







## **2.0 PURPOSE**

Development of a Model Tribal Environmental Enforcement Response Plan is intended to assist other Tribes to improve their environmental programs. The overall project focused on development of a model Tribal Environmental Protection Ordinance which will contain enforcement elements.

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### **3.0 SCOPE**

The Yurok Tribe project improved their existing environmental program by evaluation of existing environmental codes and policies and development of an Enforcement Response Plan for the Yurok Environmental Protection Ordinance. The Model Tribal Enforcement Response Plan generated for the Yurok project will be offered to other tribal nations as a template for their similar efforts, with particular applicability to other North Coast tribal nations.

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## 4.0 APPROACHES TO DEVELOPING AN ENFORCEMENT RESPONSE PLANNING

The EPA's "Guide for Developing Control Authority Enforcement Response Plans" (EPA, 1989) provides guidance in developing enforcement response plans to remedy violations of local wastewater pretreatment programs. This general guide can be used to aid in the development of Enforcement Response Plans (ERPs) for other types of environmental regulations.

ERPs provide guidance in selecting initial and follow-up enforcement actions, indicate staff responsibilities for these actions, and specifics appropriate time frames in which to take them.

Effective Tribal ERPs should include the following elements:

- Describe how the Tribe will investigate instances of noncompliance;
- Describe the types of escalating enforcement actions that the Tribe will take in response to all anticipated types of violations and the time periods within which to initiate and follow up these action; and
- Adequately reflect the Tribe's primary responsibility to enforce all applicable environmental requirements.

ERPs rely upon regulatory authority and enforcement options established in environmental ordinances and codes. ERPs are specific to a set of regulations and they include tabulations of specific anticipated violations. ERPs are policy level plans that do not usually require the same approval process of a code or ordinance resulting in greater departmental flexibility to update and modify the ERP based on the evolution of the regulatory compliance landscape.

Through discussions with the Yurok Tribe it was determined that the enforcement process and specific penalties were to be established within the Environmental Protection Ordinance which requires Tribal Council approval of any changes.

## 5.0 MODEL TRIBAL ENFORCEMENT RESPOSE PLAN

The model Tribal ERP consists of the following two elements;

- A model enforcement chapter (contained within the Model Tribal Environmental Protection Ordinance) that contains the enforcement authority and enforcement process (Appendix A); and
- Enforcement response guides (matrix which describes violations and indicates a range of appropriate enforcement options).

The Model Enforcement Chapter is a single chapter within the Model Tribal Environmental Protection Ordinance and can be found in Appendix A.

Below is a section from the enforcement chapter that can be used as a model for the enforcement process:

### 5.1 Model Enforcement Process

*[name of Tribal Agency] is charged with conducting investigations, including inspections of relevant properties, of violations of this Ordinance.*

*Investigations of such violations by [name of Tribal Agency] shall be initiated upon the filing of a written complaint, signed under penalty of perjury, by tribal members, Tribal Council members, Tribal Environmental Programs Office staff, Tribal Police Officers, other staff of the Tribe, or residents of the [Reservation/Rancheria].*

- (a) *The written complaint shall be submitted on a form developed by [name of Tribal Agency] and shall include, at a minimum, the following information:
  - (1) *name of the complainant;*
  - (2) *date and time of the alleged violation;*
  - (3) *location of the alleged violation; and*
  - (4) *a brief description of the factual basis for the complaint.**
- (b) *The written complaint must be submitted to [name of Tribal Agency], during normal business hours, within six (6) months of the alleged violation.*
- (c) *[name of Tribal Agency] shall initiate an investigation of the complaint within ten (10) days of receiving the complaint, upon a finding that the complaint sets forth a reasonable basis for believing that a violation has occurred.*

*Following an investigation, if [name of Tribal Agency] determines that a violation has occurred, [name of Tribal Agency] may take any one of the following actions which it deems most appropriate considering the gravity of the offense, any harm to human health or the environment resulting from the violation, and the circumstances of the person committing the violation:*

- (a) *Informally contact any alleged violator about possible violations of this Ordinance, or practices which may result in violations of this Ordinance, to assist the alleged violator in adhering to practices which protect the environment and comply with this Ordinance;*
- (b) *Issue a warning of violation, in the form of a letter from [name of Tribal Agency] to the alleged violator, explaining the basis for the warning; possible measures which the alleged violator may take to mitigate the basis of the warning; and an explanation of the steps [name of Tribal Agency] may take if the alleged violator does not take positive corrective action;*
- (c) *Assess a civil fine or penalty as described in Section \_\_\_\_\_, "Monetary Civil Fines or Penalties," against the alleged violator, following the procedures set out in the section below; and/or*
- (d) *Upon a finding that a violation is taking place or appears imminent, and that such activity if allowed to proceed will present an immediate hazard or cause irreparable damage, may issue an order to the person responsible for such activity to cease and desist from further commission of such violation, following the procedures set out in the section below.*

*The following procedures shall govern enforcement actions taken pursuant to sections above:*

- (a) *[name of Tribal Agency] shall issue a notice of violation, describing with particularity the violation and the proposed penalty, or other enforcement action, to the person who is charged with the violation.*
  - (1) *The notice of violation shall be served by personal service or U.S. certified mail, return receipt requested. Notice shall be considered received on the date of personal service or three (3) days after the date the notice is dispatched by U.S. mail.*
  - (2) *The notice shall include a warning that if the person does not respond within seven (7) business days of the date of receipt, the assessed civil penalty or other enforcement action will become permanent, and the person will lose all rights to appeal.*
- (b) *Within seven (7) days of receipt of the notice of violation, the person who is charged with the violation may submit a written request for an administrative hearing before [name of Tribal Agency] on the proposed enforcement action described in the notice of violation.*
  - (1) *If a hearing is requested, [name of Tribal Agency] must hold an administrative hearing within thirty (30) days of receiving the request. If the person requesting the hearing makes a showing, supported by a declaration or other written documentation, in the request for hearing submitted to [name of Tribal Agency] that the proposed enforcement action will result in great financial loss or harm to person or property before [name of Tribal Agency] is required to hold a hearing, [name of Tribal Agency] may hold a hearing immediately, or may delay or reverse any enforcement action until [name of Tribal Agency] holds the requested hearing.*
  - (2) *If the alleged violator does not request a hearing within seven*



*(7) days of receipt of the notice of violation, an assessed civil penalty or other enforcement action will become permanent and the person shall lose all rights to appeal.*

- (c) At any hearing before [name of Tribal Agency], the alleged violator must come forward with evidence, including declarations, written documents, and statements by witnesses, indicating that the finding of violation is erroneous as described in the notice of violation.*
- (d) Within fifteen (15) days of the hearing, [name of Tribal Agency] shall issue a decision on whether to affirm the proposed penalty, or other enforcement action described in the notice of violation.*
- (e) [name of Tribal Agency] shall serve a written notice of the decision on the violator. The notice of decision shall be served by personal service or U.S. certified mail, return receipt requested. Notice shall be considered received on the date of personal service or three (3) days after the date the notice is dispatched by U.S. mail.*

*The decision of [name of Tribal Agency] on appeal may be appealed to the Tribal Court upon written request submitted to the Tribal Council within five (5) days of the receipt of the notice of decision after the initial hearing. The request for a hearing before the Tribal Court must state the grounds for overturning [name of Tribal Agency]'s decision.*

- (a) The Tribal Court shall hold a hearing within thirty (30) days of receiving the notice of appeal.*
- (b) The violator and [name of Tribal Agency] shall have the opportunity to present oral arguments at the hearing.*
- (c) The written record from the administrative hearing before [name of Tribal Agency], together with all papers and requests filed in the proceeding before [name of Tribal Agency], shall constitute the exclusive record for decision on appeal.*
- (d) The Tribal Court shall set aside [name of Tribal Agency]'s decision only upon a finding that [name of Tribal Agency]'s decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.*
- (e) Within sixty (60) days of the hearing, the Tribal Court shall issue a written decision on the appeal.*
  - (1) The Tribal Court shall serve a notice of the decision on the violator. The notice of decision shall be served by personal service or U.S. certified mail, return receipt requested.*
- (f) Decisions of the Tribal Court are final.*

*[name of Tribal Agency] and/or the Tribal Court, or a representative authorized by either body, may institute proceedings in Tribal Court to enforce a penalty issued by [name of Tribal Agency] and/or upheld by the Tribal Court on appeal.*

*This Ordinance in no way restricts an individual's or the Tribe's right to file suit against a party in Tribal Court for damages incurred as a result of a violation of this Ordinance.*

## 5.2 Model Enforcement Response Guide

The enforcement response guides are contained within each chapter of the Model Tribal Environmental Protection Ordinance. The enforcement response guides are specific to a set of regulation and contain lists of specific violations and corresponding enforcement response. The enforcement response guides from the Model Tribal Environmental Protection Ordinance have been compiled and are provided below as examples. Dollar amounts of fines are to be entered into the blank columns by Tribes based on their authority, discretion, and previous enforcement experiences. The level of violation increases corresponding to severity. HARM means harm to public welfare (health/Safety) and/or negative impact on the environment.

### Solid Waste

Section 1014 Residential Municipal Solid Waste					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(b)	Accumulation creates nuisance or hazard	I			
	Failure to remove waste per [name of Tribal Agency] schedule	I			
	Unapproved waste containers	I			
	Container size exceeds requirement	I			
	Container condition deteriorated	I			
(c)	Container storage creates nuisance or hazard	I			
	Container not located as required for pick up	I			
(d)	Waste storage area improperly constructed	I			
(e)	Unconfined waste not located properly for pick up	I			
(f)	Accumulation of waste creates hazard	I			
(h)	Rural site waste disposal not approved	I			

Section 1015 Commercial and Institutional Solid Waste					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(b)	Transportation vehicle not loaded, covered, moved per requirement	I			
	Transport vehicle not maintained in good repair and sanitary	I			
(c)	Wastes not removed per schedule	I			

Section 1016 Collection and Transportation of Solid Waste					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Transportation for fee without permit/approval	II			
(b)	Transportation vehicle not loaded, covered, moved per requirement	II			
	Transport vehicle not maintained in good repair and sanitary	II			
(c)	Wastes spilled not immediately cleaned up	II			
	Special and Hazardous wastes spilled not reported to [name of Tribal Agency]	II			
(f)	Waste not collected or transferred at designated sites	II			

Section 1017 Prohibited Practices and Activities					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Hazardous waste disposed within [Reservation/Rancheria]	II			
(b)	Bulk or non-containerized waste placed in solid waste container	I			
(c)	Waste scavenging	I			
(d)	Construction/Demolition waste improperly disposed	I			
(e)	Animal Carcass improperly disposed	I			
(f)	Waste handling creates public nuisance or hazard	I			
(g)	Waste discarded into water way	II			
(h)	Vehicle abandonment	I			
(i-l)	Specified wastes improperly disposed	II			
(m)	Misleading representation	I			

Section 1018 Prohibitions on Hazardous Waste					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
	Receiving, accepting, handling, transporting, treating, storing, disposing of hazardous waste without [name of Tribal Agency] permit/approval	II			

Section 1019 Standards and Requirements Applicable To Hazardous Waste					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Hazardous waste disposed within [Reservation/Rancheria]	II			
(c)	Generator requirements not met	II			
	Transportation requirements not met	II			
	Treatment or Storage requirements not met	II			
(d)	Reuse and Recycling requirements not met	I			
(e)	Universal Waste requirements not met	II			

Section 1020 Prohibited Materials at Transfer Stations					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Listed wastes received at Transfer Station without authorization and in compliance with program for disposal	II			

Section 1021 Special and Industrial Wastes					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(b)	Listed wastes stored, treated, disposed or discharged in violation of [name of Tribal Agency] requirements	II			

1022 General Requirements for Storage of Wastes					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a-d)	General Storage Requirements not met	I			
(e)	Storage of Hazardous waste in violation of [name of Tribal Agency] requirements	II			

Section 1023 Transfer Stations					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Receipt, handling, storage or processing of hazardous waste in violation of [name of Tribal Agency] requirements	II			
	Failure to notify [name of Tribal Agency] of receipt of unauthorized	II			

	hazardous waste within two hours				
(b)	Failure to perform required elements of program to detect and prevent receipt, acceptance, handling, storage or shipment of unauthorized hazardous waste	II			

Section 1024 Transfer Station and Transportation Permits Program					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to comply with permit/approval conditions for vehicle marking, driver license.	II			
(b)	Failure to make required reports to [name of Tribal Agency]	II			

Section 1025 Permits for the Collection and Transportation of Solid Waste					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to obtain Permit or Approval by [name of Tribal Agency] as required	II			
	Failure to notify [name of Tribal Agency] of receipt of unauthorized hazardous waste within two hours	II			
(b)	Failure to perform required elements of program to detect and prevent receipt, acceptance, handling, storage or shipment of unauthorized hazardous waste	II			

Section 1026 Permits for Solid Waste Transfer Stations					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to obtain Permit or Approval by [name of Tribal Agency] as required	II			
(b)	Failure to perform required elements of Permit or Approval program	II			

Section 1027 Transfer Stations Regulations Summary					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to comply with requirements of Title 14 applicable to Transfer Stations	II			

## Onsite Waste Disposal

Section 1007 Site Criteria and Prohibitions					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Waste discharge impacts surface water.	II			
(b)	Discharge is located within 100 feet of groundwater source.	II			
(c)	Criteria for minimum soil depth is not met.	I			
(d)	Criteria for property line minimum setback is not met. No waiver granted.	I			
(e)	Construction criteria for location on slope of hill is not met.	I			

Section 1008 Construction Standards					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Construction Standards are not met.	I			

Section 1009 Maintenance Standards					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Maintenance Standards are not met.	I			

## Blight

Section 1008 Unsecured Building or Structure					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Building is unsecured per criteria.	I			

Section 1009 Abandoned Construction					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Building is abandoned per criteria.	I			

Section 1010 Attractive Nuisance					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Building is Attractive Nuisance per criteria.	I			

Section 1011 State of Disrepair					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Building in State of Disrepair per criteria.	I			

Section 1012 Exterior Property Conditions					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Exterior Property Conditions are as described in section.	I			

Section 1013 Single and Multiple Family Dwelling Landscaping Requirements					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Landscaping requirements are not met.	I			

Section 1014 Parkstrips					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Landscaping requirements are not met.	I			

Section 1015 Inadequate Solid Waste Management					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Solid Waste management requirements are not met.	I			

Section 1016 Hazardous Conditions					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Hazardous Conditions as defined exist.	II			

Section 1017 Parking, Storing or Maintaining Certain Items on Property Used as a Residence.					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Conditions as defined exist.	I			

Section 1018 Parking, Storing or Maintaining Special Mobile Equipment					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Requirements are not met for time period, setback, useable space, location proximity to building exits, windows.	I			

Section 1019 Storing or Maintaining Household Item					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Storage requirements as defined are not met.	I			

Section 1020 Storing or Maintenance of Boxes, Lumber, Dirt, and other Debris					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Storage requirements as defined are not met.	I			

Section 1021 Activities Prohibited on Property Used as a Residence					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Requirements for use of tent, camper, recreational vehicle or motor vehicle are not met.	I			



## Illegal Dumping

Section 1004 Illegal Acts					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Littering and Dumping of Household waste.	I			
	Dumping of hazardous or special waste.	II			
	Dumping of waste into watercourse.	II			
(b)	Littering from motor vehicle. Transport of waste without adequate containment.	I			
(c)	Dumping that creates harm.	II			
(d)	Open burning of solid, special or hazardous waste.	II			
(e)	Scavenging	I			
(f)	Failure to adhere to criteria in Permit or Authorization for dumping project.	II			

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## Vehicle Abatement

Section 1004 Prohibitions and Exemptions					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Vehicle left abandoned on private property in excess of prohibition time period.	I			
(b)	Vehicle left abandoned on public property in excess of prohibition time period.	II			
(c)	Vehicle left abandoned on public roadway.	II			
(d)	Vehicle left abandoned on public roadway constitutes a hazard.	II			

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## Aboveground Storage Tanks

Section 1008 standards for ASTs					
	Nature of violation	Level	1st violation	2nd Violation	Harm
(a)	Failure to adhere to tribal fire code or NFPA code as applicable	I			
	Failure to maintain tank free of leaks	II			
(b)	Failure to notify tribal agency of presence of tank	II			
	Failure to develop and file SPCC plan if required	II			
	Failure to maintain tank free of leaks	II			
(c)	Failure to notify tribal agency of presence of tank	I			
	Failure to file hazardous materials business plan if required	I			

Section 1009 compliance monitoring					
	Nature of violation	Level	1st violation	2nd Violation	Harm
(b)	Failure to install equipment, collect samples, maintain records	I			
(c)	Failure to submit required reports	I			

Section 1010 prohibition of unauthorized storage tanks					
	Nature of violation	Level	1st violation	2nd Violation	Harm
(a)	Use of unauthorized tank	II			

Section 1011 permits and requirements for tank installers					
	Nature of violation	Level	1st violation	2nd Violation	Harm
(a)	Failure to obtain permit for install, close tank	II			
(b)	Failure to have licensed installer for installation or closure of tank if required	II			

Section 1013 aboveground storage tank release report					
	Nature of violation	Level	1st violation	2nd Violation	Harm
	Failure to immediately notify [name of tribal agency] of evidence of tank release	II			

## Underground Storage Tanks

Section 1015 Federal Standards in 40 CFR Parts 280, 281					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to Demonstrate Financial Responsibility	II			
(b)	Failure to install and/or maintain release detection	II			
(c)	Failure to install and/or maintain piping release detection	II			
(d)	Failure to install and/or maintain overfill prevention	II			
(e)	Failure to install and/or maintain spill buckets	I			
(f)	Failure to maintain required records	II			
	Failure to make required notifications	II			

Section 1018 Compliance Monitoring					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(b)	Failure to install equipment, collect samples, maintain records	I			
(c)	Failure to submit required reports	I			

Section 1019 Prohibition of Unauthorized Storage Tanks					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Use of Unauthorized tank	II			

Section 1020 Permits and Requirements for Tank Installers					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to obtain permit for install, close tank	II			
(b)	Failure to have licensed installer for installation or closure of tank if required	II			

Section 1026 Underground Storage Tank Release Report					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
	Failure to immediately notify [name of Tribal Agency] of evidence of tank release	II			

## Grading

Section 1006 Activities Requiring Grading Permits or Agency Approval					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to apply for Permit or Agency Approval for work requiring Permit or Approval.	II			

Section 1007 Identification of Environmentally-Sensitive Areas					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to determine site is within environmentally - sensitive area prior to start of work.	II			

Section 1009 Exceptions to Exemption					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to eliminate hazard as determined by Agency within specified period of time.	II			

Section 1015 Erosion and Sedimentation Control					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to follow Control Measures as determined applicable and incorporated as condition of permit.	I			

Section 1016 Maintenance					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to maintain control facilities and measures in accordance with permit.	I			

Section 1018 Stop-Work Orders and Emergency Actions					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to stop work following issuance of Order	II			
(b)	Failure to implement control measures within 10 days following notice from Agency	II			

## **6.0 REFERENCES**

EPA, 1989. Guidance for Developing Control Authority Enforcement Response Plans.

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**APPENDIX A**  
**Model Enforcement Chapter**

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**MODEL TRIBAL ENVIRONMENTAL PROTECTION ORDINANCE**

**CHAPTER 10 - [NAME OF TRIBE] TRIBE ENFORCEMENT POLICIES**

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The intent of this Chapter is to provide a full selection of enforcement provisions that may or may not apply to all Tribes. Tribes should select the provisions that best meet their compliance enforcement goals.

**SECTION 1001. Title**

This Chapter shall be referred to as the “[name of Tribe] Tribal Enforcement Chapter” or “Enforcement Chapter” of the [name of Tribe] Tribal Environmental Protection Ordinance.

**SECTION 1002. Purpose**

The purpose of this Chapter is to standardize enforcement processes and options.

**SECTION 1003. Primary Jurisdiction**

The Tribal Court is the court of primary jurisdiction for violations occurring under this Ordinance.

**SECTION 1004. Jurisdiction**

The applicability of this Ordinance shall extend to all persons within the exterior boundaries of the [Reservation/Rancheria]. This Ordinance overrides and superseded any previously approved or applicable rules and regulations and orders of the Tribe.

**SECTION 1005. Inspection Authority**

For purposes of carrying out this Ordinance, the [name of Tribe] Tribe Environmental Program [name of Tribal Agency], or its designated agent may enter public or private premises at reasonable times by permission or warrant obtained from the [name of Tribe] Tribal Court for inspections to monitor compliance with the provisions of this Ordinance, and any rules or regulations promulgated pursuant to this Ordinance.

**SECTION 1006. Other Agencies**

Work cooperatively with other tribes and federal, state, county and municipal governments to:

- (a) Coordinate activities and cooperate with such other governments as have similar or related responsibilities within their respective jurisdictions; and
- (b) Develop intergovernmental agreements as appropriate for optimal coordination, cooperation, enforcement and assistance in carrying out this Ordinance and protecting the health and safety of the residents and the environment of the [Reservation/Rancheria], provided that the Tribal Council shall have the ultimate authority to execute and enter into any such intergovernmental agreements.

**SECTION 1007. Enforcement Policy**

It is the policy of the [name of Tribe] Tribe to encourage informal, practical, result-oriented resolution of alleged violations and actions needed to prevent damage to Indian lands, resources or harm to the health, safety or welfare of the Tribal population.

It is also the policy of the [name of Tribe] Tribe, consistent with the principles of due process, to provide effective procedures for enforcement.

**SECTION 1008. Enforcement Process**

[name of Tribal Agency] is charged with conducting investigations, including inspections of relevant properties, of violations of this Ordinance.

Investigations of such violations by [name of Tribal Agency] shall be initiated upon the filing of a written complaint, signed under penalty of perjury, by tribal members, Tribal Council members, Tribal Environmental Programs Office staff, Tribal Police Officers, other staff of the Tribe, or residents of the [Reservation/Rancheria].

- (a) The written complaint shall be submitted on a form developed by [name of Tribal Agency] and shall include, at a minimum, the following information:
  - (1) name of the complainant;
  - (2) date and time of the alleged violation;
  - (3) location of the alleged violation; and
  - (4) a brief description of the factual basis for the complaint
- (b) The written complaint must be submitted to [name of Tribal Agency], during normal business hours, within six (6) months of the alleged violation.
- (c) [name of Tribal Agency] shall initiate an investigation of the complaint within ten (10) days of receiving the complaint, upon a finding that the complaint sets forth a reasonable basis for believing that a violation has occurred.

Following an investigation, if [name of Tribal Agency] determines that a violation has occurred, [name of Tribal Agency] may take any one of the following actions which it deems most appropriate considering the gravity of the offense, any harm to human health or the environment resulting from the violation, and the circumstances of the person committing the violation:

- (a) Informally contact any alleged violator about possible violations of this Ordinance, or practices which may result in violations of this Ordinance, to assist the alleged violator in adhering to practices which protect the environment and comply with this Ordinance;
- (b) Issue a warning of violation, in the form of a letter from [name of Tribal Agency] to the alleged violator, explaining the basis for the warning; possible measures which the alleged violator may take to mitigate the basis of the warning; and an explanation of the steps [name of Tribal Agency] may take if the alleged violator does not take positive corrective action;
- (c) Assess a civil fine or penalty as described in **Section 1011, “Monetary Civil Fines or Penalties,”** against the alleged violator, following the procedures set out in the section below; and/or
- (d) Upon a finding that a violation is taking place or appears imminent, and that such

activity if allowed to proceed will present an immediate hazard or cause irreparable damage, may issue an order to the person responsible for such activity to cease and desist from further commission of such violation, following the procedures set out in section below.

The following procedures shall govern enforcement actions taken pursuant to sections above:

- (a) [name of Tribal Agency] shall issue a notice of violation, describing with particularity the violation and the proposed penalty, or other enforcement action, to the person who is charged with the violation.
  - (1) The notice of violation shall be served by personal service or U.S. certified mail, return receipt requested. Notice shall be considered received on the date of personal service or three (3) days after the date the notice is dispatched by U.S. mail.
  - (2) The notice shall include a warning that if the person does not respond within seven (7) business days of the date of receipt, the assessed civil penalty or other enforcement action will become permanent, and the person will lose all rights to appeal.
- (b) Within seven (7) days of receipt of the notice of violation, the person who is charged with the violation may submit a written request for an administrative hearing before [name of Tribal Agency] on the proposed enforcement action described in the notice of violation.
  - (1) If a hearing is requested, [name of Tribal Agency] must hold an administrative hearing within thirty (30) days of receiving the request. If the person requesting the hearing makes a showing, supported by a declaration or other written documentation, in the request for hearing submitted to [name of Tribal Agency] that the proposed enforcement action will result in great financial loss or harm to person or property before [name of Tribal Agency] is required to hold a hearing, [name of Tribal Agency] may hold a hearing immediately, or may delay or reverse any enforcement action until [name of Tribal Agency] holds the requested hearing.
  - (2) If the alleged violator does not request a hearing within seven (7) days of receipt of the notice of violation, an assessed civil penalty or other enforcement action will become permanent and the person shall lose all rights to appeal.
- (c) At any hearing before [name of Tribal Agency], the alleged violator must come forward with evidence, including declarations, written documents, and statements by witnesses, indicating that the finding of violation is erroneous as described in the notice of violation.
- (d) Within fifteen (15) days of the hearing, [name of Tribal Agency] shall issue a decision on whether to affirm the proposed penalty, or other enforcement action described in the notice of violation.
- (e) [name of Tribal Agency] shall serve a written notice of the decision on the violator. The notice of decision shall be served by personal service or U.S. certified mail,

return receipt requested. Notice shall be considered received on the date of personal service or three (3) days after the date the notice is dispatched by U.S. mail.

The decision of [name of Tribal Agency] on appeal may be appealed to the Tribal Court upon written request submitted to the Tribal Council within five (5) days of the receipt of the notice of decision after the initial hearing. The request for a hearing before the Tribal Court must state the grounds for overturning [name of Tribal Agency]'s decision.

- (a) The Tribal Court shall hold a hearing within thirty (30) days of receiving the notice of appeal.
- (b) The violator and [name of Tribal Agency] shall have the opportunity to present oral arguments at the hearing.
- (c) The written record from the administrative hearing before [name of Tribal Agency], together with all papers and requests filed in the proceeding before [name of Tribal Agency], shall constitute the exclusive record for decision on appeal.
- (d) The Tribal Court shall set aside [name of Tribal Agency]'s decision only upon a finding that [name of Tribal Agency]'s decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.
- (e) Within sixty (60) days of the hearing, the Tribal Court shall issue a written decision on the appeal.
  - (1) The Tribal Court shall serve a notice of the decision on the violator. The notice of decision shall be served by personal service or U.S. certified mail, return receipt requested.
- (f) Decisions of the Tribal Court are final.

[name of Tribal Agency] and/or the Tribal Court, or a representative authorized by either body, may institute proceedings in Tribal Court to enforce a penalty issued by [name of Tribal Agency] and/or upheld by the Tribal Court on appeal.

This Ordinance in no way restricts an individual's or the Tribe's right to file suit against a party in Tribal Court for damages incurred as a result of a violation of this Ordinance.

#### **SECTION 1009. Categorical Exclusions**

The Tribal Council may by regulation exclude categories of uses, activities or projects from requirements of this Ordinance for substantial and widespread economic and social impacts.

#### **SECTION 1010. Citations**

The provisions of this Ordinance shall be enforced by [name of Tribal Agency]. Any [name of Tribal Agency] employee, Tribal Public Safety Officer, or any person officially appointed by the Council in consultation with the Director of [name of Tribal Agency] may issue the following for violations:

Cease Orders, Citations, or Notices of Violation: Upon determination that any person is violating the provisions of this Ordinances, a cease order, citation, or notice of violation will be served.

It shall be a civil offense, for which a fine of not less than \$100.00 shall be assessed, to obstruct or otherwise interfere with investigative or other activities of any agent or officer of the Tribe carrying out this Ordinance.

**SECTION 1011. Monetary Civil Fines or Penalties**

The maximum monetary civil fine or penalty that may be imposed for a violation of this Ordinance is the maximum permitted under the Indian Civil Rights Act of 1968, 25 U.S.C. § 1302, as amended. Tribal Council by resolution and without amending this Ordinance may adjust the minimum monetary civil fine or penalty amounts specified in this Ordinance.

**SECTION 1012. Civil Penalties**

Any person violating any provision of this Ordinance may be assessed a civil penalty by the Tribal Court not to exceed \$5,000.00 per occurrence of violation, plus \$1,000.00 per day until the violation is remediated, plus associated costs.

**SECTION 1013. Civil Damages and/or Injunctive Actions**

In the event that any person, as a result of his or her violations of this Ordinance, should proximately cause any physical damage to any other person(s) residing within, or to any real or personal property situated in, the [Reservation/Rancheria], [name of Tribal Agency] or the person(s) adversely affected shall have the right to seek monetary and/or injunctive relief in any judicial forum of competent jurisdiction.

**SECTION 1014. Criminal Prosecution**

Notwithstanding any of the provisions stated herein, the [name of Tribe] Tribe reserves the option to seek criminal prosecution of any person in violation of this Ordinance for violation of any applicable criminal law by the appropriate authorities. Any person, including Tribal members and non-Tribal members, who violates this Ordinance shall be subject to prosecution in Tribal Court.

**SECTION 1015. Criminal Penalties**

Any individual violating any provision of this Ordinance may be guilty of a crime. All criminal violations will be referred to the U.S. Environmental Protection Agency for further action.

**SECTION 1016. Court Action and Injunctions**

Upon failure of any person to comply with any provisions of this Ordinance, the Council, by and through its attorney, shall petition a court of competent jurisdiction for the issuance of an injunction requiring such person to comply therewith. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, and to levy such fines in accordance, as the facts may warrant.

**SECTION 1017. Cleanup and Abatement**

Any person who is found in violation of this Ordinance shall be liable for all costs associated with or necessary to clean up, abate or remove said pollutants, waste materials, and abate any resulting

environmental contamination of the [Reservation/Rancheria] to their conditions that existed immediately prior to the violation. If environmental contamination is present additional cleanups shall be overseen by [name of Tribal Agency] and will comply with the [name of Tribe] [reference cleanup standards for contaminated properties that are currently in effect]. Cleanups shall be considered complete upon review and approval by [name of Tribal Agency].

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**SECTION 1018. Immediate Hazards**

In the event that a violation of this Ordinance creates an immediate hazard to the health or safety of the general public, or environmental, the [name of Tribe] Tribal Police may immediately secure location and proceed with enforcement under this Ordinance.

**SECTION 1019. Depredation of Natural Resources**

A person commits the offense of Depredation of Natural Resources if the person:

- (a) Commits an offense defined in this Ordinance, and
- (b) Knowingly, intentionally, or recklessly uses a poison, chemical, or other hazardous substance within the [Reservation/Rancheria] or on Tribal lands, and By such use may cause any of the following:
  - (1) Creation of a serious hazard to humans, wildlife, or domestic animals, or
  - (2) Degradation or harm to the environment or natural resources, or
  - (3) Pollution of an aquifer, spring, river, or body of water.

Each potential hazard or harm to humans or a distinct natural resource shall constitute a separate offense, regardless of whether the harm arises from the same occurrence.

**SECTION 1020. Lien on Property**

Any Tribal Court order finding a violation under this Ordinance and imposing monetary fines or penalties, restitution, or other money judgment may be recorded as a judgment lien on the violator's interest in real and personal property.

**SECTION 1021. Enforcement Costs**

Any reasonable cost associated with the enforcement of an order issued pursuant to this Ordinance may be assessed by the Tribal Court against the violator. This may include, but is not limited to, document reproduction costs, filing fees, and attorney fees and costs.

**SECTION 1022. Restitution**

The Tribal Court, when finding a violation under this Ordinance, may:

- (a) Order restitution;
- (b) Order the defendant to reimburse the [name of Tribe] Tribe and any federal, state, or local government concerned, for the costs incurred by such entity for the eradication or cleanup associated with the violation by the defendant, or on premises or in property that the defendant owns, resides, or does business in;
- (c) Order the defendant to reimburse the [name of Tribe] Tribe for any costs incurred by Tribal law enforcement for enforcement actions associated with a violation of this Ordinance by the defendant; and
- (d) Order restitution to any person injured as a result of the offense through direct and proximate harm or, if the injured person is deceased, to that person's estate.

Any reasonable cost associated with the enforcement of an order issued pursuant to this Ordinance may be assessed by the Tribal Court against the violator. This may include, but is not limited to, document reproduction costs, filing fees, and attorney fees and costs.

### **SECTION 1023. Community Service**

Individuals cited under this Ordinance may request community service in lieu of fines based upon financial hardship. Such requests shall be made in writing to the Tribal Court. Upon review of the citation and any information supplied by the responsible party, the Tribal Court may, at its discretion, allow for community service to be performed in lieu of payment due. In the event that community service is offered, no less than one hour of community service shall be ordered for every ten dollars so waived.

In determining the amount of community service to be performed, the Tribal Court may take into account any concurrent citations issued under this or other Ordinances of the [name of Tribe] Tribe. The [name of Tribe] Tribal Court shall determine the manner in which the community service shall be performed. Such manner may include but not necessarily be limited to working for the [name of Tribe] Tribe Environmental Program in which case the responsible party shall be given thirty days to contact the [name of Tribe] Tribe Environmental Program and make arrangements to perform the service. In order to accommodate persons of limited physical capacity, the Court may arrange for other appropriate service to be performed, which may include cleanup of illegal dumpsites, other outdoor labor, paperwork or other indoor labor, or services performed for other departments, such as tutoring Tribal youth, donating fish to the elders food program, or other tasks as the Court may find appropriate.

Should the responsible party fail to make arrangements to perform community service, or to appear to perform or complete community service within ninety days from the ruling in Tribal Court, the [name of Tribe] Tribe Environmental Program shall refer the matter to the Tribal Prosecutor's Office for refiling the original charges in Tribal Court for collection of the original amount owed in relation to the citation as well as any other sanctions deem proper and necessary.

### **SECTION 1024. Remedies Cumulative**

Any and all remedies provided in this Ordinance shall be deemed cumulative. The Tribal Police, or authorized official, shall in addition thereto have the right to exercise and enforce all rights and remedies otherwise created or existing, including the right of injunction, the right of abatement of nuisances, the right of action for damages, and the right of prosecution for violation of any of the provisions of this Ordinance.

### **SECTION 1025. Enforcement by Federal Agencies**

Ability to request enforcement by state or federal agencies of their respective laws and regulations governing solid or hazardous waste handling, treatment, disposal or releases where those laws and regulations may be applicable.



**SECTION 1026. Environmental Protection Fund**

Any funds collected through this Ordinance shall be deposited into the Environmental Protection Fund of the [name of Tribe] Tribe. The Environmental Protection Fund shall be used for expenses related to protecting human health and the environment within the [Reservation/Rancheria], promoting environmental projects, and furthering environmental education for tribal members and residents of the [Reservation/Rancheria].

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