

**RESOLUTION NO. 2005- 16  
OF THE MOHEGAN TRIBE OF INDIANS OF CONNECTICUT**

**AUTHORIZING CIVIL PENALTY AMOUNT THAT MAY BE ASSESSED FOR,  
AND APPROVING A POLICY FOR SETTLEMENT OF, VIOLATIONS OF THE  
AREA WIDE NO<sub>x</sub> EMISSION LIMITATION REGULATION**

WHEREAS, the Mohegan Tribe of Indians of Connecticut is an American Indian Tribe recognized by the United States pursuant to the provisions of 25 C.F.R. Part 83; and

WHEREAS, the Tribal Council is vested with the authority to approve and enforce all ordinances to protect the, health safety, welfare and economy of the Reservation community pursuant to Article IX, Sections 2(j),(l), (n) and (r) of the Constitution of the Mohegan Tribe of Indians of Connecticut; and

WHEREAS, the Gaming Disputes Court has authority under Section 11.A.i.g of the Area Wide NO<sub>x</sub> Emission Limitation Regulation to issue judicial orders assessing civil penalties for violations of this regulation; and

WHEREAS, the Tribal Council has established a Tribal Environmental Protection Department pursuant to Ordinance 2002-12 to implement and enforce Tribal air, water and land use quality standards on the Mohegan Indian Reservation; and

WHEREAS, the Administrator of the Mohegan Environmental Protection Department has authority under Section 11.A.i.d of the Area Wide NO<sub>x</sub> Emission Limitation Regulation (“the NO<sub>x</sub> Regulation”) to propose a settlement of alleged violations of this regulation; and

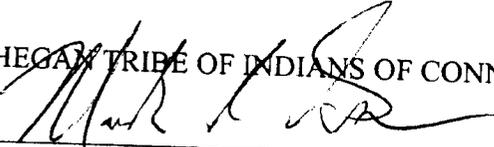
WHEREAS, the Administration has authority under Section 4.B. of Ordinance 2002-12 to promulgate reasonable and appropriate policies and procedures for the enforcement of approved environmental and natural resource laws, such as the NO<sub>x</sub> Regulation;

WHEREAS, the Administration has promulgated the Area Wide NO<sub>x</sub> Emission Limitation Regulation Civil Penalty Option (“the Policy”) to guide the Department’s exercise of authority under Section 11.A.i.d of the NO<sub>x</sub> Regulation;

THEREFORE, be it resolved that the Mohegan Tribal Council hereby authorizes the Gaming Disputes Court to assess civil penalties in the amount of up to \$25,000 per day of violation of the Area Wide NO<sub>x</sub> Emission Limitation Regulation and approves the Policy, a copy of which is attached.

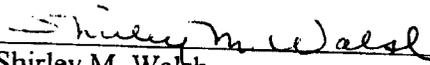
Dated this 30 day of April 2005 at Uncasville, Connecticut.

MOHEGAN TRIBE OF INDIANS OF CONNECTICUT



\_\_\_\_\_  
Mark F. Brown  
Chairman

ATTEST:

  
\_\_\_\_\_  
Shirley M. Walsh  
Recording Secretary

Mohegan Tribe  
Mohegan Environmental Protection Department  
Tribal Air Program  
Area Wide NOx Emission Limitation Regulation  
Civil Penalty Policy Option

In accordance with The Mohegan Tribe Tribal Air Program "Area Wide NOx Emission Limitation" (AWL) Section 11A.i.d Enforcement, the Administrator of the Mohegan Environmental Protection Department (MEPD) is authorized to propose a settlement of the alleged violation of the regulation. Such settlement may consist of a monetary civil penalty.

In the event that the Administrator chooses to offer such a civil penalty option to an alleged violator, the Administrator may choose to assess penalties for alleged violation of the Mohegan Tribal Air Program by using a gravity-based penalty for each violation. If deemed appropriate by the Administrator, the attached "Mohegan Environmental Protection Department Gravity Based Penalty Matrix" may be used for guidance for calculating the appropriate penalty by the Administrator.

In the event that the matrix is used, the following two factors shall be considered for each violation:

- "Extent of Deviation" from the legal requirement violated: this is a measure of the degree to which the alleged violator has deviated from the substance and intent of the AWL requirement, and
- "Potential for Harm" to the environment, to public health, and the Department's ability, through the MEPD regulatory programs, to insure against actual or potential harm to the environment or public health posed by the violation.

These two factors reflect the seriousness of the violation, and have been incorporated onto the attached gravity-based penalty matrix.

The MEPD retains full discretion to seek up to, but no greater than, the maximum penalty for each day a violation existed.

When adjusting the gravity-based penalty upward or downward, the Administrator may consider the following factors:

- Good faith efforts or lack of good faith to comply prior to the MEPD discovery of the violation (downward or upward adjustment).
- Degree of willfulness and / or negligence (upward adjustment).
- History of noncompliance (upward adjustment).
- Ability to pay.
- Other unique factors, such as risk and cost of litigation (upward or downward adjustment).

The MEPD may choose to forego the assessment of a penalty on the grounds of impossibility only if the alleged violator demonstrates to the Administrator's satisfaction that compliance was impossible due solely to an event that was unforeseeable, beyond the violator's control, and the results of which could not have been avoided or repaired in order to prevent the violation.

While enforcement action in a case is pending, penalty calculations should be kept in a separate file of confidential documents, but after the enforcement action is settled or adjusted, penalty calculations should be placed in the public file.

#### Basic Gravity-Based Penalty Component

The basic gravity-based penalty for each violation of the "Mohegan Area-Wide NOx NOx Emission Limitation" is calculated by the Administrator by assessing both the "Extent of Deviation" from legal requirements, and using the "Potential for Harm" posed by the violation using the "Mohegan Environmental Protection Department Gravity-Based Penalty Matrix".

##### 1. Extent of Deviation

-The extent of deviation from the substance and extent of the requirements without regard to risk posed by the violation the extent of deviation. In determining the extent of deviation, the Administrator uses the following categories:

- "Major:" Substantial noncompliance to the extent that most of the components of the requirements are either not met or are met after significant delay.
- "Moderate:" Significant noncompliance, but some of the components of the requirement are implemented as intended or requirements are met after significant delay.
- "Minimal:" Minor noncompliance but most of the important components of the requirement are met after minimal delay.

##### 2. Potential for harm

- Assessment of the "potential for harm" should consider both:

Harm to the environment – risk of human or environmental exposure to pollutants, or the risk to natural resources.

Harm to the regulatory program – adverse effect of noncompliance to the MEPD's ability, through its regulatory programs, to prevent or monitor potential harm to public health or the environment.

###### a. Harm to the environment

The risk analysis considers hazard exposure, the impact of such exposure, and the potential impact on natural resources. Emphasis is on potential for harm. The Administrator uses professional judgment to determine if the risk is Major, Moderate, or Minor based on the population at risk, environment at risk, and the hazard and quantity of the discharge.

b. Harm to the regulatory program.

Some violations may undermine the purpose of, or procedures necessary to implement the MEPD program and therefore, have the potential for indirect impact on health and / or the environment.

Each violation shall be evaluated by the Administrator in terms of degree of regulatory harm and to categorize each violation as major, moderate, or minor.

- “Major:” The violation has or could have a substantial effect on the MEPD’s ability to prevent or monitor potential harm to public health or the environment.
- “Moderate:” The violation has or could have a significant effect on the MEPD’s ability to prevent or monitor potential harm to public health or the environment.
- “Minor:” The violation has or could have a small effect on the MEPD’s ability to prevent or monitor potential harm to public health or the environment.

**Mohegan Environmental Protection Department  
Gravity-Based Penalty Matrix**

<b>POTENTIAL FOR HARM</b>		<b>EXTENT OF DEVIATION</b>		
		<i>Major</i>	<i>Moderate</i>	<i>Minor</i>
<i>Major</i>	<i>Major</i>	\$25,000	\$19,250	\$75,000
		\$21,500	\$16,750	\$13,500
		\$18,000	\$14,250	\$12,000
	<i>Moderate</i>	\$12,000	\$7,200	\$4,500
		\$9,200	\$5,600	\$3,500
		\$6,400	\$4,000	\$2,500
	<i>Minor</i>	\$2,500	\$1,300	\$500
		\$1,900	\$900	\$300
		\$1,300	\$500	\$100