordinance for larger scale burns such as clearing of land for agricultural fields, large housing developments and construction sites. The proposed changes include more expanded notification to residents in the area, a requirement for fire suppression equipment and special notification of the Fire Department. The GRIC DEQ developed a questionnaire to gather information from Community members concerning open burning. The Air Program is using the information from the questionnaires as a guide for developing open burning requirements.

B. Specific Provisions.

The two area source ordinances are geared toward reducing dust and limiting the health affects of open burning (smoke) on GRIC residents. To achieve this goal, Section 1.0 (Open Burning) requires a permit for both small burns (households) and non-residential burns (land clearing, commercial development, or other large scale burns). The permits contain requirements designed to limit Community member's exposure to smoke and odors from open burning.

Section 1.0 (Open Burning) contains requirements that should be followed to reduce the exposure of Community members to smoke and odors from burning. These requirements

include burning smaller piles, notifying any neighbors within ¼ mile and burning during prescribed hours. Additional requirements apply to non-residential burns and large scale burns. The ordinance also contains a list of fires that do not require a permit including fires for cooking, cultural, religious or ceremonial fires, fires for heating, recreation and branding of animals. This ordinance also lists materials that are prohibited. These items include garbage, asphalt shingles, tar paper, plastic and rubber, oils, pesticide containers, tires, debris from demolished homes and materials containing asbestos.

Section 2.0 (General Requirements for Fugitive Dust-Producing Activities) is designed to reduce the amount of dust produced from earthmoving operations, land clearing, demolition activities, unpaved parking lots at industrial plants, and other activities that generate dust. Agricultural activities are not subject to this ordinance. This ordinance requires that anyone conducting earthmoving operations (leveling/moving dirt for an industrial facility or large housing development) or land clearing over an area greater than 1 acre must first get an earth moving permit through the Department. As a requirement of the earthmoving permit, a dust control plan must be developed describing how dust will be controlled. In addition, any industrial facility with an unpaved parking lot with traffic exceeding 20 vehicle trips per day must acquire a permit. Sources or activities that cause dust are required to limit the amount of dust by watering, applying certain chemicals, using covers or by installing control equipment on dusty operations.

The Dust Control Plan must be submitted to the Department as part of the Earthmoving Permit Application or as part of an Individual Industrial Sources Permit Application. The Dust Control Plan Application contains a list of dust control options that can be chosen by the applicant. In addition, the ordinance contains work practices for hauling and controlling dust from stockpiles.

Section 2.0 also sets record keeping requirements to ensure that dust control measures are being properly used and to document how often measures are implemented. These records document how often a water truck is filled, how often water is applied to a site or how often other control measures are applied.

VI. Part VI: Generally Applicable Individual Source Requirements For Existing and New Sources

A. Overview.

The Community's AQMP contains ordinances in Part VI that set requirements for Visible Emissions (Section 1.0), VOC (volatile organic compound) Usage, Storage and Handling (Section 2.0) and Degreasing and Solvent Metal Cleaning (Section 3.0).

In general, these ordinances apply to all sources within the Community that store, handle or use gasoline, solvents or other VOC-containing materials or that conduct degreasing or metal

cleaning using solvents. In addition, any facility or operation that may emit air pollutants that can be seen by the human eye is subject to the requirements of section 1.0.

B. Specific Provisions.

Section 1.0 (Visible Emissions) sets an opacity limit (20%) on sources that emit air pollutants through a stack or that have fugitive emissions from leaks in piping or duct work. GRIC air quality personnel receive certifications to read smoke in accordance with EPA Method 9 which allows enforcement of the 20% opacity limit.

Section 2.0 (VOC Usage, Storage and Handling) sets requirements for the usage, storage and handling of materials that contain VOCs. These materials include gasoline, solvents, paints and adhesives. This ordinance establishes daily limits on emissions from different types of VOCs used in specific industrial processes or process lines. In addition, this ordinance sets levels of control and/or reductions for air pollution control equipment used to reduce VOC emissions from specific processes or process lines.

Section 3.0 (Degreasing and Solvent Metal Cleaning) sets work practices for facilities that use solvents to clean metal parts. This includes auto/equipment repair shops including public works and BIA, manufacturers of aerospace parts, and manufacturers of aluminum products. The work practices are designed to reduce VOC emissions from the usage of solvents for metal cleaning. Most of the work practice requirements are simple and include keeping the lid closed on solvent trays, storing solvent soaked rags in closed containers, fixing leaks and labeling requirements. Most businesses follow these practices already. Certain types of degreasers (open top vapor degreasers and conveyorized degreasers) require more complicated work practices due to the heating and spraying of solvents.

Sections 2.0 and 3.0 establish record keeping requirements to ensure that solvents are being disposed of properly. The records also keep track of air pollution emissions from the use of solvents and other VOC-containing materials. Records must also be kept to ensure that daily emission limits for process lines are not exceeded. Several industrial facilities may be required, through their individual permits, to have personnel certified to read smoke in accordance with Section 1.0 and EPA Method 9.

VII. Part VII: Source/Category Specific Emission Limits for Existing and New Sources

A. Overview.

The Community's AQMP contains ordinances in Part VII that establish operating requirements and emission limits for air pollutants. The ordinances are broken down into specific categories of air pollution sources that include: Secondary Aluminum Production (Section 1.0) (melting scrap aluminum), Aerospace Manufacturing and Rework Operations (Section 2.0) (applying

coatings to rebuilt aerospace parts), Nonmetallic Mineral Mining and Processing (Section 3.0) (rock crushing and aggregate mining, concrete batch plants and asphalt batch plants).

B. Specific Provisions.

Section 1.0 sets requirements for facilities that produce/process secondary aluminum. More specifically, facilities that receive scrap aluminum and melt the aluminum for the purpose of producing aluminum parts are subject to this ordinance. This ordinance sets limits on visible emissions from the melt furnaces (20% opacity) (opacity is the amount of visibility blocked by particles exiting a source), requires a 15% reduction of VOCs (solvents) over 5 years from the large solvent cleaning operations and sets limits on certain hazardous air pollutants (dioxin/furans and hydrochloric acid) from melting operations. This ordinance also establishes limits on what types of aluminum can be charged to the furnaces (no painted aluminum, oil soaked aluminum or aluminum cans). In addition, the ordinance requires that each furnace be labeled (type of furnace, operational standards/limits, types of charge), that performance testing be conducted on the furnaces to ensure emissions limits are not exceeded and an Operation and Maintenance Plan (O&M Plan) be submitted to the GRIC DEQ for approval to ensure air pollution controls and operational requirements are maintained. Many of the requirements contained in Section 1.0 are the same as the federal government requirements.

Section 2.0 (Aerospace Manufacturing and Rework Operations) sets work practices, operating requirements and VOC limits on coatings for aerospace manufacturing and rework facilities. This ordinance is directed at reducing VOC emissions from the numerous coatings used in the aerospace manufacturing and rework industry. The ordinance lists the maximum VOC content that topcoats, primers, maskants and other coatings can contain. In addition, the ordinance contains requirements on spray gun cleaning, application techniques and housekeeping requirements.

Sections 3.0 (Nonmetallic Mineral Mining and Processing) sets emission limits, operating requirements and performance testing requirements for nonmetallic mineral mining operations, concrete batch plants, vermiculite and perlite expansion furnaces and hot mix asphalt plants. The ordinance also prohibits the use of "off specification fuel oil" in hot mix asphalt plants and the sale or manufacture of cutback asphalt. The ordinance contains specific (particulate matter/dust) emission limits for different operations at nonmetallic mineral mining operations including material handling systems (7% opacity), transfer points (7% opacity) and crushing operations (15% opacity). In addition, emission limits for fugitive sources of dust (emission not from a stack) have been established for operations such as truck dumping, vehicle traffic and operation of front loaders (20% opacity). The ordinance requires that hot mix asphalt plants, vermiculite and perlite expansion furnaces and other pollution control units be tested to meet the emission limits contained in the ordinance. Each facility using an Emission Control System (ECS) to control air pollution emissions from one of the above operations is required under the ordinance

to develop and submit to the GRIC DEQ, an O&M Plan describing how the control system will be operated including operating parameters and maintenance schedule.

The above three ordinances contain record keeping requirements that apply to each specific operation. Each ordinance requires records to be kept documenting the amount of basic raw materials used, the quantity of fuel burned, hours of operation, VOC contents of coatings etc. Records must also be kept to ensure that air pollution control equipment is operated as designed.