

**RESOLUTION
OF THE
SOUTHERN UTE INDIAN TRIBAL COUNCIL
April 5, 2016**

WHEREAS, authority is vested in the Southern Ute Indian Tribal Council by the Constitution adopted by the Southern Ute Indian Tribe, and approved November 4, 1936, and amended October 1, 1975, and August 27, 1991, to act for the Southern Ute Indian Tribe; and

WHEREAS, pursuant to Article VII, Section 1(c) of the Constitution, the Tribal Council is empowered to manage any portion of the Southern Ute Indian Reservation, including the granting of rights to use the natural resources of the Tribe; and

WHEREAS, pursuant to Article VII, Section 1(n) of the Constitution, the Tribal Council has the power “[t]o protect and preserve the property, wildlife and natural resources of the tribe, and to regulate the conduct of trade and the use and disposition of tribal property upon the reservation”; and

WHEREAS, the Tribe has a significant interest in the regulation of hydraulic fracturing operations on the Reservation based on the Tribe’s interest in both oil and gas development and environmental protection; and

WHEREAS, the historic well stimulation practice of hydraulic fracturing, in which rock is fractured by a hydraulically pressurized liquid made of water, sand, and chemicals, has been conducted on the vast majority of wells on the Reservation and is necessary for the continued development of oil and gas resources including potential development of low permeability shale formations on the Reservation; and

WHEREAS, on March 26, 2015, the Secretary of the Interior, acting by and through her Assistant Secretary – Land and Minerals Management and the Bureau of Land Management (“BLM”), published in the Federal Register a final rule regulating hydraulic fracturing, entitled “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands” (“BLM’s Hydraulic Fracturing Rule” or “Rule”) 80 Fed. Reg. 16128 (Mar. 26, 2015) (codified at 43 C.F.R. Part 3160); and

WHEREAS, throughout the Secretary’s rulemaking process, the Tribe expressed concerns about and opposition to aspects of the Rule, including concerns about certain technical requirements and opposition to inevitable delays to the already slow-moving energy development process caused by requiring operators to file and obtain additional approvals before engaging in oil and gas operations; and

WHEREAS, the Tribal Council has determined that establishing hydraulic fracturing regulations is important to ensure that wells are properly constructed to protect water supplies, to make certain that the fluids flowing back to the surface as a result of hydraulic fracturing operations are managed in an environmentally responsible way, and to provide public disclosure of the

RESOLUTION NO. 2016-41

Page 2

April 5, 2016

chemicals used in hydraulic fracturing fluids; and

WHEREAS, in recognition of the Tribe's significant governmental interests and in furtherance of its powers, on June 16, 2015, the Tribal Council adopted Resolution No. 2015-98 approving the initial Southern Ute Indian Tribe – Hydraulic Fracturing and Chemical Disclosure Regulations ("Initial Regulations"), which purported to supersede the BLM's Hydraulic Fracturing Rule on Reservation lands subject to the Tribe's jurisdiction, including lands leased by the Tribe under the Indian Mineral Leasing Act of 1938 and the Indian Mineral Development Act of 1982; and

WHEREAS, on June 18, 2015, the Tribe petitioned the United States District Court for the District of Colorado to set aside the BLM Rule under the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (*Southern Ute Indian Tribe v. United States Dep't of Interior*, Case 1:15-cv-01303 (D. Colo.) ("Pending Litigation")); and

WHEREAS, the Tribe and representatives of the United States Government thereafter engaged in settlement negotiations regarding the Pending Litigation and the Initial Regulations, and the potential adoption by the Tribal Council of amendments to the Initial Regulations; and

WHEREAS, the Tribe's Department of Energy, General Counsel and Legal Department have recommended approval of certain amendments to the Tribe's Initial Regulations set forth in the attached Amended and Restated Southern Ute Indian Tribe – Hydraulic Fracturing and Chemical Disclosure Regulations ("Amended and Restated Regulations"); and

WHEREAS, the Manager of the Department of Energy has determined that the adoption of the Amended and Restated Regulations will not adversely affect the rights of any party who has conducted or is in the process of conducting hydraulic fracturing operations in reliance on the provisions of the Initial Regulations; and

WHEREAS, the Tribal Council has determined that the Tribal Council's adoption of the recommended amendments to the Initial Regulations, as included in the attached Amended and Restated Regulations, is in the best interests of the Tribe.

NOW, THEREFORE, BE IT RESOLVED, that the Southern Ute Indian Tribal Council hereby approves the attached Amended and Restated Southern Ute Indian Tribe – Hydraulic Fracturing and Chemical Disclosure Regulations, which regulations are incorporated herein by reference and supersede the Initial Regulations approved in Resolution No. 2015-98.

BE IT FURTHER RESOLVED, that the Tribe's Department of Energy is directed to notify Reservation oil and gas operators of this Resolution and is authorized and designated to act as the entity within the Tribe's governmental organization that is primarily responsible for monitoring and ensuring compliance with the Amended and Restated Regulations.

RESOLUTION NO. 2016-41

Page 3

April 5, 2016

BE IT FURTHER RESOLVED, that the requirements of the Amended and Restated Regulations shall constitute “applicable regulations governing lease operations,” the violations of which may result in, among other available legal remedies, lease forfeiture under Tribal Ordinance No. 86-01 adopted by the Tribal Council on November 5, 1985.

BE IT FURTHER RESOLVED, that the Chairman of the Southern Ute Indian Tribal Council or, in his absence, the Vice Chairman, or, in the absence of both the Chairman and the Vice Chairman, a duly appointed Acting Chairman is hereby authorized to sign the necessary documents and take all necessary actions to carry out the intentions of this resolution.

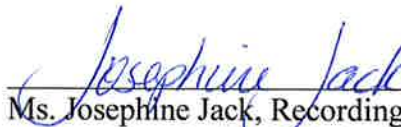
This resolution was duly adopted on the 5th day of April, 2016.



Ms. Lorelei Cloud, Vice Chairman
Southern Ute Indian Tribal Council

C E R T I F I C A T I O N

This is to certify that there were (6) of the regularly elected Southern Ute Indian Tribal Council members present at the above meeting, at which (5) voted for, and (0) against, it being a quorum and the above resolution was passed, the Chairman not being permitted to vote in this instance due to a Constitutional provision.



Ms. Josephine Jack, Recording Secretary
Southern Ute Indian Tribal Council



Southern Ute Indian Reservation Hydraulic Fracturing Checklist

Please submit information requested on this checklist with a Notification of Hydraulic Fracture (HF) for wells located within the Southern Ute Indian Reservation (SUIR) subject to SUIR jurisdiction. Documentation must be submitted at least 20 business days prior to planned HF activities.

Well Name: _____

API: _____

Location: _____

Date HF Scheduled: _____

1. Geology

- a. Target formation
- b. Estimated target depths (measured and true vertical) to top and bottom of HF zone
- c. Estimated depth and thickness of overlying confining zone
- d. Description of any known vicinity structures, faults or fractures
- e. Wellbore diagram

2. Water Supply

- a. Source of water supply
- b. Method of transport of water

3. HF Plan

- a. Estimated total volume of fluid to be used
- b. Maximum anticipated surface pressure during HF
- c. Documentation of pressure testing to anticipated surface pressure during HF
- d. Number of planned HF stages and stage length(s)
- e. Horizontal offset well evaluation for all wells w/in 1,500 feet of proposed well
- f. Estimated volume of flowback
- g. Disposal and transport method for flowback

4. Cement

- a. Depth and placement method of cement
- b. Documentation of cement adequacy

SOUTHERN UTE INDIAN TRIBE

**AMENDED AND RESTATED HYDRAULIC FRACTURING AND CHEMICAL
DISCLOSURE REGULATIONS**

**(Approved June 16, 2015 by the Southern Ute Indian Tribal Council,
Resolution No. 2015-98, as amended and supplemented by Tribal Council Resolution No.
2016-41, adopted April 5, 2016)**

I. Applicability. These regulations apply to hydraulic fracturing treatments performed on or after June 23, 2015 on lands subject to the Tribe's regulatory authority.

II. Definitions. For these regulations, the identified terms shall have the following meanings:

Business Day means any day that is not a Saturday, Sunday or a day that is recognized as a holiday by the Tribe. Unless designated as a business day, "day" means calendar day.

Department means the Tribe's Department of Energy.

Isolate means using cement to protect, separate, or segregate fresh water aquifers and mineral resources.

Manager means the Department Manager or an authorized delegate of the Department Manager.

Operator means the individual, company, trust, or other entity designated as responsible for the exploration, development, and production of an oil or gas well or lease on the Southern Ute Indian Reservation.

Fresh water aquifers means generally those aquifers with waters containing up to 5,000 parts per million of total dissolved solids or, if specifically designated as fresh water aquifers by the Southern Ute Indian Tribal Council, geologic water bearing zones containing water with total dissolved solids in excess of 5,000 parts per million. Fresh water aquifers include, but are not limited to: (i) Underground water that supplies any public water system and (ii) an aquifer which contains a sufficient quantity of groundwater to supply a public water system and currently supplies drinking water for human consumption. The following geologic zones are deemed not to contain fresh water aquifers: (i) zones from which an operator is authorized to produce hydrocarbons; (ii) aquifers exempted under 40 CFR 144.7; (iii) and zones containing total dissolved solids in excess of 5,000 parts per million unless designated as fresh water aquifers by the Southern Ute Indian Tribal Council.

III. Notice of Intent to Conduct Hydraulic Fracturing Treatment. Operators shall give at least 20 business days advance written notice to the Department of their intent to conduct a

hydraulic fracturing treatment at any well located on lands subject to a tribal oil and gas lease, tribal mineral development agreement, communitization agreement that includes any lands of the Tribe, a tribal direct development resolution, or otherwise subject to the jurisdiction of the Tribe within the exterior boundaries of the Southern Ute Indian Reservation. Such notice shall be provided on a form approved by the Tribe's Department of Energy and shall include information identified in the attached checklist. After providing notice in conformity with these regulations, the operator may proceed with such activity unless otherwise directed by the Department.

IV. Information Sharing and Opportunity to Comment.

A. Sharing Notices of Intent to Conduct Hydraulic Fracturing. The Department shall provide prompt electronic notice to other interested governmental entities, including but not limited to the United States Bureau of Land Management ("BLM"), of any notice of an operator's intent to conduct hydraulic fracturing received by the Department. Prior to an operator's commencement of hydraulic fracturing activities, such interested governmental entities may provide comments to the Department of concerns related to such activity and may request an opportunity to consult with the Department about those concerns. Provided that comments and concerns are provided to the Department in a timely manner, the Department will make reasonable efforts to consult with commenting governmental entities prior to the operator's commencement of such activities.

B. Additional Sharing of Reports. Promptly following receipt by the Department, the Department shall transmit to the BLM copies of the operator's post-completion disclosures required in Section IX, Final Drilling Completion Report required in Section X, and Completed Interval Report required in Section XII of these regulations, as well as any notice of undesirable event submitted by an operator to the Department arising from activities associated with these regulations. Additionally, the Department may share other reports and records submitted by the operator to the Department under these regulations upon request from other interested governmental entities.

V. Protection of Fresh Water Aquifers and Other Minerals. In conducting hydraulic fracturing treatments, operators must isolate all fresh water aquifers and other mineral-bearing formations and protect them from contamination. Neither the existence of these Hydraulic Fracturing and Chemical Disclosure Regulations nor an operator's compliance with them is intended to limit the remedies available under applicable law to adversely affected parties against operators or lessees arising from damage to fresh water aquifers, contamination, or inadequate zonal isolation resulting from hydraulic fracturing activities.

VI. Cement Operations.

A. Casing and cement program to protect hydrocarbon formations and groundwater. The casing and cement program for each well must prevent oil, gas, and water from migrating from one formation to another behind the casing. Groundwater bearing zones penetrated during drilling must be protected from the infiltration of hydrocarbons or water from other formations penetrated by the well.

B. Surface and intermediate casing cementing. The operator shall ensure that all surface and intermediate casing cement required under these regulations shall be of adequate quality to achieve a minimum compressive strength of 300 psi after 24 hours and 800 psi after 72 hours measured at ninety-five degrees Fahrenheit (95 °F) and at eight hundred 800 psi confining pressure. All surface and intermediate casing shall be cemented with a continuous column from the bottom of the casing to the surface. Cement placed behind the surface and intermediate casing shall be allowed to set a minimum of 8 hours, or until 300 psi calculated compressive strength is developed, whichever occurs first, prior to commencing drilling operations.

C. Production casing cementing. The operator shall ensure that all cement required under these regulations placed behind production casing shall be of adequate quality to achieve a minimum compressive strength of at least 300 psi after 24 hours and of at least 800 psi after 72 hours both measured at 800 psi at either ninety-five degrees Fahrenheit (95 °F) or at the minimum expected downhole temperature. After thorough circulation of a wellbore, cement shall be pumped behind the production casing at least 50 feet above the bottom of the intermediate casing. If the well does not have intermediate casing, the production casing shall be cemented with a continuous column from the bottom of the casing to the surface. This requirement does not apply to portions of production casing located within the target formation. Cement placed behind the production casing shall be allowed to set 72 hours, or until 800 psi calculated compressive strength is developed, whichever occurs first, prior to the undertaking of any completion operation.

D. Production and intermediate casing pressure testing. The installed production casing or, in the case of a production liner, the intermediate casing, shall be adequately pressure tested for the conditions anticipated to be encountered during completion and production operations. The operator must keep a record of the pressure testing and mechanical integrity testing performed sufficient to verify compliance with the requirements of this section. A mechanical integrity test will be considered successful if the pressure applied holds for 30 minutes with no more than a 10 percent pressure loss. Operators shall promptly notify the Manager if a mechanical integrity test pressure loss exceeds 10 percent.

E. Remedial cementing for surface, intermediate or production casing.

(1) Within 24 hours of discovering that (a) the surface or intermediate casing cement level falls below the surface, (b) there is a material deviation from the cementing standards set forth above in subsections B or C of this Section VI, or (c) there is another indication of inadequate cementing, the operator shall notify the Manager and advise the Manager of the remedial steps, if any, that the operator has taken or intends to take, including the means by which the operator will verify that the remedial action is successful. The operator shall perform remedial cementing operations upon discovering any of the conditions (a), (b), or (c) set forth above unless the operator reasonably determines and is able to demonstrate to the Manager that any such event will not compromise either safety or aquifer protection. If the Manager determines that the remedial action taken or planned to be taken by the operator is inadequate with respect to safety or aquifer protection, the Manager will direct the operator to take additional remedial action.

(2) Upon completion of remedial cementing operations, the operator will certify in writing to the Manager that the inadequate cementing has been corrected.

F. Protection of aquifers and production stratum and suspension of drilling operations before or after running production casing. If drilling operations are suspended before production string is run, the Manager shall be notified immediately and the operator shall take adequate and proper precautions to assure that no alien water enters oil or gas strata, nor potential fresh water aquifers during such suspension period or periods. If alien water is found to be entering the production stratum or to be causing significant adverse environmental impact to fresh water aquifers during completion testing or after the well has been put on production, the condition shall be promptly remedied by the operator.

G. Remedial cementing during recompletion. The Manager may request that a condition of BLM approval for an Application for Permit-to-Drill or Sundry Notice, as applicable, be added to require remedial cementing during recompletion operations consistent with the provisions for protecting aquifers and hydrocarbon bearing zones in these regulations.

H. Horizontal offset well evaluation. An operator will perform an offset well evaluation of all offset wellbores within 1500 feet of a proposed well to determine if those wells have adequate zonal isolation in the formation to be stimulated. The offset well evaluation shall include producing, shut in, temporarily abandoned, plugged and abandoned, and dry and abandoned wells. The offset well evaluation area shall be a 1500 feet lateral distance around the proposed wellbore path, projected to surface in plan view; provided, however, the Manager may require the operator to expand the area of evaluation in the event that specific circumstances justify such expansion. If inadequate zonal isolation is identified in an offset well, then, prior to undertaking stimulation activities, the operator shall provide to the Manager, and the Manager shall have approved, a monitoring plan, or, if applicable, a monitoring and mitigation plan, designed to assess or control potential cross-communication (e.g. monitoring offset well bradenhead pressure during stimulation). The operator shall immediately report to the Manager any indication of cross-communication with offset wells during stimulation, and, in the event of cross communication, the operator will cease stimulation activities in a safe and prudent manner.

I. Fracture stimulation setback.

(1) No portion of a proposed wellbore's treated interval shall be located within 150 feet of an existing (producing, shut-in, or temporarily abandoned) or permitted oil and gas wellbore's treated interval belonging to another operator without the signed written consent of the Manager. The signed written consent shall be attached to either the Application for Permit-to-Drill for the proposed wellbore or the Notice of Intent to Conduct Hydraulic Fracturing Treatment required to be filed under Section III of these regulations.

(2) The measurement of distance between wellbores shall be based upon the directional survey for drilled wellbores and the deviated drilling plan for permitted wellbores, or as otherwise reflected in the well records of the Department, the BLM, or the Colorado Oil and Gas Conservation Commission. The distance shall be measured from the perforation or mechanical isolation device.

VII. Bradenhead Monitoring During Well Stimulation Operations.

The placement of all stimulation fluids shall be confined to the objective formations during treatment to the extent practicable.

During stimulation operations, bradenhead annulus pressure shall be continuously monitored and recorded on all wells being stimulated.

If at any time during stimulation operations the bradenhead annulus pressure increases more than 200 psig, the operator shall undertake appropriate corrective actions and shall verbally notify the Manager as soon as practicable, but no later than 24 hours following the incident. Upon the Manager's request, the operator shall undertake corrective actions not already undertaken. A form Field Operations Notice—Notice of High Bradenhead Pressure During Stimulation shall be submitted by the end of the first business day following the event. Within 15 days after the occurrence, the operator shall submit a Sundry Notice, giving all details, including corrective actions taken.

If intermediate casing has been set on the well being stimulated, the pressure in the annulus between the intermediate casing and the production casing shall also be monitored and recorded.

The operator shall keep all well stimulation records and pressure charts on file and available for inspection by the Tribe for a period of at least five (5) years. An operator may seek a variance from these bradenhead monitoring, recording, and reporting requirements, which variance must be approved in writing by the Manager based on appropriate circumstances.

VIII. Recovered Fluids Management.

A. Use of tanks required. Except as provided below, all fluids recovered between commencement of hydraulic fracturing operations and approval of a produced water disposal plan must be stored in rigid enclosed, covered, or netted and screened above-ground tanks. The tanks may be vented unless applicable regulations require vapor recovery or closed-loop systems. The tanks must not exceed a 500 barrel (bbl) capacity unless approved in advance by the Manager.

B. Lined pits allowed only upon approval in specific circumstances. The Manager may approve an application to use lined pits only if the applicant demonstrates that use of a tank as described above is infeasible for environmental, public health or safety reasons and only if, at a minimum, all of the following conditions apply:

- (1) The distance between the lined pit and intermittent or ephemeral water sources is at least 300 feet.
- (2) The distance between the lined pit and perennial water sources is at least 500 feet.
- (3) No usable groundwater is present within 50 feet of the lined pit.

(4) The distance between the lined pit and the location expected to be publicly occupied is greater than 300 feet.

(5) The lined pit is not constructed in fill or an unstable area.

(6) The construction of the lined pit would not adversely impact the hydrologic functions of a 100-year floodplain.

(7) The lined pit's use and construction complies with all other applicable laws.

(8) The lined pit is constructed with a durable, leak-proof synthetic material and equipped with a leak detection system.

(9) The lined pit is regularly inspected and maintained to ensure there is no fluid leakage into the environment. The operator must document all inspections.

IX. Post-Completion Required Disclosures.

A. Vendor and service provider disclosures. A service provider who performs any part of a hydraulic fracturing treatment and a vendor who provides hydraulic fracturing additives directly to the operator for a hydraulic fracturing treatment shall, except for information claimed to be a trade secret, furnish the operator with the information needed for the operator to comply with its disclosure requirements under these regulations. Such information shall be provided as soon as possible within 30 days following the conclusion of the hydraulic fracturing treatment.

B. Operator disclosures.

(1) Within 30 days following the conclusion of a hydraulic fracturing treatment, the operator of the well must complete the chemical disclosure registry form and post the form on the *FracFocus* chemical disclosure registry, including the following categories of information:

- (a) the operator name;
- (b) the date of the hydraulic fracturing treatment;
- (c) the county in which the well is located;
- (d) the API number for the well;
- (e) the well name and number;
- (f) the longitude and latitude of the wellhead;
- (g) the true vertical depth of the well;

(h) the total volume of water used in the hydraulic fracturing treatment of the well or the type and total volume of the base fluid used in the hydraulic fracturing treatment, if something other than water;

(i) each hydraulic fracturing additive used in the hydraulic fracturing fluid and the trade name, vendor, and a brief descriptor of the intended use or function of each hydraulic fracturing additive in the hydraulic fracturing fluid;

(j) each chemical intentionally added to the base fluid;

(k) the maximum concentration, in percent by mass, of each chemical intentionally added to the base fluid; and

(l) the chemical abstract service number for each chemical intentionally added to the base fluid, if applicable.

C. Information Claimed to be Exempt from Public Disclosure. Information required above may only be withheld when required to avoid substantial competitive harm to the owner of the information. Information required above may not be withheld from the Tribe, and no privilege against disclosure shall be recognized, if such category of information has been previously disclosed to the public or to any federal, state or local governmental entity, or if such category of information is otherwise required to be disclosed to the public under any other applicable tribal, state, local, or federal law. For information required above that the owner of the information claims to be exempt from public disclosure and is withheld from the Tribe, a corporate officer, managing partner, or sole proprietor of the operator must sign, and the operator must submit to the Manager, an affidavit that:

(1) Identifies the owner of the withheld information and provides the name, address and contact information for a corporate officer, managing partner, or sole proprietor of the owner of the information;

(2) Affirms that the operator has been provided the withheld information from the owner of the information and is maintaining records of the withheld information, or that the operator has access and will maintain access to the withheld information held by the owner of the information;

(3) Affirms that the operator, when requested by the Department, will make arrangements for the prompt disclosure of the information to Department, and, in an emergency situation, directly to health care professionals; and

(4) Affirms that the owner of the withheld information has informed the operator in writing that such category of information has not been previously disclosed by the owner to the public or to any federal, state or local governmental entity and is not otherwise required to be disclosed to the public under any other applicable tribal, state, local, or federal law.

X. Drilling Completion Report.

A. Final Drilling Completion Report. A Final Drilling Completion Report shall be submitted within 30 days of rig release after drilling, sidetracking, or deepening a well to total depth. In the case of continuous, sequential drilling of multiple wells on a pad, the Final Drilling Completion Report shall be submitted for all the wells within 60 days of rig release for the last well drilled on the pad.

B. Information Requirements. The Final Drilling Completion Report shall include the following information:

(1) A cement job summary for every casing string set, except for those with verification by a cement bond log as required by permit conditions or otherwise, shall be attached to the form.

(2) All logs run, open-hole and cased-hole, electric, mechanical, mud, or other, shall be reported and copies submitted as specified here:

(a) A digital image file (PDF, TIFF, PDS, or other format approved by the Manager of the Tribe's Department of Energy) of every log run shall be attached to the form. A paper copy may be submitted in lieu of the digital image file and shall be so noted on the report.

(b) A digital data file (LAS, DLIS, or other format approved by the Manager) of every log run, except for mud logs and cement bond logs, shall be attached to the report.

(3) All drill stem tests shall be reported and test results shall be attached to the report.

(4) All cores shall be reported and the core analyses attached to the report. If core analyses are not yet available, the operator shall note this on the report and provide a copy of the analyses as soon as it is available, via a Sundry Notice.

(5) Any directional survey shall be attached to the report.

(6) The latitude and longitude coordinates of the "as drilled" well location shall be reported on the report. The latitude and longitude coordinates shall be in decimal degrees to an accuracy and precision of five decimals of a degree using the North American Datum (NAD) of 1983 (e.g.; latitude 37.12345, longitude -104.45632). If GPS technology is utilized to determine the latitude and longitude, all GPS data shall meet the necessary requirements and the Position Dilution of Precision (PDOP) reading, the GPS instrument operator's name and the date of the GPS measurement shall also be reported on the report.

XI. Certification. Within 30 days after hydraulic fracturing is completed, the operator shall submit a certification to the Department that the operator complied with the requirements of these regulations and the hydraulic fracturing fluid constituents, once they arrived on the lease, complied with all applicable permitting and notice requirements as well as all applicable federal and tribal

laws, rules, and regulations. The Manager may require the operator to provide documentation substantiating any information submitted under these regulations.

XII. Completed Interval Report. A Completed Interval Report shall be submitted within 30 days after a formation is completed (successful or not); after a formation is temporarily abandoned or permanently abandoned; after a formation is recompleted, re-perforated or re-stimulated; and after a formation is commingled. The details of fracturing, acidizing, or other similar treatment, including the volumes of all fluids involved, shall be reported to the Department.

XIII. Enforcement.

A. Investigations and Information Requests. For the purpose of (i) developing or assisting in the development of any changes to these regulations, (ii) determining whether any operator is in violation of any requirement of these regulations, or (iii) carrying out any provision of these regulations –

(1) the Department may require any operator, on a one-time, periodic or continuous basis, who the Department believes may have information related to the purposes set forth in these regulations, or who is subject to any requirement of these regulations to—

(a) establish and maintain records and reports; install, use, and maintain monitoring equipment; use audit procedures or methods; or keep records as determined by the Department;

(b) monitor fluids, pressure, and other information (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Department shall prescribe);

(c) submit compliance certifications in accordance with section XI. above; and

(d) provide such other information as the Department may reasonably require relating to the operator's hydraulic fracturing operations or to any investigation authorized by these regulations;

(2) the Tribe, through its authorized representatives, upon presentation of credentials, has the power to enter and inspect any property, premises, or place for the purpose of investigating any actual, suspected, or potential hydraulic fracturing operation or ascertaining compliance with any requirement of these regulations; and the Tribe may, at reasonable times, have access to and copy any record, inspect any monitoring equipment or method, or sample any fluids used by the operator. Any information relating to secret processes or methods of manufacture or production obtained in the course of the inspection or investigation may be kept confidential in accordance with Section IX.C. above.

B. Emergency Action. Whenever the Tribe determines, after investigation, that any operator is either engaging in any activity involving a significant risk of adverse impacts to fresh water aquifers or the environment and such activity either (x) constitutes a clear, present, and

immediate danger to the environment or to the health of the public, or that any such activity, if permitted to continue unabated, will result in a condition of clear, present, and immediate danger to the health of the public, or (y) does not constitute a clear, present, and immediate danger to the health of the public, but is of such a nature as to cause extreme discomfort or that it is an immediate danger to the welfare of the public because such impact makes habitation of residences or the conduct of businesses subjected to the impact unhealthy or disruptive, the Department shall:

(1) Issue a written cease-and-desist order to the operator requiring immediate discontinuance of such activity, and, upon receipt of such order, such person shall immediately discontinue such activity; or

(2) Apply to a court of competent jurisdiction for a temporary restraining order, temporary injunction, or permanent injunction; or

(3) Both issue such a cease-and-desist order and apply for any such restraining order or injunction.

C. Other Incidental Powers. The Department may exercise all incidental powers necessary to carry out the purposes of these regulations.

D. Enforcement Authority. The Department has the following authority to prevent and address violations of these regulations by operators:

(1) Civil Penalties and Damages. To assess or sue to recover in court civil penalties or recover civil damages according to the following:

(a) Civil penalties or damages assessed, sought, or agreed upon by the Department under this section shall be appropriate to the violation;

(b) These penalties or damages shall be separately recoverable in an amount not to exceed \$10,000.00 per day per violation;

(c) Civil penalties or damages shall be recoverable for the violation of any applicable requirement; any filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or orders issued by the Department. Mental state shall not be included as an element of proof for civil violations.

(d) In determining the amount of any civil penalty, the following factors shall be considered:

(i) The violator's compliance history;

(ii) Good-faith efforts on behalf of the violator to comply;

(iii) Payment by the violator of penalties previously assessed for

the same violation;

(iv) Duration of the violation;

(v) Economic benefit of noncompliance to the violator;

(vi) Impact on, or threat to, the public health or welfare or the environment as a result of the violation;

(vii) Malfeasance; and

(viii) Whether legal and factual theories were advanced for purposes of delay.

(e) In addition to the factors set forth above, the following circumstances shall be considered as grounds for reducing or eliminating civil penalties:

(i) The voluntary and complete disclosure by the violator of such violation in a timely fashion after discovery of the noncompliance;

(ii) Full and prompt cooperation by the violator following disclosure of the violation including, when appropriate, entering into a legally enforceable commitment to undertake compliance and remedial efforts;

(iii) The existence and scope of a regularized and comprehensive environmental compliance program or an environmental audit program;

(iv) Substantial economic impact of a penalty on the violator;

(v) Nonfeasance; and

(vi) Other mitigating factors.

(f) The imposition of civil penalties may be deferred or suspended where appropriate based on consideration of the factors set forth above.

(2) Civil Action. To bring a civil action for declaratory or injunctive relief against any operator who fails to comply with terms of these regulations or a Department order, or is presenting an imminent and substantial endangerment to the public health or welfare, or the environment.

(3) These regulations constitute "applicable regulations governing lease operations," the violation of which can result in, among other available legal remedies, lease forfeiture under Tribal Ordinance No. 86-01 adopted by the Tribal Council on November 5, 1985. The Tribe

shall enforce compliance with these regulations including, if necessary, through the procedures under Tribal Ordinance No. 86-01, a civil action in a court of competent jurisdiction, or both.

(4) Referral for Federal Enforcement. The Department may refer any violations to the BLM, Bureau of Indian Affairs, United States Environmental Protection Agency, or other federal agency with enforcement jurisdiction.

E. Administrative Appeal. An operator who is aggrieved by a final action or inaction by the Department under these regulations may, within 30 days following the date of the action or inaction, appeal to the Administrative Appeals and Hearings Office. An operator who appeals shall be entitled to a hearing before the Administrative Appeals and Hearings Office within 90 days the date of the appeal, at which time the operator shall present its reasons and arguments for the appeal and the Department shall be permitted to present the reasons and arguments supporting the Department's decision. Should the operator fail to appear on the date appointed for the hearing before the Administrative Appeals and Hearings Office, the appeal may, in the absence of a showing of unforeseeable circumstances, be summarily dismissed and the appeal denied. The Administrative Appeals and Hearings Office shall render a decision on any appeal within 60 days following the date of the hearing. The rationale supporting a decision regarding a specific appeal may be relied upon in deciding other appeals filed for identical reasons.

F. Judicial Review. Within 30 days of a final Administrative Appeals and Hearings Office decision, an operator who is adversely affected by the decision may file a petition for judicial review in the Southern Ute Indian Tribal Court, and the Tribe hereby consents to such a suit. The review shall be on the record without taking additional evidence. If the court finds that the Administrative Appeals and Hearings Office or the Department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the Administrative Appeals and Hearings Office's decision. Otherwise, the Administrative Appeals and Hearings Office's decision shall be affirmed. The decision of the Tribal Court may be appealed to the Tribe's appellate court in accordance with the rules and procedures governing practice before that court. Provided a jurisdictional basis exists, the final decision of the Tribe's courts issued, after exhaustion of all tribal judicial remedies, may be appealed to the United States District Court for the District of Colorado, and the Tribe hereby consents to such federal appellate review. The Tribe does not consent to be sued in the state courts of Colorado.

XIV. Amendment. The Southern Ute Indian Tribal Council may amend these regulations by resolution, ordinance, or other enactment, which amendments shall become effective upon the date of enactment unless otherwise specified by the Tribal Council.