

This model code was created pursuant to a grant awarded to the National Indian Justice Center by the United States Environmental Protection Agency, Office of Environmental Justice Programs, Grant #EQ-98976201. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Environmental Protection Agency.

The National Indian Justice Center, Inc., founded in 1983, is a non-profit, 100% Indian owned and administered organization. NIJC's primary goals are to provide training and technical assistance to tribal courts, tribal governments, social services and law enforcement and to assist victims of crime in Indian country.

If you have any questions regarding this model code, please feel free to contact NIJC.

NATIONAL INDIAN JUSTICE CENTER

**5250 Aero Drive
Santa Rosa, CA 95403
(707) 579-5507
Fax: (707) 579-9019
E-mail: nijc@aol.com**



**PRODUCT OF THE NATIONAL INDIAN JUSTICE CENTER
5250 Aero Drive, Santa Rosa, CA 95403 (707) 579-5507**

MODEL TRIBAL DRINKING WATER ORDINANCE

TABLE OF CONTENTS

1. Short Title, Findings and Purpose
 - 101 Short Title
 - 102 Findings
 - 103 Purpose
 - 104 Authority and Scope
 - 105 Consensual Relations Among Non-members, the Tribe and Tribal Members
2. Definitions
3. Tribal Environmental Protection Agency
 - 301 Designation as Lead Tribal Agency
 - 302 Powers and Duties
 - A. Adopt and Enforce Regulations
 - B. Annual Report
 - C. Establish Drinking Water Standards
 - D. Procedures for Permit and Inspection Program
 - E. Studies, Investigations and Information Systems
 - F. Records
 - G. Contracts and Coordination with Other Agencies
 - H. Primary Drinking Water Regulations
 - I. Secondary Drinking Water Standards
 - J. Sampling and Analytical Regulations
 - K. Investigations and Hearings
 - L. Rules and Regulations
 - M. Emergency Powers
 - 303 Tribal Court
4. Public Water Systems
 - 401 General Requirements
 - 402 Design Criteria
 - 403 Site Plan
 - 404 Primary Drinking Water Regulations
 - 405 Secondary Drinking Water Standards
 - 406 Inspections
 - 407 Violations
 - 408 Laboratory Requirements
 - 409 Record Keeping
 - 410 Reporting Test and Analyses Results
 - 411 General Public Notification Requirements
 - 412 Public Notification Requirements for Lead
 - 413 Emergency Water Plan

5. Certification of Operators of Drinking Water Supply Facilities
 - 501 Committee for Certification of Operators of Water Supply Treatment Facilities
 - 502 Duties of the Advisory Committee
 - 503 Certification Process
 - 504 Definitions as Used in This Section
 - 505 Mandatory Certification of Public Water Supply Operator
 - 506 Certification and Revocation
6. Permit and Inspection Program
 - 601 Permits
 - A. Permit Required
 - B. Emergency Powers of Tribe
 - 602 Permit Application; Hearing; Fees
 - A. Contents of Application
 - B. Required Consent
 - C. Application Under Oath
 - D. Fees
 - E. Public Notice and Hearing on Permit Application
 - F. Denial of Permit
 - 603 Variances
 - 604 Exemptions
7. Enforcement Program/Administrative Procedures
 - 701 Enforcement Policy
 - 702 Enforcement Agency
 - 703 Enforcement Activities
 - 704 Notice of Violation; Cease and Desist Order
 - 705 Informal Conferences
 - 706 Reports Required
 - 707 Enforcement Hearings
 - A. Burden of Proof
 - B. Enforcement Orders
 - 708 Civil Penalties and Corrective Action
 - A. Emergency Orders
 - B. Revocation of Permit
 - 709 Judicial Enforcement
 - 710 Special Provisions for Tribal Departments and Agencies
1. Appeals
 - 801 Judicial Review
2. Other Provisions
 - 901 Severability
 - 902 Amendments
 - 903 Effective Date
3. Sovereign Immunity Preserved

APPENDIX A
APPENDIX B

Permit Application Form
List of Potential Sources of Groundwater Contamination

MODEL TRIBAL DRINKING WATER ORDINANCE

COMMENTARY

Under the compacts signed between California Governor Gray Davis and many California tribes, the tribes must have safe drinking water standards as follows:

“Tribes must adopt and comply with standards no less stringent than federal water quality and safe drinking water standards applicable in California; the Gaming Operation will allow for inspection and testing of water quality by state or county health inspectors, as applicable, during normal hours of operation, to assess compliance with these standards, unless inspections and testing are made by an agency of the United States pursuant to, or by the Tribe under express authorization of, federal law, to ensure compliance with federal water quality and safe drinking water standards. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state or county health inspectors, but any alleged violation of the standards shall be treated as alleged violations of this Compact.” (Compact dated September 10, 1999, Section 10.2(b)).

Section 1 - Short Title, Findings and Purpose

- 101 Short Title:** This Ordinance shall be titled: the [name of Tribe] **Safe Drinking Water Ordinance**. The ordinance shall be effective immediately upon adoption by resolution by the [name of Tribal governing body].

COMMENTARY

Other terms such as “Code,” “Law,” “Title” or “Act” could be substituted for “Ordinance.” The name of the Tribe could also be inserted into the title.

- 102 Findings:** The [name of Tribal governing body] hereby finds as follows:

- A. It is the policy of the [name of Tribe] to protect the health and welfare of [name of Tribe] people by ensuring that water on the [Reservation/Rancheria] is safe for drinking and other domestic purposes.

COMMENTARY

The term *policy* in this context means that the Tribe has a fundamental interest in protecting the drinking water on the Reservation or Rancheria, which is higher than the interest of the state, county or federal government.

- B. Pursuant to federal law as determined by the U.S. Supreme Court in such cases as *Montana v. United States*, 450 U.S. 544 (1981) and reaffirmed in *Strate v. A-1 Contractors* 117 S.Ct. 1404 (1997), the [name of Tribe] possesses inherent sovereign authority to regulate collection and treatment of drinking water on the [Reservation/Rancheria] and all on-Reservation pollution discharges that could adversely affect drinking water on the [Reservation/Rancheria] or any other fundamental Tribal interest, or the public health and safety, including when such activities are conducted by non-members of the Tribe on privately owned land within the [Reservation/Rancheria].

COMMENTARY

The test set out in *Montana* and *Strate* is that tribes have civil jurisdiction over the actions of non-Indians and nonmember Indians on non-Indian land within the reservation only if:

- 1. The person or company has entered into a consensual agreement with the tribe or its members; or**
- 2. The conduct of the nonmember threatens or has some direct effect on the political integrity, economic security, health or welfare of the tribe.**

- C. Under the federal Safe Drinking Water Act, 42, U.S.C. §§300f, et seq. (SDWA), the Administrator of the USEPA may delegate to tribes primary enforcement responsibility for public water systems (42 U.S.C. §300j-11) and underground injection control (42 U.S.C. §300h-1(e)).

COMMENTARY

In general, tribes must comply with 42 U.S.C. §300g-2, which sets out the criteria for states to assume primary enforcement responsibility for public water systems. These requirements include:

- 1. Adopting drinking water regulations that are no less stringent than the national primary drinking water regulations;**
- 2. Adopting and implementing adequate procedures for enforcing the regulations, including monitoring and inspection;**
- 3. Keeping records and making reports required by the USEPA;**
- 4. Granting variances or exemptions to the drinking water regulations only under conditions and in a manner that is not less stringent than variances and exemptions under sections 300g-4 and 300g-5 of the SDWA; and**
- 5. Adopting and implementing an adequate plan for providing safe drinking water in emergency conditions.**

- 103 Purpose:** The purpose of this Ordinance is to promote the protection of the health and welfare of the [name of Tribe] people and the environment by establishing appropriate water quality standards to ensure that the drinking water within the exterior boundaries of the [name of Reservation or Rancheria] is safe for consumption.

COMMENTARY

The Tribe should add any other purposes it deems appropriate in this section.

104 Authority and Scope

Authority: This Safe Drinking Water Ordinance is hereby adopted by [name of Tribe's governing body] pursuant to [Article/Section of the Tribe's Constitution] authorizing the [name of Tribe's governing body] to undertake such actions.

Scope: The [name of Tribal governing body] hereby finds as follows:

- A. Except as otherwise provided in this section, the provisions of this Ordinance and the regulations promulgated hereunder shall apply to all public water systems within the boundaries of the [Reservation/Rancheria].
- B. This Ordinance does not apply to any water system that meets all of the following conditions:
 1. It consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
 2. It obtains all of its water from, but is not owned or operated by, a public water system to which these regulations apply;

3. It does not sell water to any person;
 4. It is not a carrier which conveys passengers in interstate commerce; and
 5. It does not provide water to any school, tribal, state or federal governmental employees or private entity serving twenty-five (25) or more employees or individuals.
- C. Subject to the provisions of subsections (D) and (E) of this section, the provisions of this Ordinance shall not apply to any person or property where such application would be in violation of any valid waiver of jurisdiction or covenant not to regulate or otherwise exercise jurisdiction over such person or property; provided, however that before any person claiming a right under a purported waiver of jurisdiction may be released from compliance with this Ordinance that person must offer clear and convincing evidence that:
1. That person does not operate a public water system subject to this Ordinance; or
 2. That person operates a public water system which provides no drinking water to any resident or visitor of the [Reservation/Rancheria] at any time; and
 3. The public water system is subject to the jurisdiction of another state or tribal regulatory body which imposes standards as stringent or more stringent than those imposed by this Ordinance; and
 4. No underground or surface waters of the [Reservation/Rancheria] enter the public water system seeking to establish a regulatory waiver; and
 5. The party seeking to establish the waiver has the written consent of the Administrator to do so.

COMMENTARY

<p>This exception to the applicability of the Ordinance covers public water systems that have some physical connection to the Reservation or Rancheria, such as a water line that runs through the Reservation or Rancheria, but where the public water system does not actually sell the water on the Reservation or Rancheria.</p>

- D. Notwithstanding the provisions of subsection (C) of this section, the provisions of this Ordinance shall apply to any person who has submitted an application for a permit pursuant to this Ordinance.
- E. Nothing in this Ordinance shall excuse the required performance of any act as set out in any other applicable law or regulation of the [name of Tribe].

105 Consensual Relations Among Non-members, the Tribe and Tribal Members

Any person who is not a member of the Tribe who uses land anywhere within the exterior boundaries of the [Reservation/Rancheria], whether trust or non-trust land, shall be deemed to have entered into consensual relationships with the Tribe or its members. Such person's discharge of pollutants into or other activities which affect the drinking water within the exterior boundaries of the Reservation will have demonstrably serious impact upon the environment, natural resources, public health and safety of the Tribe and its members, unless such use is in compliance with the provisions of this Ordinance and any regulations promulgated hereunder.

COMMENTARY

The purpose of this provision is to explicitly comply with the test for tribal civil jurisdiction over nonmembers set out in <i>Strate v. A-1 Contractors</i> (see Comment to §102(C) above).
--

Section 2 - Definitions

For the purposes of this Ordinance, the following words and phrases shall have the following meanings:

“Action Level” (AL) means the concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.

“Administrator” means the Administrator of the United States Environmental Protection Agency.

“Best Available Technology” means the best technology, treatment techniques, or other means which the USEPA Administrator finds, after examination for efficiency under field conditions and not solely under laboratory conditions, are available for specific containment or category of contaminants.

“Certified Laboratory” means an analytical laboratory licensed by the State of California or the Tribe, to perform biological, microbiological section, chemical or radio-chemical examination of potable water.

“Tribal Council” means the [name of Tribe] Tribal Council [or insert other name of tribal governing body].

“Coagulation” means a process using thickening chemicals and mixing by which colloidal and suspended materials are destabilized and gathered into flocs.

COMMENTARY

A “floc” is a tuft-like mass of materials.

“Community Water System” refers to a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Community water systems serve a residential population on a year-round basis. Users of community systems are likely to be exposed to any contaminants in the water supply over an extended time period.

“Contaminant” means any physical, chemical, biological, or radiological substance or matter in water that has the potential to adversely affect human health.

“Conventional filtration treatment” means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

COMMENTARY

“Flocculation” is the process of gathering materials together into clumps.

“Direct filtration” means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

“Director” means director of the [name of tribe] Tribal Environmental Protection Agency.

“Disinfection” means a process which inactivates pathogenic [disease-causing] organisms in water by chemical oxidants or equivalent agents.

“EPA” and “USEPA” refer to the United States Environmental Protection Agency.

“Exemption” means a waiver granted by the Director to a public water system pursuant to this Ordinance and regulations promulgated thereunder.

“Filtration” means a process for removing particulate matter from water by passage through porous media.

“Human Consumption” means the use of water for drinking, bathing, showering, hand washing or oral hygiene.

“Lead Free” when used with respect to solders and flux, “lead free” shall mean not more than 0.2 percent lead, and when used with respect to pipes and pipe fittings, “lead-free” shall

mean not more than 8.0 percent lead.

“Legioella” means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

“Maximum Contaminant Level Goal” (MCLG) means the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLG’s allow for a margin of safety.

“Maximum Contaminant Level” (MCL) means the highest level of a contaminant that is allowed in drinking water. MCL is determined at a point of entry into the distribution system or at any point in the distribution system as determined by the Director based on the nature of the contaminants and/or other relevant factors, with the following exceptions:

- a) Turbidity contaminant levels are applicable only to a surface water source as determined at a point of entry into the distribution system.
- b) Total trihalomethane contaminant levels are applicable to disinfected community water systems as described herein.
- c) Microbiological contaminant levels are applicable to each point of entry into the distribution and at any point in the distribution system.

MCL’s are set as close to the MCLG’s as feasible using the best available treatment technology.

“Maximum Residual Disinfectant Level” (MRDL) means the highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

“Maximum Residual Disinfectant Level Goal” (MRDLG) means the level of a drinking water disinfectant below which there is no reason or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

“Near the first service ” means at one of the 20 percent nearest service connections to the water supply treatment facility, as measured by water transport time within the distribution system.

“Non-community water system” means a public water system that is not a community water system.

“Non-transient non-community water systems” means a non-community water system

that regularly services at least twenty-five (25) of the same persons over six (6) months per year.

“Person” shall include an individual, partnership, association, or corporation, company, limited liability company, municipality, public utility, local, federal, or state government agency, or Indian tribe, tribal division, tribal department, tribal enterprise, or tribal entity or other public body, institution or legal entity.

“Point of disinfectant application” is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water run off.

“Point-of-use treatment device” means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water.

“Primary Drinking Water Standard/Regulation” means a standard or regulation which:

- a) applies to public water systems;
- b) specifies contaminants which, in the judgement of the Tribe/Department, may have an adverse effect on human health;
- c) specifies for each contaminant a maximum contaminant level adopted by the Tribe/Department; and
- d) contains criteria and procedures to assure a supply of drinking water which dependably complies with maximum contaminant levels, including quality control and testing procedures, to ensure compliance with such levels and to ensure proper operation and maintenance of the public water system, and requirements as to the minimum quality of water which may be taken into the system and siting for new facilities for public water systems.

“Public water system owner or operator” means any person who owns and/or operates a public water system.

“Public water systems” means a system for the provision to the public of piped water for human consumption through pipes or other conveyances, provided such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. The term “public water system” shall include all sources and facilities involved in collecting, treating, storing and distributing the water.

“Regularly serves” means a public water system that serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year.

“Resident” means a person who physically occupies, whether by ownership, rental, lease, or other means, the same dwelling for at least 60 days out of the year.

“Residual disinfectant concentration” (“C” in CT calculation) means the concentration of disinfectant measured in mg/l in a representative sample of water.

“Sanitary Survey” means an on-site review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation, and maintenance for producing and distributing safe drinking water.

“Secondary Drinking Water Standards” means standards promulgated under this Ordinance that apply to public water systems and specify the maximum contaminant levels which, in the judgement of the [name of Tribal agency], are requisite to protect the public welfare primarily with regard to aesthetic qualities. Such standards may apply to any contaminant in drinking water (a) which may adversely affect the odor or appearance of water and, consequently, may cause a substantial number of persons served by the public water system to discontinue its use; or (b) which may otherwise adversely affect the public welfare. Such standards may vary according to geographic location and other circumstances.

“Sedimentation” means a process for removal of solids before filtration by gravity or separation.

“Surface water” means all water which is open to the atmosphere and subject to surface runoff.

“System with a single service connection” means a system which supplies drinking water to consumers via a single service line.

“Tamper” means the introduction of a contaminant into or other interference with the operation of a public water system with the intention of harming persons.

“Treatment technique” means a required process intended to reduce the level of a contaminant in drinking water.

“User” means any person using water for domestic purposes. User does not include any person processing, selling or serving water or operating a public water system.

“Variance” means a waiver granted by the [name of Tribal agency] to a public water system pursuant to this Ordinance and regulations promulgated hereunder.

“Virus” means a virus of fecal origin which is infectious to humans by waterborne transmission.

“Water purveyor” is any person who owns or operates a public water system.

“Waterborne disease outbreak” means the significant occurrence of acute infectious illness, epidemiologically [through the study of infectious diseases] associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate Tribal agency.

“Water treatment plant” means a group or assemblage of structures, equipment, and processes that treat, blend or condition the water supply or a public water system for the purpose of meeting primary drinking water standards.

“Water distribution system” means any combination of pipes, tanks, pumps, and other physical features that deliver water from the source or water treatment plant to the consumer.

Section 3 - Tribal Environmental Protection Agency

301 Designation as Lead Tribal Agency: The Tribal Environmental Protection Agency [or other department or agency] shall be the lead agency for implementing this Safe Drinking Water Ordinance.

COMMENTARY
Because the Tribe may have a different title for the person(s)/agencies responsible for implementing this Ordinance, most references in this Model Ordinance call for the Tribe to insert the [name of Tribal agency] where appropriate.

302 Powers and Duties: There is hereby created the position of Tribal Drinking Water Quality Control Officer. The Tribal Drinking Water Quality Control Officer shall serve under the direction of the [name of Tribe’s governing body or Chairperson] and shall be appointed by the [name of Tribe’s governing body or Chairperson], which appointment shall be confirmed by [name of Tribe’s governing body (if appointed by Chairperson or other official)]. The Tribal Drinking Water Quality Control Officer shall cooperate with the USEPA and other agencies of the federal government or the State of California, as necessary to carry out the intent of this Ordinance. The powers and duties of the Tribal Drinking Water Quality Control Officer [or name of Tribal agency] include:

COMMENTARY

The Tribe may choose not to have a designated person act as a Water Quality Control Officer, especially if the Tribe is small and has one person who is responsible for carrying out all of the Tribe’s environmental programs. Substitute the name of the person/agency here. All references from this point to the end of the Model Ordinance call for the Tribe to insert the [name of Tribal agency]. The Tribe should be careful to insert the names so they correctly reflect existing persons or agencies where ever it says “[name of Tribal agency]” throughout this Model Ordinance.

- A. Adopt and Enforce Regulations - The [name of Tribal agency] is responsible for adopting and enforcing regulations promulgated pursuant to this Ordinance.
- B. Annual Report - The [name of Tribal agency] shall submit an annual report to the [name of Tribe’s governing body]. The [name of Tribal agency] shall also submit reports to the USEPA as required by 40 CFR §142.15, as amended from time to time.
- C. Establish Drinking Water Standards - The [name of Tribal agency] shall establish drinking water standards pursuant to this Ordinance that are at least as stringent as the federal standards, and can be more stringent than the federal standards.
- D. Procedures for Permit and Inspection Program - The [name of Tribal agency] shall establish procedures for a permit and inspection program for all public water systems serving the Tribe.
- E. Studies, Investigations and Information Systems - The [name of Tribal agency] shall conduct all studies and investigations and implement such information systems as necessary to carry out this Ordinance.
- F. Records - The [name of Tribal agency] shall establish and maintain a file for each public water system that provides drinking water on the [Reservation/Rancheria]. Each file shall contain the information and be maintained as required by 40 CFR §142.14, as that regulation may be amended from time to time, as well as any additional information deemed appropriate by the [name of Tribal agency]. These records shall be available for public inspection at the office of the [name of Tribal agency] during regular business hours.
- G. Contracts and Coordination with Other Agencies - The [name of Tribal agency] shall enter into agreements, contracts of cooperative arrangements with other Tribal departments, divisions or entities; with state, federal or inter-state agencies; municipalities; local health departments, educational institutions or other organizations; or other persons for the purpose of ensuring the safety of drinking water within the [Reservation/Rancheria].
- H. Primary Drinking Water Regulations - The [name of Tribal agency] may prescribe the maximum permissible levels for contaminants in all public water systems on the [Reservation/Rancheria]. These regulations shall govern monitoring and reporting of the water quality of all public water systems and shall be at least as stringent as federal regulations promulgated pursuant to the SDWA.
- I. Secondary Drinking Water Standards - The [name of Tribal agency] may prescribe

controls including water purification systems for contaminants in drinking water that primarily affect the aesthetic qualities (such as taste, color and smell) relating to the public acceptance of drinking water. Such secondary regulations should be guided by any national secondary drinking water regulations, but may vary from any non-mandatory federal guidelines.

- J. Sampling and Analytical Regulations - The [name of Tribal agency] may prescribe the microbiological, inorganic, organic, radioactivity and turbidity sampling requirements for public water systems.
- K. Investigations and Hearings - In order to fulfill the obligations of this Ordinance, the [name of Tribal agency] is authorized to:
 - 1. Conduct investigations, inspections and tests to carry out the duties of this Ordinance;
 - 2. Hold hearings related to any aspect of or matter within the duties of this Ordinance and, in connection therewith, compel the attendance of witnesses and the production of records according to the procedures established in this Ordinance;
 - 3. Encourage voluntary cooperation by advising and consulting with persons or affected groups, tribes or states to achieve the purposes of this Ordinance;
 - 4. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, to carry out the purposes of this Ordinance;
 - 5. Compile and publish, from time to time, reports, data and statistics with respect to matters studied or investigated by the [name of Tribal agency] at its discretion;
 - 6. Implement and administer the provisions of this Ordinance; and
 - 7. Perform such other activities as the [name of Tribal agency] may find necessary to carry out its functions under this Ordinance.
- L. Rules and Regulations - The [name of Tribal agency] is authorized to promulgate such rules and regulations from time to time as may be necessary to carry out the provisions of this Ordinance.
- M. Emergency Powers - Notwithstanding any other provisions of this Ordinance, the [name of Tribal agency], upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water may present an imminent and substantial endangerment to the health of persons, and that appropriate authorities have not acted to protect the health of such persons, may take such actions as the [name of Tribal agency] may deem necessary in order to protect the health of such persons, including requiring the immediate closure of such public water system. To the extent the [name of Tribal agency] determines it to be practicable in light of such imminent endangerment, the [name of Tribal agency] shall consult with federal, state and local authorities in order

to confirm the correctness of the information on which action proposed to be taken under this section is based and to ascertain the action which such authorities are or will be taking. The actions which the [name of Tribal agency] may take include, but shall not be limited to:

- 1. Issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment; and
- 2. Requesting the [Tribal prosecutor or other appropriate person or agency] to commence a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

Any person who violates or fails or refuses to comply with any order issued by [name of Tribal agency] under this section may, in an action brought in a court of competent jurisdiction to enforce such order, be subject to a civil penalty not to exceed \$5,000 for each day in which such violation occurs or failure to comply continues.

303 Tribal Court: The [name of Tribal court] shall have exclusive jurisdiction to hear any disputes arising out of this Ordinance or the enforcement thereof.

COMMENTARY

The Indian Civil Rights Act limits fines in criminal matters to \$5,000. Although this provision of the Model Tribal Water Quality Ordinance is labeled “civil,” the Tribe should keep each fine under the \$5,000 limit. If a violator continues to obstruct an investigation, the Tribe can impose daily fines on the theory that each day the obstruction continues is a separate offense.

Section 4 - Public Water Systems

401 General Requirements

- A. No person shall develop, maintain or operate a public water supply system that operates within the [Reservation/Rancheria] unless the system is approved by the [name of Tribal agency]. All public water supply systems must be developed, operated and maintained in accordance with the requirements and provisions of this Ordinance in order for a public water supply system to maintain approval by [name of Tribal agency].
- B. Should the [name of Tribal agency] find that a public water supply system is not developed, maintained or operated in compliance with this Ordinance, the [name of

Tribal agency] may revoke, suspend or otherwise limit the approval previously granted.

- C. The [name of Tribal agency] is authorized to enter at all reasonable times in or upon any private or public property for the purpose of carrying out the provisions of this Ordinance or making an inspection or investigation of a condition which the [name of Tribal agency] believes may be hazardous to the health of the consumers serviced by any public water supply system or in violation of this Ordinance.

402 Design Criteria

- A. No new or substantially modified public water system shall be authorized to begin construction or operation on the [Reservation/Rancheria] until such time as the [name of Tribal agency] has reviewed the proposed design of such facility to ensure that it is capable of compliance with applicable minimum construction guidelines for public water systems. In conducting this review, the [name of Tribal agency] is authorized to rely upon the technical assistance of the Office of Environmental Health and Engineering, United States Indian Health Service.
- B. In the event that the proposed design is satisfactory, the [name of Tribal agency] shall so advise the applicant, in writing, in a timely manner. Appropriate design changes must be made by the applicant prior to initiating any operation of the system.
- C. No source of water shall be developed for a public water system until a site plan prepared by a professional engineer or land surveyor has been approved by the [name of Tribal agency].

403 Site Plan

- A. The site plan shall include an appropriately scaled topographic map of the area under consideration.
- B. Approval of the plans and specifications granted to an applicant shall expire within two (2) years if construction of the approved system has not begun within that period.
- C. Expired approvals may be renewed if the data provided in the application is unchanged and attested to by the applicant and plans conform with all construction standards and testing requirements in effect at the time of the application for renewal.
- D. All revisions to approved plans must be submitted to the [name of Tribal agency] for approval. The [name of Tribal agency] may require a new application and/or site plan if the revisions are deemed significant.
- E. All consumers are to be protected. Every building connected to the public water system must have a point-of-entry device installed, maintained and adequately monitored. The Tribe must be assured that every building is subject to treatment and monitoring and that the rights and responsibilities of the public water system customer are conveyed upon the sale of property.

404 Primary Drinking Water Regulations: The [name of Tribal agency] may prescribe the maximum permissible levels for contaminants in all public water systems on the [Reservation/Rancheria]. These regulations shall govern monitoring and reporting of the water quality of all public water systems, and shall be at least as stringent as federal regulations promulgated pursuant to the United States Safe Drinking Water Act.

A. National Primary Drinking Water Regulations/Primary Standards: see charts below.

Microorganisms	MCLG¹ (mg/L)²	MCL or TT¹ (mg/L)²	Potential Health Effects from Ingestion of Water	Sources of Contaminant in Drinking Water
Cryptosporidium	as of 01/01/02: zero	as of 01/01/02: TT ³	Gastrointestinal illness (e.g., diarrhea, vomiting, cramps)	Human and animal fecal waste
Giardia lamblia	zero	TT ³	Gastrointestinal illness (e.g., diarrhea, vomiting, cramps)	Human and animal fecal waste
Heterotrophic plate count (HPC)	n/a	TT ³	HPC has no health effects, but can indicate how effective treatment is at controlling microorganisms	HPC measures a range of bacteria that are naturally present in the environment
Legionella	zero	TT ³	Legionnaire's Disease, commonly known as pneumonia	Found naturally in water; multiplies in heating systems
Total Coliforms (including fecal coliform and E. Coli)	zero	5.0% ⁴	Used as an indicator that other potentially harmful bacteria may be present	Coliforms are naturally present in the environment; fecal coliforms and E.coli come from human and animal fecal waste.

Turbidity	n/a	TT ³	Turbidity is a measure of the cloudiness of water. It is used to indicate water quality filtration effectiveness (e.g., whether disease causing organisms are present). Higher turbidity levels are often associated with higher levels of disease causing microorganisms such as viruses, parasites and some bacteria. These organisms can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.	Soil runoff
Viruses	zero	TT ³	Gastrointestinal illness (e.g., diarrhea, vomiting, cramps)	Human and animal fecal waste

Disinfectants & Disinfection Byproducts	MCLG¹ (mg/L)²	MCL or TT¹ (mg/L)²	Potential Health Effects from Ingestion of Water	Sources of Contaminant in Drinking Water
Bromate	as of 01/01/02: zero	as of 01/01/02: 0.010	Increased risk of cancer	Byproduct of drinking water disinfection
Chloramines (as Cl ₂)	as of 01/01/02: MRDLG=4 ¹	as of 01/01/02: MRDL=4.0 ¹	Eye/nose irritation; stomach discomfort; anemia	Water additive used to control microbes
Chlorine (as Cl ₂)	as of 01/01/02: MRDLG=4 ¹	as of 01/01/02: MRDL=4.0 ¹	Eye/nose irritation: stomach discomfort, anemia	Water additive used to control microbes
Chlorine dioxide (as ClO ₂)	as of 01/01/02: MRDLG=0.8 ¹	as of 01/01/02: MRDL=0.8 ¹	Anemia; infants and young children: nervous system effects	Water additive used to control microbes
Chlorite	as of 01/01/02: 0.8	as of 01/01/02: 1.0	Anemia; infants and young children: nervous system effects	Byproduct of drinking water disinfection

Haloacetic acids (HAA5)	as of 01/01/02 n/a ⁶	as of 01/01/02: 0.060	Increased risk of cancer	Byproduct of drinking water disinfection
Total Trihalomethanes (TTHMs)	none ⁷ as of 01/01/02: n/a ⁶	0.10 as of 01/01/02: 0.080	Liver, kidney or central nervous system problems; increased risk of cancer	Byproduct of drinking water disinfection

Inorganic Chemicals	MCLG₁ (mg/L)	MCL or TT¹ (mg/L)²	Potential Health Effects from Ingestion of Water	Sources of Contaminant in Drinking Water
Antimony	0.006	0.006	Increase in blood cholesterol; decrease in blood glucose	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder
Arsenic	none ⁷	0.05	Skin damage; circulatory system problems; increased risk of cancer	Erosion of natural deposits; runoff from glass and electronics production wastes
Asbestos (fiber > 10 micrometers)	7 million fibers per liter	7 MFL	Increased risk of developing benign intestinal polyps	Decay of asbestos cement in water mains; erosion of natural deposits
Barium	2	2	Increase in blood pressure	Discharge of drilling wastes; discharge from metal refineries; erosion of natural deposits
Beryllium	0.004	0.004	Intestinal lesions	Discharge from metal refineries and coal burning factories; discharge from electrical, aerospace, and defense industries
Cadmium	0.005	0.005	Kidney damage	Corrosion of galvanized pipes; erosion of natural deposits; discharge from metal refineries; runoff from waste batteries and paints
Chromium (total)	0.1	0.1	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis	Discharge from steel and pulp mills; erosion of natural deposits

Copper	1.3	TT ⁸ ; Action Level=1.3	Short term exposure: gastrointestinal distress. Long term exposure: liver or kidney damage. People with Wilson's Disease should consult their personal doctor if their water systems exceed copper action level.	Corrosion of household plumbing systems; erosion of natural deposits
Cyanide (as free cyanide)	0.2	0.2	Nerve damage or thyroid problems	Discharge from steel/metal factories; discharge from plastic and fertilizer factories
Fluoride	4.0	4.0	Bone disease (pain and tenderness of the bones); children may get mottled teeth.	Water additive which promotes strong teeth; erosion of natural deposits; discharge from fertilizer and aluminum factories
Lead	zero	TT ⁸ ; Action Level=0.015	Infants and children: delays in physical or mental development. Adults: kidney problems; high blood pressure	Corrosion of household plumbing systems; erosion of natural deposits
Mercury (inorganic)	0.002	0.002	Kidney damage	Erosion of natural deposits; discharge from refineries and factories; runoff from landfills and cropland
Nitrate (measured as nitrogen)	10	10	"Blue baby syndrome" in infants under six months-life threatening without immediate medical attention. Symptoms: infant looks blue and has shortness of breath.	Runoff from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits
Nitrite (measured as nitrogen)	1	1	"Blue baby syndrome" in infants under six months-life threatening without immediate medical attention. Symptoms: infant looks blue and has shortness of breath.	Runoff from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits
Selenium	0.05	0.05	Hair or fingernail loss; numbness in fingers or toes; circulatory problems	Discharge from petroleum refineries; erosion of natural deposits; discharge from mines

Thallium	0.0005	0.002	Hair loss; changes in blood; kidney, intestine, or liver problems	Leaching from ore-processing sites; discharge from electronics, glass, and pharmaceutical companies
----------	--------	-------	---	---

Organic Chemicals	MCL G¹ (mg/L)²	MCL or TT¹ (mg/L)²	Potential Health Effects from Ingestion of Water	Sources of Contaminant in Drinking Water
Acrylamide	zero	TT ⁹	Nervous system or blood problems; increased risk of cancer	added to water during sewage/wastewater treatment
Alachlor	zero	0.002	Eye, liver, kidney or spleen problems; anemia; increased risk of cancer	Runoff from herbicide used on row crops
Atrazine	0.003	0.003	Cardiovascular system problems; reproductive difficulties	Runoff from herbicide used on row crops
Benzene	zero	0.005	Anemia; decrease in blood platelets; increased risk of cancer	Discharge from factories; leaching from gas storage tanks and landfills
Benzo(a)pyrene (PAHs)	zero	0.0002	Reproductive difficulties; increased risk of cancer	Leaching from linings of water storage tanks and distribution lines
Carbofuran	0.04	0.04	Problems with blood or nervous system; reproductive difficulties	Leaching of soil fumigant used on rice and alfalfa
Carbon tetrachloride	zero	0.005	Liver problems; increased risk of cancer	Discharge from chemical plants and other industrial activities
Chlordane	zero	0.002	Liver or nervous system problems; increased risk of cancer	Residue of banned termiticide
Chlorobenzene	0.1	0.1	Liver or kidney problems	Discharge from chemical and agricultural chemical factories
2,4-D	0.07	0.07	Kidney, liver, or adrenal gland problems	Runoff from herbicide used on row crops

Dalapon	0.2	0.2	Minor kidney changes	Runoff from herbicide used on rights of way
1,2-Dibromo-3-chloropropane (DBCP)	zero	0.0002	Reproductive difficulties; increased risk of cancer	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards
o-Dichlorobenzene	0.6	0.6	Liver, kidney, or circulatory system problems	Discharge from industrial chemical factories
p-Dichlorobenzene	0.075	0.075	Anemia; liver, kidney or spleen damage; changes in blood	Discharge from industrial chemical factories
1,2-Dichloroethane	zero	0.005	Increased risk of cancer	Discharge from industrial chemical factories
1,1-Dichloroethylene	0.007	0.007	Liver problems	Discharge from industrial chemical factories
cis-1,2-Dichloroethylene	0.07	0.07	Liver problems	Discharge from industrial chemical factories
trans-1,2-Dichloroethylene	0.1	0.1	Liver problems	Discharge from industrial chemical factories
Dichloromethane	zero	0.005	Liver problems; increased risk of cancer	Discharge from pharmaceutical and chemical factories
1,2-Dichloropropane	zero	0.005	Increased risk of cancer	Discharge from industrial chemical factories
Di (2-ethylhexyl) adipate	0.4	0.4	General toxic effects or reproductive difficulties	Leaching from PVC plumbing systems; discharge from chemical factories
Di(2-ethylhexyl) phthalate	zero	0.006	Reproductive difficulties; liver problems; increased risk of cancer	Discharge from rubber and chemical factories
Dinoseb	0.007	0.007	Reproductive difficulties	Runoff from herbicide used on soybeans and vegetables
Dioxin (2,3,7,8-TCDD)	zero	0.00000003	Reproductive difficulties; increased risk of cancer	Emissions from waste incineration and other combustion; discharge from chemical factories
Diquat	0.02	0.02	Cataracts	Runoff from herbicide use

Endothall	0.1	0.1	Stomach and intestinal problems	Runoff from herbicide use
Endrin	0.002	0.002	Nervous system effects	Residue of banned insecticide
Epichlorohydrin	zero	TT ⁹	Stomach problems; reproductive difficulties; increased risk of cancer	Discharge from industrial chemical factories; added to water during treatment process
Ethylbenzene	0.7	0.7	Liver or kidney problems	Discharge from petroleum refineries
Ethylene dibromide	zero	0.00005	Stomach problems; reproductive difficulties; increased risk of cancer	Discharge from petroleum refineries
Glyphosate	0.7	0.7	Kidney problems; reproductive difficulties	Runoff from herbicide use
Heptachlor	zero	0.0004	Liver damage; increased risk of cancer	Residue of banned termiticide
Heptachlor epoxide	zero	0.0002	Liver damage; increased risk of cancer	Breakdown of heptachlor
Hexachlorobenzene	zero	0.001	Liver or kidney problems; reproductive difficulties; increased risk of cancer	Discharge from metal refineries and agricultural chemical factories
Hexachlorocyclopentadiene	0.05	0.05	Kidney or stomach problems	Discharge from chemical factories
Lindane	0.0002	0.0002	Liver or kidney problems	Runoff/leaching from insecticide used on cattle, lumber, gardens
Methoxychlor	0.04	0.04	Reproductive difficulties	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock
Oxamyl (Vydate)	0.2	0.2	Slight nervous system effects	Runoff/leaching from insecticide used on apples, potatoes, and tomatoes
Polychlorinated biphenyls (PCBs)	zero	0.0005	Skin changes; thymus gland problems; immune deficiencies; reproductive or nervous system difficulties; increased risk of cancer	Runoff from landfills; discharge of waste chemicals
Pentachlorophenol	zero	0.001	Liver or kidney problems; increased risk of cancer	Discharge from wood preserving factories

Picloram	0.5	0.5	Liver problems	Herbicide runoff
Simazine	0.004	0.004	Problems with blood	Herbicide runoff
Styrene	0.1	0.1	Liver, kidney, and circulatory problems	Discharge from rubber and plastic factories; leaching from landfills
Tetrachloroethylene	zero	0.005	Liver problems; increased risk of cancer	Discharge from factories and dry cleaners
Toluene	1	1	Nervous system, kidney, or liver problems	Discharge from petroleum factories
Toxaphene	zero	0.003	Kidney, liver, or thyroid problems; increased risk of cancer	Runoff/leaching from insecticide used on cotton or cattle
2,4,5-TP (Silvex)	0.05	0.05	Liver problems	Residue of banned herbicide
1,2,4-Trichlorobenzene	0.07	0.07	Changes in adrenal glands	Discharge from textile finishing factories
1,1,1-Trichloroethane	0.20	0.2	Liver, nervous system, or circulatory problems	Discharge from metal degreasing sites and other factories
1,1,2-Trichloroethane	0.003	0.005	Liver, kidney or immune system problems	Discharge from industrial chemical factories
Trichloroethylene	zero	0.005	Liver problems; increased risk of cancer	Discharge from petroleum refineries
Vinyl chloride	zero	0.002	Increased risk of cancer	Leaching from PVC pipes; discharge from plastic factories
Xylenes (total)	10	10	Nervous system damage	Discharge from petroleum factories; discharge from factories

Radionuclides	MCLG¹ (mg/L)²	MCL or TT¹ (mg/L)²	Potential Health Effects from Ingestion of Water	Sources of Contaminant in Drinking Water
Alpha particles	none ⁷ as of 12/08/03: zero	15 picocuries per liter (pCi/L)	Increased risk of cancer	Erosion of natural deposits

Beta particles and photon emitters	none ⁷ as of 12/08/03: zero	4 millirems per year	Increased risk of cancer	Decay of natural and man-made deposits
Radium 226 and Radium 228 (combined)	none ⁷ as of 12/08/03: zero	5 pCi/L	Increased risk of cancer	Erosion of natural deposits
Uranium	as of 12/08/03: zero	as of 12/08/03: 30 ug/L	Increased risk of cancer; kidney toxicity	Erosion of natural deposits

Notes

¹ Definitions:

Maximum Contaminant Level (MCL) - The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to MCLGs as feasible using the best available treatment technology and taking cost into consideration. MCLs are enforceable standards.

Maximum Contaminant Level Goal (MCLG) - The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety and are non-enforceable public health goals.

Maximum Residual Disinfectant Level (MRDL) - the highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

Maximum Residual Disinfectant Level Goal (MRDLG) - The level of drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

Treatment Techniques - A required process intended to reduce the level of a contaminant in drinking water.

²Units are in milligrams per liter (mg/L) unless otherwise noted. Milligrams per liter are equivalent to parts per million.

³EPA's surface water treatment rules require systems using surface water or ground water under the direct influence of surface water to: (1) disinfect their water; and (2) filter their water or meet criteria for avoiding filtration so that the following contaminants are controlled at the following levels:

- *Cryptosporidium*: (as of January 1, 2002) 99% removal/inactivation
- *Giardia lamblia*: 99.9% removal/inactivation
- Viruses: 99.99% removal/inactivation

- *Legionella*: No limit, but EPA believes that if *Giardia* and viruses are removed/inactivated, *Legionella* will also be controlled.
- Turbidity: At no time can turbidity (cloudiness of water) go above 5 nephelometric turbidity units (NTU); systems that filter must ensure that the turbidity can go no higher than 1 NTU (0.5 NTU for conventional or direct filtration) in at least 95% of the daily samples in any month. As of January 1, 2002, turbidity may never exceed 1 NTU, and must not exceed 0.3 NTU in 95% of daily samples in any month.
- HPC: No more than 500 bacterial colonies per milliliter.

⁴ No more than 5.0% samples total coliform-positive in a month. (For water systems that collect fewer than 40 routine samples per month, no more than one sample can be total coliform-positive). Every sample that has total coliforms must be analyzed for fecal coliforms. There may not be any fecal coliforms or *E. coli*.

⁵ Fecal coliform and *E. Coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Disease-causing microbes (pathogens) in these wastes can cause diarrhea, cramps, nausea, headaches, or other symptoms. These pathogens may pose a special health risk for infants, young children, and people with severely compromised immune systems.

⁶ Although there is no collective MCLG for this contaminant group, there are individual MCLGs for some of the individual contaminants:

- Trihalomethanes: bromodichloromethane (zero); bromoform (zero); dibromochloromethane (0.06 mg/L). Chloroform is regulated with this group but has no MCLG.
- Haloacetic acids: dichloroacetic acid (zero); trichloroacetic acid (0.3 mg/L). Monochloroacetic acid, bromoacetic acid, and dibromoacetic acid are regulated with this group but have no MCLGs.

⁷ MCLGs were not established before 1986 Amendments to the Safe Drinking Water Act. Therefore, there is no MCLG for this contaminant.

⁸ Lead and copper are regulated by a Treatment Technique that requires systems to control the corrosiveness of their water. If more than 10% of tap water samples exceed the action level, water systems must take additional steps. For copper, the action level is 1.3 mg/L, and for lead is 0.015 mg/L.

⁹ each water system must certify, in writing, to the state (using third-party or manufacturer's certification) that when acrylamide and epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed the levels specified, as follows:

- Acrylamide=0.05% dosed at 1 mg/L (or equivalent)
- Epichlorohydrin=0.01% dosed at 20mg/L (or equivalent)

405 Secondary Drinking Water Standards: The [name of Tribal agency] may prescribe controls including water purification systems for contaminants in drinking water that primarily affect the aesthetic qualities (such as taste, color and smell) relating to the public acceptance of drinking water. Such secondary regulations should be guided by any national secondary drinking water regulations, but may vary from any non-mandatory federal guidelines.

A. National Secondary Drinking Water Regulations - National Secondary Drinking Water Regulations (NSDWRs or secondary standards) are non enforceable guidelines regulating contaminants that may cause cosmetic effects (such as skin or tooth discoloration) or aesthetic effects (such as taste, odor or color) in drinking water. EPA recommends secondary standards to water systems but does not require them.

Contaminant	Secondary Standard
Aluminum	0.05 to 0.2 mg/L
Chloride	250 mg/L
Color	15 (color units)
Copper	1.0 mg/L
Corrosivity	noncorrosive
Fluoride	2.0 mg/L
Foaming Agents	0.5 mg/L
Iron	0.3 mg/L
Manganese	0.05 mg/L
Odor	3 threshold odor number
pH	6.5-8.5
Silver	0.10 mg/L
Sulfate	250 mg/L

Total Dissolved Solids	500 mg/L
Zinc	5 mg/L

406 Inspections

The [name of Tribal agency] or a designated representative shall:

- A. Make such investigations and inspections as are necessary to ensure the compliance of public water systems with this Ordinance and other applicable laws, decisions, orders, rules or other actions taken pursuant to this Ordinance.
- B. Have the right to enter the property of any public water system for the purpose of inspecting and investigating the sanitary condition of the public water system, the quality of the water and compliance with applicable Tribal law. This right shall include the right to review and copy the records required to be established and maintained by this Ordinance.
- C. Except in an emergency, as determined by the [name of Tribal agency], notify and permit the public water system owner or operator to be present when an inspection or investigation is being conducted. The [name of Tribal agency] is authorized to utilize the services of the United States Indian Health Service or appropriate tribal departments to ensure that necessary inspections are performed, to coordinate its activities with those agencies or departments and to rely upon competent inspections and investigations performed by those agencies or departments.

407 Violations

- A. Use of Lead Pipes, Solder and Flux - It shall be unlawful for any person to use any pipe, solder or flux used in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system that is not lead-free. This subsection shall not apply to leaded joints necessary for the repair of cast iron pipes.
- B. Tampering with Public Water Systems - It shall be unlawful to tamper or attempt or threaten to tamper with a public water system. Any person who tampers or attempts or threatens to tamper with a public water system may be subject to civil and/or criminal fines.
- C. Other Violations - No person shall violate any conditions of any variance, exemption, permit or order, including cease and desist orders and orders to comply, decisions, rules or any other actions taken pursuant to this Ordinance. Upon adoption of regulations requiring a permit, no person shall operate or construct a public water system unless said person obtains a permit from [name of Tribal agency].

408 Laboratory Requirements

The Tribe adopts the certified laboratory lists maintained by the USEPA or the State of California, as they may be amended from time to time. Public water system owners or operators are required to use a certified laboratory from such lists in contracting for laboratory services. The [name of Tribal agency] may maintain a service contract with one or more certified laboratories to meet this requirement.

409 Record Keeping

A public water system owner or operator shall retain, on the premises or at a convenient location near the premises of the public water system, the following records:

- A. Records of microbiological analyses made pursuant to this Ordinance shall be kept for not less than five (5) years. Records of chemical analyses made pursuant to this Ordinance shall be kept not less than ten (10) years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:
 - 1. The date, place and time of sampling, and the name of the person who collected the sample;
 - 2. Identification of the sample as to whether it was routine distribution system sample, check sample, raw or processed water sample or other special purpose sample;
 - 3. Date of analysis;
 - 4. Laboratory and person responsible for performing analysis;
 - 5. The analytical technique or method used; and
 - 6. The results of the analysis
- B. Records of actions taken by the public water system owner or operator to correct violations of this Ordinance shall be kept for a period of not less than three (3) years after the last action taken with respect to the particular violation involved.
- C. Copies of any written reports, summaries or communication relating to sanitary surveys of the system conducted by the system itself, by a private consultant or by an tribal, state or federal agency, shall be kept for a period of not less than ten (10) years after completion of the sanitary survey involved.
- D. Records concerning a variance or exemption to the system shall be kept for a period ending not less than five (5) years following the expiration of such variance or exemption.

410 Reporting Test and Analyses Results

- A. It shall be the duty of each public water system owner or operator to ensure that copies of all tests and analyses performed on each public water system, pursuant to the requirements of the Primary Drinking Water Regulations and other applicable tribal and federal law, are made available to the [name of Tribal agency], on a timely basis, for inclusion in such files.
- B. Except where a shorter period is specified in this Ordinance, each public water system owner or operator shall report to the [name of Tribal agency] the results of any test, measurement or analysis required by this Ordinance within:
 - 1. The first ten (10) days following the month in which the result is received; or
 - 2. The first ten (10) days following the end of the monitoring period required by the [name of Tribal agency], whichever is shortest.
- C. The public water system owner or operator shall report to the [name of Tribal agency] within 48 hours any violation of a primary drinking water regulation (including failure to comply with monitoring requirements) set forth in this Ordinance.
- D. The public water system owner or operator is not required to report analytical results to the [name of Tribal agency] in cases where a USEPA-approved laboratory performs the analysis and reports the results to the [name of Tribal agency].
- E. The public water system owner or operator shall, within ten (10) days of completion of each public notice requirement by this Ordinance, submit to the [name of Tribal agency] a representative copy of each type of notice distributed, published, posted and/or made available to the media or to persons served by the system.
- F. The [name of Tribal agency] may request from the public water system owner or operator all pertinent information. The public water system owner or operator shall submit to the [name of Tribal agency], within the time stated in the request, copies of any records required by this Ordinance to be maintained and copies of any documents which the [name of Tribal agency] is entitled to inspect pursuant to this Ordinance.

411 General Public Notification Requirements

- A. Each owner or operator of a public water system shall give notice to the persons served by it whenever the public water system:
 - 1. Fails to comply with an applicable maximum contaminant level or treatment technique, as specified in the regulations promulgated under this Ordinance;
 - 2. Fails to limit fluoride concentrations to less than 2.0 mg/l;
 - 3. Fails to comply with an applicable testing procedure established by this Ordinance;
 - 4. Is granted a variance or exemption from an applicable maximum contaminant

- level;
5. Fails to comply with a schedule prescribed pursuant to such variance or exemption; or
 6. Fails to perform any monitoring required by this Ordinance.

COMMENTARY

A community water system is a type of public water system that specifically services at least 25 residents.
--

- B. If a community water system has violated an applicable maximum contaminant level, the public water system owner or operator shall notify the public of such violation in addition to the notification required hereunder, as follows:
1. By publication on not less than three (3) consecutive days in a newspaper or newspapers of general circulation in the area served by the system. Such notice shall be completed within fourteen (14) days after the public water system owner or operator learns of the violation.
 2. By furnishing a copy of the notice to the radio and television stations serving the area served by the system. Such notice shall be furnished within seven (7) days after the public water system owner or operator learns of the violation.
 3. The requirements of paragraph (2) of this subsection may be waived by the [name of Tribal agency] if the [name of Tribal agency] determines that the violations have been corrected promptly after discovery, the causes of the violation have been eliminated, and there is no longer a risk to public health.
- C. In addition, in the case of a community water system and with respect to all violations listed above, and the grant of variances and exemptions, the owner or operator of the system shall notify the users of the water system as soon as possible and in any event within three (3) months after a violation or grant of an exemption or variance. The notification shall be by any means necessary to ensure that all users are notified of the problem. This may require the house-to-house distribution of handouts in cases where inclusion with monthly utility bills is not practical. Such notice shall be repeated at least once every three (3) months as long as the violation or the variance or exemption remains in effect.
- D. Customers of a community water system must be notified by the owner or operator of the public water system in question every three (3) months when drinking water concentrations for fluoride exceed 2.0 mg/l. The notification must consist of any means necessary to make users aware of the problem. The notice must also be

mailed on a quarterly basis to tribal and federal public health officials and published in the local newspaper(s). Continued notification is desirable to alert new users who may begin using the system. The exact form and manner of such notice shall be prescribed by the [name of Tribal agency] as may be necessary to ensure adequate notice.

- E. In the case of a non-community water system, the public water system owner or operator shall give notice by continuous posting of any violation of an applicable maximum contaminant level or of the granting of a variance or exemption from any such level to the persons served by the system as long as the violation or variance or exemption continues. The form and manner of such notice shall be prescribed by the [name of Tribal agency], and shall ensure that the public using the system is adequately informed of the violation or the variance or exemption.
- F. Notice given pursuant to this section other than that otherwise specified shall be written in a manner reasonably designed to inform fully the users of the system. The notice shall be conspicuous and shall not use unduly technical language, unduly small print or other methods which could frustrate the purpose of the notice. The notice shall disclose all material facts regarding the subject, including the nature of the problem, and when appropriate, a clear statement that a primary drinking water regulation has been violated and preventive measures that should be taken by the public, such as the necessity for seeking alternative water supplies. Notices may include a balanced explanation of the significance or seriousness to the public health of the subject of the notice, a fair explanation of steps taken by the system to correct any problem and the results of any additional sampling.
- G. Notice to the public required by this section may be given by the [name of Tribal agency] on behalf of the public water system owner or operator, where, in the [name of Tribal agency]'s discretion, this is warranted.
- H. In any instance in which notification by mail or other suitable means is required by this section but notification by newspaper, radio or television stations is not required by this section, the [name of Tribal agency] may nevertheless require the owner or operator of a public water system to provide notification by newspaper and to radio and television stations when circumstances make more immediate or broader notice appropriate to protect the public's health.
- I. Any person who violates this section shall be subject to a civil penalty not to exceed \$25,000.

412 Public Notification Requirements for Lead

Each public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from the lead content in the construction materials of the public water distribution system or the corrosivity of the water supply sufficient to cause leaching of lead.

Notice shall be provided in such manner and form as may be reasonably required by the [name of Tribal agency]. Notice under this section shall be provided notwithstanding the absence of a violation of any other provision of this Ordinance.

413 Emergency Water Plan

Each public water system owner or operator shall develop an emergency water plan and submit a copy to the [name of Tribal agency] for review within 180 days after the enactment of this Ordinance. An emergency water plan is a plan for the provision of alternative safe drinking water in emergencies. The [name of Tribal agency] shall review and comment on the emergency water plan and notify the public water system owner or operator of its determination within ninety (90) days after having received the emergency water plan. The public water system owner or operator shall incorporate the changes or modifications, if any, recommended by the [name of Tribal agency].

Section 5 - Certification of Operators of Drinking Water Supply Facilities

501 Committee for Certification of Operators of Water Supply Treatment Facilities

There will be created an advisory committee for certification of operators of water supply treatment facilities to insure the proper management, operation and maintenance of water supply treatment facilities. At least one member of the committee shall be a registered certified professional engineer engaged in the practice of water supply engineering.

COMMENTARY
The Tribe will need to determine how many people should serve on the Committee, the length of their terms, and whether the terms should be staggered. It is suggested that at least one of the other Committee members have experience operating a public water supply treatment facility.

502 Duties of the Advisory Committee

The Advisory Committee shall:

- A. Recommend to the [name of Tribal agency] a classification of all water supply treatment facilities using surface water or groundwater under the direct influence of surface water as determined by the [name of Tribal agency] as to their size and type and recommend specifications for certification of operators of each class of water supply treatment facilities.
- B. Recommend to the [name of Tribal agency] based on examination, and from the applicant's training and experience, the class of certificate, if any, he/she should be

issued. Examinations shall be held at least once each year at a time and place designated by the [name of Tribal agency].

- C. Make recommendations to the [name of Tribal agency] on the issuance of a non-renewable provisional certificate to an individual where the Advisory Committee deems necessary; provided, however, that any individual receiving a provisional certificate shall pass the examination and meet other requirements for such position within one (1) year after issuance of such certificate.
- D. Keep records of its proceedings and all applications for certification.
- E. Encourage all operators to attend classes, seminars and/or other educational programs periodically to keep abreast of changes and advances in the fields of water supply treatment and management.

503 Certification Process

A person who desires to be certified as an operator of a drinking water supply facility shall file with the Advisory Committee an application on a form to be furnished by the Advisory Committee and signed under oath. If the application is accepted, the [name of Tribal agency] shall issue a certification, which shall expire at the end of the calendar year and may be renewed from year to year thereafter.

504 Definitions as Used in This Section

- A. “Operator” means an individual who is responsible for one (1) or more mechanical treatment units, processes or other important functions at a water supply treatment facility.
- B. “Superintendent” means the individual operator who is responsible for the management, operation and maintenance of a water supply treatment facility during all working shifts at the facility and who shall hold a certificate equal to the grade or classification of the water treatment facility. It does not apply to any official who does not work at the water supply treatment facility as an operator.
- C. “Assistant superintendent” means the operator who is responsible for the management, operation and maintenance of a water supply treatment facility in the absence of the superintendent and who shall have a certificate equal to the grade or classification of the water supply treatment facility.
- D. “Water supply treatment facility” means an arrangement of devices, equipment and structures constructed and/or installed for the purpose of treatment of water to be supplied to the public.
- E. “Certificate” means a certificate of competency issued by the [name of Tribal agency] for certification of operators of drinking water supply facilities to an individual to operate one or more specified classes of water supply treatment facilities.

505 Mandatory Certification of Public Water Supply Operator

It shall be unlawful for any public water supply system using surface water or groundwater under the direct influence of surface water as determined by the [name of Tribal agency] to supply water for human consumption unless the treatment of such water is under the supervision of a superintendent or assistant superintendent who is responsible for the management, operation and maintenance of a water supply treatment facility during all working shifts at the facility and who shall hold a certificate equal to the grade or classification of the water supply treatment facility, established by this section or unless a temporary emergency certification has been issued by the [name of Tribal agency]. The Advisory Committee shall advise the [name of Tribal agency] on the need for individual emergency certifications for a duration of not more than six (6) months.

506 Certification and Revocation

The Advisory Committee shall advise the [name of Tribal agency] on the following:

- A. Upon satisfactory fulfillment by an applicant of the provisions of this section, the [name of Tribal agency] shall issue a suitable certificate designating competency. This certificate shall expire at the end of the calendar years and may be renewed from year to year thereafter. The certificate shall indicate the class of treatment facility for which the operator is qualified. The certificate for the superintendent and assistant superintendent shall be prominently displayed in the office of the water treatment facility.
- B. Certificates may be issued, upon application, without examination, in a comparable classification to any individual who holds a certificate issued by any state, territory or possession of the United States.
- C. The [name of Tribal agency] may revoke the certificate of an operator when it is found after such an individual has been granted a hearing that he/she performed his/her duties in a manner that produced a supply that is out of compliance with this Ordinance or that he/she has practiced fraud or deception; or that reasonable care, judgment or the application of his/her knowledge or ability was not used in the performance of his/her duties or that an individual is incompetent or unable to perform his/her duties properly.

Section 6 - Permit and Inspection Program

601 Permits

- A. Permits Required - No person shall operate or construct a public water system on the [Reservation/Rancheria] without first obtaining a permit from the [name of Tribal agency].
- B. Emergency Powers of Tribe - Nothing in any permit shall ever be construed to prevent or limit the application of any emergency power of the Tribe.

602 Permit Application; Hearing; Fees

A. Contents of Application - Permit applications will include the following information:

1. Identification and address of owner and operator of the public water system;
2. Location of the water source that will be used to supply the public water system and whether that source is surface water or groundwater;
3. Location of water treatment facility and type of water treatment the facility will use (filtration and/or disinfection);
4. Location and character of any potential pollution sources that could adversely affect the water quality of the system, including the location of sewage treatment plants, solid and/or hazardous waste disposal sites;
5. The number of service connections anticipated;
6. The nature of the services to be provided by system (i.e., storage, collection, treatment and/or distribution);
7. Equipment and procedures required for mandatory monitoring as well as record-keeping and reporting requirements;
8. Procedures to be followed by tribal personnel for entering and inspecting the premises;
9. Restrictions on the transfer of the permit;
10. Emergency water plan information; and
11. Duration of permit and renewal procedures.

B. Required Consent - All permit applications shall contain the following statement to which the applicant must agree and subscribe for the application to be complete and as a condition precedent to the issuance of any permit:

“Applicant hereby consents to the jurisdiction of [name of Tribe] in connection with all activities conducted pursuant to or in connection with any permit issued pursuant to this application or to which the provisions of the [name of Tribe] Safe Drinking Water Ordinance otherwise apply. This consent is without reservation or limitation and is intended to be construed broadly to the fullest extent permitted by law, notwithstanding any prior waiver of jurisdiction or covenant not to regulate or otherwise exercise jurisdiction over Applicant or any activity conducted by, for or on behalf of Applicant. This consent shall be effective whether or not a permit is issued or is in effect, and may not be withdrawn by Applicant. This consent shall extend to and be binding upon all successor, heirs, assigns, employees and agents, including contractors and subcontractors, of Applicant.”

COMMENTARY

This consent is intended to comply with the “consensual agreement” prong of the *Montana* and *Strate* cases (see §102(B) above). It helps the Tribe show that the Applicant knew that the Tribe intended to assert jurisdiction over the Applicant with respect to the application and related activities, such as the operation of the public water system.

Applicant shall include the foregoing statement as a term and condition of any agreement it executes for services to be performed or goods to be provided within the [Reservation/Rancheria] in connection with any permit issued under this Ordinance, and each party to any such agreement must agree and subscribe to said statement, substituting the name of the party for “Applicant” as appropriate and substituting the phrase “this agreement” in place of the phrase “any permit issued pursuant to this application.” Failure by Applicant to include such a statement, or of any party to agree and subscribe to such statement, shall render the contract or other agreement void and unenforceable and shall subject Applicant to civil penalty in accordance with this Ordinance.

- C. Application Under Oath - Each applicant shall sign the permit application under oath, certifying the truth and accuracy of the information contained in the permit application.
- D. Fees - A processing fee, established by the [name of Tribal agency] shall be paid to the Tribe at the time of filing. These fees shall be used for costs associated with administering this Ordinance.
- E. Public Notice and Hearing on Permit Application - Public notice of every complete application for a permit to construct and/or operate a public water system shall be circulated in a manner designed to inform interested and potentially interested persons of the application and of the proposed determination to issue or deny a permit. Procedures for the circulation of public notice shall be established by the Tribe and shall include at least the following:
 - 1. Notice shall be circulated within the geographical areas to be serviced by the public water system.
 - 2. Notice shall be mailed to any person or group upon request.
 - 3. The Tribe shall promulgate such regulations as are necessary and appropriate to provide an opportunity for public hearing, when appropriate, prior to granting or denying a permit, variance or exclusion.
- F. Denial of Permit - Upon denial of a permit, the [name of Tribal agency] shall give written notice of the denial to the applicant and any other person who has requested in writing that such notice be given. Notice to the operator shall be accompanied by a form request for re-hearing.

An operator who desires an appeal of the denial of a permit shall file with the [name of Tribal

agency] a written request for a re-hearing before the agency within fifteen (15) days after receiving notice of the denial of the permit. The hearing procedures will be the same as the “Enforcement Program/Administrative Procedures” set out herein.

603 Variances

- A. The [name of Tribal agency] may grant one or more variances from an applicable Primary Drinking Water Regulation to one or more public water systems which, because of characteristics of the raw water sources that are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation. A variance may only be issued to a system after the system’s application of the best technology, treatment techniques or other means, as promulgated by the Administrator pursuant to §1415 of the SDWA. Before the [name of Tribal agency] may grant a variance under this Ordinance, the [name of Tribal agency] must find that the variance will not result in an unreasonable risk to health. If the [name of Tribal agency] grants a public water system a variance under this Ordinance, the [name of Tribal agency] shall prescribe, at the time the variance is granted, a schedule for:
1. Compliance (including increments of progress) by the public water system with each contaminant level requirement with respect to which the variance was granted; and
 2. Implementation by the public water system of such additional control measures as the [name of Tribal agency] may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.
 - a. The [name of Tribal agency] shall provide notice and opportunity for the public hearing on the schedule before such schedule may take effect. A notice given pursuant to the preceding sentence may cover the granting of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice. A schedule prescribed pursuant to this Ordinance for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable as the [name of Tribal agency] may reasonably determine.
- B. The [name of Tribal agency] may grant to one or more public water systems one or more variances from any provision of a primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of

the [name of Tribal agency] that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system. A variance granted under this Ordinance shall be conditioned on such monitoring and other requirements as the Administrator may prescribe.

- C. Before a variance proposed to be granted by the [name of Tribal agency] under this Ordinance may take effect, the [name of Tribal agency] shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The [name of Tribal agency] shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance and the basis for any findings required before granting the variance, and documentation of the need for the variance.
- D. The [name of Tribal agency] shall condition each public water system's variance granted under this Ordinance upon compliance by the public water system with the schedule prescribed pursuant to this Ordinance. Any schedule or other requirement on which a variance granted under this Ordinance is conditioned may be enforced as if such requirement were part of a primary drinking water regulation.
- E. Each schedule prescribed pursuant to this Ordinance shall be deemed approved by the Administrator pursuant to §1415(a) of the SDWA unless the variance for which it was prescribed is revoked by the Administrator or the schedule is revised by the Administrator under such section.
- F. If an application for a variance is made, the [name of Tribal agency] shall act upon such application within sixty (60) days of its submission.
- G. For purposes of this Ordinance, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with §1401(1)(C)(ii) of the SDWA) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of §1412(b)(3) of the SDWA.

804 Exemptions

COMMENTARY

A *variance* allows an owner to construct a new public water system that is not in compliance with the Ordinance. The justification for a variance is that the water source from which the system will obtain water cannot meet the requirements of maximum contaminant levels when the best available technology is applied. The Ordinance requires that the variance be issued only if the variance will not result in an unreasonable risk to human health. The Ordinance also requires that the owner agree to a compliance schedule to bring the water quality up to standards within a pre-determined time period.

An *exemption* is used to allow a public water system that was in compliance with the regulations before the effective date new restrictions were enacted by the Tribe or USEPA to continue operating. The Tribe can require the existing public water system to comply with the new regulations over a period of time via a compliance schedule.

NOTE: variances and exemptions must be approved by the Administrator of the USEPA.

- A. The [name of Tribal agency] may exempt any public water system from any requirement respecting a maximum contaminant level or any treatment technique requirement, or both, of an applicable primary drinking water regulation upon a finding that:
1. Due to compelling factors (which may include economic factors) the public water system is unable to comply with such contaminant level or treatment technique requirement;
 2. The public water system was in operation on the effective date of such contaminant level or treatment technique requirement or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system; and
 3. The granting of the exemption will not result in an unreasonable risk to human health.
- B. If the [name of Tribal agency] grants a public water system an exemption under this Ordinance, the [name of Tribal agency] may prescribe, at the time the exemption is granted, a schedule for:
1. Compliance (including increments of progress) by the public water system with each contaminant level requirement and treatment technique requirement with respect to which the exemption was granted; and

2. Implementation by the public water system of such control measures as the [name of Tribal agency] may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required. Before a schedule prescribed by the [name of Tribal agency] pursuant to this Ordinance may take effect, the [name of Tribal agency] shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.
- C. A schedule prescribed pursuant to this section for a public water system granted an exemption hereunder shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the [name of Tribal agency] may reasonably determine) but (except as provided herein):
1. In the event of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the national primary drinking water regulations promulgated under §1412(a) of the SDWA, not later than twelve (12) months after the enactment of the Safe Drinking Water Act amendments; and
 2. In the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the national primary drinking water regulations other than a regulation referred to in §1412(a) of the SDWA, twelve (12) months after the date of the issuance of the exemption.
- D. The final date for compliance provided in any schedule in the case of any exemption may be extended by the [name of Tribal agency] for a period not to exceed three (3) years after the date of the issuance of the exemption if the public water system establishes that:
1. The system cannot meet the standard without capital improvements which cannot be completed within the period of such exemption;
 2. In the case of a system which needs financial assistance for necessary improvements, the system has entered into an agreement to obtain such financial assistance;
 3. The system has entered into an enforceable agreement to become a part of a regional public water system; and
 4. The system is taking all practicable steps to meet the standard.
- E. In the case of a system which does not serve more than 500 service connections and

which needs financial assistance for the necessary improvements, an exemption granted above may be renewed for one or more additional two year periods if the system establishes that it is taking all practicable steps to meet the requirements of this Ordinance.

- F. Each public water system’s exemption granted by the [name of Tribal agency] under this Ordinance shall be conditioned upon compliance by the public water system with the schedule prescribed pursuant to this Ordinance. Requirements of each such schedule shall be enforceable by the [name of Tribal agency] under Tribal law. Any requirements of a schedule on which an exemption granted under this section is conditioned may be enforced under this Ordinance as if such requirement were part of a primary drinking water regulation.
- G. Each schedule prescribed pursuant to this Ordinance shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under §1416(d)(2) of the SDWA or the schedule is revised by the Administrator under such section.
- H. The [name of Tribal agency] will promptly notify the Administrator of the granting of any exemption under this section. Such notification shall contain the reasons for the exemptions (including the basis for the finding required by subsections (a)(3) of the SDWA, before the exemption may be granted) and document the need for the exemption.
- I. If an application for an exemption under this section is made, the [name of Tribal agency] shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.
- J. The [name of Tribal agency] shall make any revisions or revocation of exemptions or schedules that may be required by the Administrator, pursuant to the Administrator’s authority to review such exemptions or schedules under the SDWA.

COMMENTARY

Because the Tribal Environmental Protection Agency is responsible for enforcement of this Ordinance, everything outlined in this section constitutes administrative actions. If the Tribe has separate administrative procedures in place, this section should be worded so it is consistent with those administrative procedures.

Section 7 - Enforcement Program/Administrative Procedures

701 Enforcement Policy

It is the policy of the [name of Tribal Agency] to encourage informal, practical, result-oriented resolution of alleged violations and actions needed to prevent damage to [Reservation/Rancheria] resources or harm to the health, safety or welfare of the

[Reservation/Rancheria] population. It is also the policy of the [name of Tribal Agency], consistent with the principles of due process, to provide effective procedures for enforcement.

702 Enforcement Agency

The [name of Tribal Agency] shall be responsible for enforcing the provisions of this Ordinance. Specifically, the [name of Tribal Agency] shall conduct investigations when a complaint is received by the [names of Tribal agencies] or other Tribal agency believes that a violation of this Ordinance has occurred.

703 Enforcement Activities

Where a written and verified complaint shall be filed with the [name of Tribal Agency] and reviewed by the [name of Tribal Agency] alleging that, or where the [name of Tribal Agency(ies)] itself shall have cause to believe that, any person is violating any drinking water regulation or permit condition, the [name of Tribal Agency] shall cause a prompt investigation to be made.

704 Notice of Violation; Cease and Desist Order

If the [name of Tribal Agency] finds after an investigation pursuant to this Ordinance that a violation of any regulation or permit condition exists, the [name of Tribal Agency] shall promptly notify both the alleged violator and the [name of Tribe's governing body] in writing.

In the case of an apparent violation of this Ordinance, the [name of Tribal Agency] is authorized to issue a Notice of Violation to the person(s) apparently responsible for the violation, and, if the apparent violation occurred on property owned by a person other than the alleged violator, a Notice of Violation shall also be issued to the landowner.

In the case of a continuing violation or a threatened violation, the [name of Tribal Agency] is authorized to issue a Cease and Desist Order to prevent the violation from continuing or occurring.

Failure to comply with a Cease and Desist Order shall constitute a violation of this Ordinance. Both a Notice of Violation and a Cease and Desist Order may be issued for a single incident. A Notice of Violation will include a Summons to appear before the [name of Tribal Agency] at an enforcement hearing at a specified time and date, and shall advise the alleged violator that failure to appear may result in the imposition of civil penalties.

If a Cease and Desist Order is issued without an accompanying Notice of Violation, the Order will inform the recipient that failure to comply with the Order will constitute a violation of this Ordinance which will result in the issuance of a Notice of Violation and may result in the imposition of civil penalties.

705 Informal Conferences

The [name of Tribal Agency] shall afford the owner or operator of a public water system or his or her representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the [name of Tribal Agency] determines that there may be either imminent environmental damage to a [Reservation/Rancheria] resource or adverse impact upon the health, safety and welfare of the [Reservation/Rancheria] population. Informal conferences may be used at any stage in the enforcement proceedings, except that the [name of Tribal Agency] may refuse to conduct informal conferences with respect to any matter then pending before the [name of Tribal Agency] or [name of Tribal court].

706 Reports Required

The [name of Tribal Agency] shall keep written notes of the date and place of the conference, the persons in attendance, the subject matter discussed and any decisions reached with respect to further enforcement action.

707 Enforcement Hearings

If the owner or operator of a public water system and the [name of Tribal Agency] are unable to resolve the matter via an informal conference, the [name of Tribal Agency] is authorized to conduct adjudicatory hearings to determine if a violation of this Ordinance has occurred. In such a hearing the [designated official or agency], in cooperation with the [name of Tribal official] shall present the case to the [name of Tribal Agency] to establish that the person(s) charged has (have) committed a violation of this Ordinance. Any person so charged shall be entitled, at his or her own expense, to be represented by an attorney or other representative.

- A. Burden of Proof - The [designated official or agency] shall have the burden of proving that a violation of this Ordinance has occurred and that a person charged was responsible for the violation. The [name of Tribal Agency] shall rule that a violation of this Ordinance has occurred if it finds that the charges are supported by substantial evidence and that a preponderance of the credible evidence supports a finding that a violation has occurred.
- B. Enforcement Orders - Within thirty (30) days after the date of any enforcement hearing, the [name of Tribal Agency] shall issue a written decision. If the [Agency] determines that a violation has occurred and that the person(s) charged was (were) responsible for the violation, the [Agency]'s decision shall include an Enforcement Order.

708 Civil Penalties and Corrective Action

An Enforcement Order shall direct any person(s) found to have committed a violation of this Ordinance to take whatever corrective action the [name of Tribal Agency] deems appropriate under the circumstances. An Enforcement Order may impose civil penalties in accordance with a schedule of civil penalties prescribed in the [name of Tribal agency]'s rules. Alternatively, an Enforcement Order may impose civil penalties in the event that a person found to have committed a violation of this Ordinance does not take corrective action in accordance with the Order within a prescribed time frame. If a person who has been found to have committed a violation does not take corrective action within the prescribed time frame, an appropriate department or agency of the Tribal government may take the necessary corrective action, in which case the amount of any civil penalty shall be increased by twice the amount of the cost incurred by the Tribal department or agency in taking the corrective action.

COMMENTARY
<p>If there is no Tribal administrative procedure act or if the Tribal act does not establish procedures for such hearings, this section, or another section of this Ordinance, should establish minimum requirements for the Agency's rules in order to ensure that the Agency provides due process for all persons who are subject to its rulings. Due process, at a minimum, requires adequate notice to the person being charged with a violation of the Ordinance and an opportunity to present his or her side of the story.</p>

- A. Emergency Orders - Notwithstanding any other provision of this Ordinance, if the [name of Tribal Agency] determines that noncompliance with this Ordinance is presenting an imminent and substantial threat to the public health, welfare or environment and determines, in consultation with the Tribe's attorneys, that it is not practicable to assure prompt protection of the public health, welfare or environment of an administrative or judicial enforcement action under this section, the [name of Tribal Agency] may issue such orders as may be necessary to protect the public health, welfare or environment. Any such order shall be effective immediately upon issuance and shall remain in effect for a period not to exceed sixty (60) days.
- B. Revocation of Permit - Failure of any person to comply with any Enforcement Orders will result in an immediate revocation of his or her permit. In order to obtain a reinstatement of such permit, the person(s) against whom the Enforcement Order was issued must first demonstrate compliance with the Order and pay all outstanding penalties and then petition for reinstatement of the permit with the [name of Tribal Agency].

709 Judicial Enforcement

The [name of Tribal Court] shall have jurisdiction of all cases and controversies arising under this Ordinance.

- A. The [name of Tribal Agency] may request the [name of Tribe's governing body] to authorize the [name of Tribal Agency] to file an action in Tribal Court pursuant to this Ordinance for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties and clean up and administrative costs associated with the enforcement of this Ordinance (except that any suit against the Tribe or a Tribal department or agency shall be for injunctive relief only and not for penalties or other money damages), in any of the following instances:
1. Whenever a person has violated, or is in violation of, any provision of this Ordinance, including but not limited to a regulation, permit or order issued pursuant to this Ordinance;
 2. Whenever a person submits false information under this Ordinance or regulations promulgated under this Ordinance; or
 3. Whenever a person is creating an imminent and substantial endangerment to the public health, welfare, environment or cultural resources of the Tribe, in which case the [name of Tribal Agency] shall pursue injunctive relief but not the assessment of penalties, unless the endangerment is caused by a violation, as specified in paragraphs (1) and (2) above.
- B. Any person who in violation of this Ordinance emits pollutants into the water within the boundaries of the [Reservation/Rancheria] shall be liable for all costs associated with or necessary to clean up, abate or close the source and restore the quality of the water of the [Reservation/Rancheria] to its condition as it existed immediately prior to the emissions.

710 Special Provisions for Tribal Departments and Agencies

In any case in which the [name of Tribe's governing body] or any Tribal agency or department is alleged to have violated the terms and conditions of a permit, or to have conducted activities without a permit, the [name of Tribal agency] shall bring the matter to the attention of [name of head of Tribal governing body] who shall consider taking action to ensure compliance with this Ordinance. If the matter cannot be resolved informally, the [name of Tribal agency] shall conduct an enforcement hearing for the purpose of making factual determinations and issuing a decision recommending a course of corrective action if necessary.

Section 8 - Appeals

801 Judicial Review

Any person who is aggrieved by the issuance or denial of a permit without respect to whether that person, corporation or other entity is a party to such permit application, or who is the subject of an Enforcement Order, may file an appeal with the Tribal Court. The Court is authorized to hear such appeal.

Section 9 - Other Provisions

901 Severability

If any provision of this Ordinance, or the application thereof, is held invalid, the remainder of this Ordinance, or applications of such provisions, shall not be affected.

902 Amendments

The [name of Tribe’s governing body] reserves the sole right to amend this [name of Ordinance] and to issue rules effecting all aspects of the Ordinance. Provisions in the Ordinance allow the [name of Tribe’s governing body] full flexibility to enact measures which will benefit the Tribe. The inclusion of these provisions does not necessitate their implementation, but allows the [name of Tribe’s governing body] flexibility to alter the Ordinance according to the evolving needs of the [name of Tribal community].

903 Effective Date

This Ordinance shall become effective on _____ [date].

Section 10 - Sovereign Immunity Preserved

Nothing in this Ordinance is intended to, nor should be interpreted as a waiver of the Tribe’s sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages from the Tribe.

APPENDIX A

PERMIT APPLICATION FORM

APPENDIX B

List of Potential Sources of Groundwater Contamination

Airports-Commercial (maintenance & repair, fuel storage)	Metal & Drum Cleaning/Reconditioning
Automotive Repair Shops	Paint Shops
Automotive Body Shop	Photographic Processors
Boat Builders and Refinishers	Printers, Blueprint Shops
Bus and Truck Terminals	Railroad yards
Chemical Manufacturers	Repair Shops (engines, appliances, etc.)
Dry Cleaners	Rust Proofers
Dumps	Service Stations (gas station)
Fuel Oil Distributors (product storage, equipment maintenance and storage)	Waste Storage, Treatment, & Recycling (hazardous & non-hazardous waste)
Furniture Strippers, Refinishers	Military facilities (past & present)
Industrial Manufacturers	Nursing Homes
Junkyards and Salvage Yards	Pipelines (oil & sewer)
Agricultural Related Activities (pesticide & fertilizer storage & application, machinery maintenance & fueling)	Prisons
Asphalt, Coal, Tar & Concrete Companies	Research Laboratories
Car Dealers	Road Salt Storage
Dredge Disposal Sites	Schools, Colleges & Trade Centers
Medical Facilities (hospitals clinics, laboratories)	Wastewater Treatment Plants (past or present sludge disposal)
Animal Care and Holding Areas (stables, kennels & pet shops)	Wood Preserves
Auto Parts Stores	Residential Development (lawn care & septic systems)

Beauty Salons	Restaurants & Taverns
Construction Sites	Retail Shopping Centers, Malls
Funeral Homes & Cemeteries	Sawmills
Golf Courses	Storm-water Management Facilities (leaching systems)
Hotels & Motels	Transmission Line Rights of Way
Land Application of Sewage Sludge	Transportation Corridors (road deicing, materials transport)
Laundromats	Utility Substations/Transformers
Nurseries	Waste Transfer Stations
Landfills	Machine Shops
Food Processors (meat packers, dairies, bakeries)	Sand & Gravel Mining Operations