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# MODEL TRIBAL WATER QUALITY 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 Creation of Position of Tribal Water Quality Control Officer; Establishment of Riparian Review Committee
  - 303 Powers and Duties of Tribal Water Quality Control Officer
  - 304 Riparian Review Committee
  - 305 Enforcement
4. Antidegradation Policy and Implementation Plan
  - 401 Antidegradation Policy
  - 402 Implementation Plan
5. Surface Water Quality Standards
  - 501 Designated Uses
  - 502 Use Classification Key
  - 503 General Water Quality Criteria
  - 504 Managing Discharges Attributable to Point and Nonpoint Sources
  - 505 Water Quality Criteria for Toxic Pollutants
  - 506 Aquatic Life Criteria
  - 507 Biological Criteria
  - 508 Wildlife Criteria
  - 509 Wetlands Criteria
  - 510 Modification of Standards to Reflect Attainability
  - 511 Revision of Standards and Errors
6. Sampling and Analysis
  - 601 Sample Collection, Preservation and Analysis to Determine Water Quality and Maintain Standards
  - 602 Bacteriological Surveys
  - 603 Sampling Procedures
7. Notice of Discharges
  - 701 Notice of Discharge
8. Permit and Inspection Program
  - 801 Permits Required

- 802 Categorical Exclusions
- 803 Issuance of Permit; Final Environmental Determination
- 804 Monitoring and Records
- 9. Enforcement Program/Administrative Procedures
  - 901 Enforcement Policy
  - 902 Enforcement Agency
  - 903 Enforcement Activities
  - 904 Notice of Violation; Cease and Desist Order
  - 905 Informal Conferences
  - 906 Reports Required
  - 907 Enforcement Hearings
  - 908 Civil Penalties and Corrective Action
  - 909 Judicial Enforcement
  - 910 Special Provisions for Tribal Departments and Agencies
- 10. Appeals
  - 1001 Judicial Review
- 11. Other Provisions
  - 1101 Severability
  - 1102 Sovereign Immunity Preserved

**MODEL TRIBAL WATER QUALITY ORDINANCE**

**Section 1 - Short Title, Findings and Purpose**

**101 Short Title:** This Ordinance shall be known as the **Tribal Water Quality Ordinance** of the [name of Tribe].

<b>COMMENTARY</b>
<b>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.</b>

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

(A) Since [time immemorial], the [name of each of the significant water bodies on and near the Tribe’s lands], its tributary streams, the streambeds thereof and the riparian areas adjacent thereto, have been natural resources of profound significance to the [name of the Tribe] and the [name] people have used these resources for cultural, ceremonial, religious, fishery, seasonal residential and other purposes fundamental to the Tribe’s way of life.

<b>COMMENTARY</b>
<b>The phrase “since time immemorial” could be challenged if the Tribe has been moved or terminated and re-recognized. Consider the Tribe’s particular history before adopting this phrase.</b>

(B) The people of [name of Tribe] have a primary interest in the protection, control and conservation of the water resources which flow into and through the [name of Tribe’s reservation or rancheria], and the quality of such waters must be protected to insure the health, economic, aesthetic and cultural well-being of the [name] People.

<b>COMMENTARY</b>
<b>The term <i>primary</i> in this context means that the Tribe has a fundamental interest in protecting the water on the Reservation or Rancheria, which is higher than the interest of state, county or federal governments.</b>
<b>The term <i>aesthetic</i> refers to the overall beauty of the Tribe’s lands.</b>

- (C) Various sites along the [name of each significant water body] are or may be contaminated with toxic or hazardous materials as a result of previous land use activities, [many of which were authorized without adequate review of impacts or without adequate disclosure to the Tribe of the potential for such impacts,] and the contamination at these sites may pose significant risks to water quality and public health if not properly contained and cleaned up.

**COMMENTARY**

**The text “many of which were authorized without adequate review of impacts or without adequate disclosure to the Tribe of the potential for such impacts” should be considered in terms of the Tribe’s history to determine if this language is appropriate for the Tribe.**

- (D) The [name of Tribal governing body] hereby finds that wellhead protection is a proactive approach to managing public groundwater supplies focusing on preventing contaminants from entering recharge areas to public water supply well. Protecting wellheads involves: knowing the location and boundaries of the recharge area; identifying any potential sources of contamination in the recharge area; controlling those potential sources to prevent the release of contaminants; and, controlling future land use in the recharge area to prevent activities which are known to threaten groundwater quality.

**COMMENTARY**

**The term *wellhead* refers to the area both above the ground and underground that surrounds a well which is used for drinking water.**

**The term *recharge area* means the place where rainwater, underground rivers/streams or other water sources flow into the water supply on a seasonal basis so as to replenish the well.**

- (E) 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 on-Reservation pollution discharges that affect fundamental Tribal interests and public health and safety, including when such activities are conducted by non-members of the Tribe on privately owned land within the Reservation.

**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.**

- (F) Under 1988 amendments to the Clean Water Act, 33 U.S.C. §1377, Indian Tribes are entitled to be certified by the U.S. Environmental Protection Agency as authorized to exercise exclusive jurisdiction (Tribal primacy) over all on-Reservation surface and ground water quality matters, including over on-Reservation portions of waters, such as those of the [name of specific water bodies], that flow through other jurisdictions.
- (G) Regulation or elimination of all discharges of pollutants into the waters of the [name of Reservation or Rancheria] is necessary at this time in order to maintain the quality of those waters for their beneficial use by member of the [name of Tribe] and residents of the Reservation.
- (H) [Such protection of Reservation waters is not adequately provided for under existing legislation, and such protection will be furthered by the passage, adoption and implementation of this Ordinance.] **[OPTIONAL PROVISION]**

**COMMENTARY**

**This Section is a sample of the type of issues the Tribe may want to address. However, the Tribe should carefully consider the unique history and needs of the community when adopting the final language.**

- 103 Purpose:** The purpose of this Ordinance is to exercise comprehensive Tribal regulatory authority over all surface and groundwater matters, and to protect fundamental Tribal cultural, ceremonial, religious, fishery, seasonal residential, public health and safety and water quality issues by ensuring adequate drinking water, protecting beneficial uses, prohibiting all point source discharges and restricting non-point source discharges of pollutants within the exterior boundaries of the [name of Reservation or Rancheria].

## COMMENTARY

***Point source discharges* are discharges that can be traced to a particular pollution source, such as a refinery or mining operation that places a polluting substance into a body of water or channel that leads into a body of water on the Reservation or Rancheria.**

***Non-point source discharges* are pollutants that end up in the water supply but come from more than one source. For example, rain runoff can flow across several pieces of land and into a river, picking up pollution such as residual pesticides, oil on the roadway, etc.**

### 104 Authority and Scope:

Authority: This Tribal Water Quality 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 provisions of this Ordinance shall apply to all existing and proposed point and non-point pollution discharges into surface or ground waters, and to all activities which have the potential to affect cultural, ceremonial, religious, fishery, seasonal residential, public health and safety, water quality and other fundamental interests of the Tribe, including such activities conducted by non-members of the tribe or on privately owned lands. Activities to be regulated hereunder include but are not limited to:

- (A) Landfills and open dumps;
- (B) Storage of animal waste;
- (C) Automobile graveyards and junkyards;
- (D) Landfilling of sludge or septic system waste;
- (E) Individual, residential, industrial, commercial or agricultural sewage treatment facilities;
- (F) Individual, residential, industrial, commercial, fire protection or agricultural water control devices including but not limited to treatment facilities or systems, dams, reservoirs, ponds, pools, tanks, wells, pipelines, flumes, canals and intake or diversion systems;

- (G) Underground and above-ground liquid storage containers;
- (H) Surface and subsurface removal of mineral resources, overburden, rock or soil, including quarry operations (borrow pitting) for road surfacing or other uses;
- (I) All prospecting activities involving removal of soil or rock materials, including operations involving the reopening of existing mine pits, tunnels or quarries;
- (J) Sand and gravel operations;
- (K) Activities such as suction dredging, that have the potential to affect the riparian area, water quality or channel morphology;

<b>COMMENTARY</b>
<b>The term <i>riparian area</i> refers to land on the banks of a body of water, such as a river, lake or stream.</b>

- (L) Potential non-point source pollution problem areas including agricultural, mining, construction, urban runoff, silviculture, salt water intrusion, hydrological modification and residential activities;
- (M) Identified point source pollution problem areas such as, but not limited to, [name specific existing pollution sources on the Tribe’s lands];
- (N) Application of herbicide, insecticide or other pesticide or toxic materials or fertilizer for non-domestic use.

The provision of this Ordinance shall apply to all wellhead protection areas within the exterior boundaries of the Reservation, to all persons and businesses on the [name of Reservation/Rancheria], to all land, trust or fee, and to all activities in areas with the potential to affect water quality, public health and safety and other fundamental interests of the 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, enters into consensual relationships with the Tribe or its members, through commercial dealings, contracts leases or other arrangements. Such person’s discharge of pollutants into or other activities which affect the water quality of surface or ground waters 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.

<b>COMMENTARY</b>
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<b>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(E) above).</b>
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## Section 2 - Definitions

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

**“Aquifer”** means any geologic formation capable of yielding a significant amount of potentially recoverable water.

**“Beneficial uses”** means all lawful uses of waters identified in the [name of water quality control plan]. Uses may include but are not limited to domestic, commercial, industrial, agricultural, traditional, cultural and recreational, and uses by fish and wildlife for habitat or propagation.

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

**“Designated use”** means a use that is specified in water quality standards as a goal for a water body segment, whether or not it is currently being attained.

**“Existing uses”** means all uses actually attained in the water body on or after [date], whether or not they are explicitly stated as designated uses in the water quality standards or presently existing uses.

**“Hazardous materials”** means: 1) any substance that poses a threat to human health or the environment. Typical hazardous substances are toxic, corrosive, ignitable, explosive or chemically reactive. 2) Any substance name by the EPA to be reported if a designated quantity of the substance is spilled in the waters of the United States or if otherwise emitted into the environment.

**“Herbicide”** means any chemical compound designed to control or destroy plants, weeds

or grasses.

**“Historical uses”** means all uses that have historical significance for the [name of Tribe].

**“Insecticide”** means any compound designed or used to kill or control the growth of insects.

**“Impervious barrier”** means any material or structure on, above or below the ground that does not allow precipitation or surface water to penetrate directly into the underlying surface.

**“Mining”** means any activities designed for the extraction of minerals.

**“Mitigation”** means a measure taken to reduce adverse impacts on the environment.

**“Nonpoint source”** means any pollution sources which are diffuse and do not have a single point of origin or are not introduced into a receiving stream from a specific outlet.

**“Person”** means any individual, corporation, partnership, association, agency, municipality, commission or department, including the [name of Tribe] or other federally-recognized Tribal government.

**“Pesticide”** means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest. Also, any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

**“Point source”** means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, culvert, well, discrete fissures, containers, rolling stock, concentration animal feeding operation, vessel or other floating craft.

**“Pollutant”** means any substance that will alter the quality of the waters of the Reservation.

**“Potential uses”** means all uses attainable in the water body, whether or not they are explicitly stated as designated uses in the water quality standards or presently potential uses.

**“Quality of the water or waters”** means any chemical, physical, biological, bacteriological, radiological and other properties and characteristics of water which affect its use.

**“Reservation [or Rancheria]”** means all land, air and water located within the exterior boundaries of the [name of Reservation or Rancheria].

**“Riparian”** refers to land on the banks of a body of water, such as a lake, river or stream.

**“Toxic materials”** means any chemical or mixture that presents an unreasonable risk or injury to human health or the environment.

**“Recharge area”** means any area that collects precipitation or surface water and carries it to aquifers. Recharge areas may include areas designated as wellhead protection areas.

**“Variance”** means an authorized written permission for a delay or exception in the application of a given law, ordinance or regulation.

**“Waste”** includes waste water and any and all other substances, liquid, solid, gaseous, radioactive, heat laden, associated with human habitation, or of human or animal origin, or from any of man’s activities including producing, manufacturing or processing operation of whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal.

**“Waters of the Reservation [or Rancheria]”** or **“Reservation [or Rancheria] waters”** means any water, surface or underground, contained within, flowing through or bordering upon the [name of Reservation or Rancheria] or any portion thereof.

**“Water quality control plan”** is a document designating or establishing for the waters within a specified area: 1) beneficial uses to be protected; 2) water quality objectives; and 3) a program of implementation needed for achieving and maintaining water quality objectives.

**“Water quality criteria”** means specific levels of water quality which, if reached, are expected to render a body of water suitable for its beneficial use.

**“Wellhead protection area”** means the surface and subsurface area surrounding a water well or well field, supplying a domestic water system, through which contaminants are reasonably likely to move toward and reach such water well or well field.

### **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 Tribal Water Quality Ordinance.

**302 Creation of Position of Tribal Water Quality Control Officer; Establishment of Riparian Review Committee:** There is hereby created the position of Tribal Water Quality Control Officer. The Tribal 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 Water Quality Control Officer shall cooperate with the Riparian Review Committee, the U.S. EPA and other agencies of the federal government or the State of California, as necessary to carry out the intent of this Ordinance and implement the Tribal Water Quality Control Plan.

**303 Powers and Duties of Tribal Water Quality Control Officer:** The Tribal Water Quality Control Officer shall be responsible for:

- (A) Designating beneficial uses for the waters of the Reservation;
- (B) Developing a Water Quality Control Plan for the waters of the Reservation. The Water Quality Control Plan shall set out water quality standards and contain sections pertaining to beneficial uses, water quality criteria and anti-degradation policy;
- (C) Identifying water bodies or sections of water bodies which do not support beneficial uses;
- (D) Establishing and overseeing the Tribe's point and non-point source permit review system;
- (E) Conducting biannual assessments of the Tribe's Water Quality Control Plan for review by the [name of Tribe's governing body];
- (F) Conducting biannual assessments of the Tribe's Water Quality Control Plan for review by the [name of Tribe's governing body]; and
- (G) Developing regulations to further the purpose of this Ordinance.

**304 Riparian Review Committee:** The Riparian Review Committee shall consist of [number] persons: the Water Quality Control Officer or his/her representative; [others]. The Riparian Review Committee shall be responsible for:

- (A) Reviewing the Water Quality Control Plan, Biannual Water Quality Assessment, National Pollution Discharge Elimination System Permits, other permits and review procedures, as set forth in this Ordinance;
- (B) Specifying document submission and record keeping requirements to be adhered to by all potential dischargers or applicants for permits;
- (C) Establishing criteria for the assessment of application and processing fees;
- (D) Issuing permits, as required by this Ordinance, after approval by the [name of Tribe's

governing body]. The Riparian Review Committee shall provide a recommendation with proposed findings on each permit for [name of Tribe's governing body] approval;

- (E) Entering and inspecting any property, premises or facility involved in any activity which may affect water quality on any lands within the exterior boundaries of the Reservation. Such inspections may include, but are not limited to:
  - (1) Obtaining samples of soil, rock, vegetable, air, water or other substances deemed necessary; and
  - (2) Setting up and maintaining monitoring equipment for the purpose of assessing compliance with beneficial uses, water quality criteria, anti-degradation policy, applicable regulations, best management practices or health or safety hazards;
- (F) Obtaining from the Tribal Court a warrant or other order which may be necessary to carry out its responsibilities under this ordinance; and
- (G) Reviewing and recommending regulations for [name of Tribe's governing body] approval to further the purposes of this Ordinance, following notice and hearings or written opportunity for public comment.

**305 Enforcement:** [See Section 9 of this Ordinance for more details on enforcement.] The provisions of this Ordinance shall be enforced by [name of enforcing body]. Any Tribal Law Enforcement Officer, or any person officially appointed to the [name of Tribe's governing body] in consultation with the [name of enforcing body] may issue the following for violations:

- (A) Cease and Desist Orders or Notices of Violation: Upon a determination pursuant to an investigation as outlined in Section 903 of this Ordinance that any person is discharging or causing to be discharged or is about to discharge into any Reservation waters, directly or indirectly, any pollutant which constitutes a violation of this Ordinance, a Cease and Desist Order or Notice of Violation will be served upon the responsible parties and the landowner.
- (B) It shall be a civil offense, for which a fine of not less than [ \$\_\_\_\_\_ ] shall be assessed, to obstruct or otherwise interfere with investigative or other activities of any agent or officer of the Tribe carrying out this Ordinance.

<b>COMMENTARY</b>
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**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 - Antidegradation Policy and Implementation Plan**

### **401 Antidegradation Policy**

- (A) Existing uses shall be protected. The level of water quality necessary to protect existing uses shall be maintained.
- (B) Where existing water quality exceeds levels necessary to support propagation of fish and wildlife and recreation in and on the water, that level of water quality shall nonetheless be maintained and protected unless it is found, after full satisfaction of governmental and public participation requirements, that a lower level of water quality is acceptable in order to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation of water quality, the Tribe shall impose the highest statutory and regulatory requirements for point sources and shall impose best management practices for non-point sources.
- (C) Where high quality waters constitute an outstanding national or Tribal resource, or waters of exceptional recreational or ecological significance, the water quality and uses of those water bodies shall be maintained and protected.
- (D) In those cases where potential water quality impairments associated with thermal discharge are involved, the antidegradation policy and implementation method shall be consistent with Section 316 of the Clean Water Act, as amended (33 U.S.C. §1326).

**402 Implementation Plan:** Acting under authority delegated by [name of Tribe’s governing body], the Tribal Water Quality Control Officer shall implement the Tribe’s Water Quality Control Plan, including the antidegradation policy, by establishing and maintaining controls on the introduction of pollutants into surface waters. More particularly, the Tribal Water Quality Control Officer shall do the following:

- (A) Establish and maintain controls on the introduction of pollutants in surface waters of the Reservation;

- (B) Monitor water quality to assess the effectiveness of pollution controls and to determine whether water quality standards are being attained;
- (C) Obtain information as to the impact of effluents on receiving waters;
- (D) Review the adequacy of the existing data base and obtain additional data when required;
- (E) Assess the probable impact of effluents on receiving waters in light of designated uses and numeric and narrative standards;
- (F) Require the highest and best degree of wastewater treatment practicable and commensurate with protecting and maintaining designated uses and existing water quality;
- (G) Develop water quality based effluent limitations and comments on technology-based effluent limitations, as appropriate, for inclusion in any federal permit issued to a discharger pursuant to Section 402 of the Clean Water Act (33 U.S.C. §1342);
- (H) Require that these effluent limitations be included in any such permit as a condition for Tribal certification pursuant to Section 401 of the Clean Water Act (33 U.S.C. §1341);
- (I) Coordinate water pollution control activities with other constituent agencies and other local, state and federal agencies, as appropriate;
- (J) Develop and pursue inspection and enforcement programs in order to ensure that dischargers comply with requirements of the Water Quality Control Plan and any requirements promulgated thereunder, and in order to support the enforcement of federal permits by the U.S. EPA;
- (K) Provide continuing technical training for wastewater treatment facility operators through training and certification programs;
- (L) Provide funds to assist in the construction of publicly owned wastewater treatment facilities through the construction grants and revolving funds program authorized by the Clean Water Act (33 U.S.C. §1281), and other federal funds available for such purpose; and
- (M) Encourage, in conjunction with other agencies, voluntary implementation of best management practices to control non-point sources of pollutants to achieve compliance with the standards set out in the Water Quality Control Plan.

**COMMENTARY**

**The Tribe should decide which of these duties are appropriate for its Tribal Water Quality Control Officer, given the particular water quality issues facing the Tribe and the Tribe's resources.**

**Section 5 - Surface Water Quality Standards**

The water quality standards described in this section apply to all waters of the Reservation. Water quality standards described in this section designate beneficial uses and water quality for waters of the Reservation. Any subsequent standards that may be described in the Water Quality Control Plan must be at least as stringent as the standards provided below.

**COMMENTARY**

**The following section is meant to serve as a guideline and provide examples of the types of issues the Tribe might want to address in its standards. The Tribe should consult an environmental biologist or other qualified professional before finalizing this section.**

**501 Designated Uses:** For the purposes of this Ordinance, there are hereby established the following designated uses for the waters of the Reservation. A water body that is not listed in Section 502 but that is a tributary to a listed water body shall be protected by the water quality standards that have been established for the nearest downstream water body listed in Section 502. Water bodies within the Reservation which do not have beneficial uses designated for them are assigned wildlife habitat designations. These wildlife habitat designations in no way affect the presence or absence of other beneficial use designations in these water bodies. Further classification will be based on the size of the water body and its historic and environmental significance. Further, if a water body has more than one designated use listed in Section 502, the applicable water quality criterion for a pollutant is the most stringent of those prescribed to protect the designated uses of the water body.

The codes used in Section 502 are as follows:

- (A) Municipal and Domestic Supply (MUN) includes usual uses in community water systems and domestic uses from individual water supply systems.
- (B) Agricultural Supply (AGR) includes crop, orchard and pasture irrigation, stock watering, support of vegetation for range grazing and all uses in support of farming

and ranching operations.

- (C) Industrial Service Supply (IND) includes uses that do not depend primarily on water quality such as mining, cooling water supply, hydraulic conveyance, gravel washing and fire protection.
- (D) Industrial Process Supply (PROC) includes process water supply and all uses related to the manufacturing of products.
- (E) Groundwater Recharge (GWR) includes natural or artificial recharge for future extraction for beneficial uses.
- (F) Hydropower Generation (POW) means used for hydropower generation.
- (G) Cold Freshwater Habitat (COLD) includes uses of water that support cold water ecosystems including but not limited to preservation or enhancement of aquatic habitats, vegetation, fish or wildlife, including invertebrates.
- (H) Water Contact Recreation (REC-1) includes all recreational uses involving actual body contact with water, such as swimming, wading, water-skiing, skin-diving, surfing, sport fishing, uses in therapeutic spas and other uses where ingestion of water is reasonably possible.
- (I) Non-Contact Water Recreation (REC-2) includes recreational uses which involve the presence of water but do not require contact with water, such as picnicking, sunbathing, hiking, beach combing, camping, pleasure boating, hunting and aesthetic enjoyment.
- (J) Preservation of Areas of Special Biological Significance (BIOL) includes aquatic and wildlife refuges, ecological reserves and designated areas of special biological significance.
- (K) Wildlife Habitat (WILD) includes water bodies that provide a water supply and vegetation habitat for the maintenance of wildlife.
- (L) Preservation of Threatened and Endangered Species (T&E) provides an aquatic habitat necessary, at least in part, for the survival of certain species established as being threatened and endangered species.
- (M) Fish Migration (MGR) provides a migration route and temporary aquatic environment for anadromous or other fish species.

- (N) Fish Spawning (SPWN) provides a high quality aquatic habitat especially suitable for fish spawning.
- (O) Cultural (CUL) has religious, ceremonial or subsistence significance or provides a role in [name of Tribe] Tribal culture.

**502 Use Classification Key**

The use classification key is as follows:

- P = Potential Use
- E = Existing Use
- H = Historical Use
- N/A = Not Applicable

Full protection will be afforded to existing, potential and historical uses of the Reservation waters.

[insert table Tribe’s specific uses, for example:]

Unit	Inter-state?	MUN	AGR	IND	PROC	GWR	POW	COLD	REC-1
[Name of Water Body]	[Y/N]	[P,E,H or N/A]							

Unit	Inter-state?	REC-2	BIOL	WILD	T&E	MGR	SPWN	CUL
[Name of Water Body]	[Y/N]	[P,E,H or N/A]						


**503 General Water Quality Criteria:** The following criteria set forth limits or levels of water quality characteristics for surface waters to ensure the reasonable protection of beneficial uses from degradation or unreasonable effect of point and non-point pollution which may be a result of any cause including agricultural, mining, construction, urban runoff, silviculture, salt water intrusion, hydrological modification and residential activities. The water quality standards included in this Ordinance are developed on a Reservation-wide basis.

- (A) Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
- (B) Tastes and Odors: Waters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin, that cause nuisance or adversely affect beneficial uses.
- (C) Floating Material: Waters shall not contain floating material, including solids, liquids, foams and scum in concentrations that cause nuisance, adversely affect beneficial uses or degrade water quality.
- (D) Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- (E) Settleable Material: Waters shall not contain substances in concentrations that result in deposition of materials, that cause nuisance or adversely affect beneficial uses.
- (F) Oil and Grease: Waters shall not contain oils, greases, waxes or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance or that otherwise adversely affect beneficial uses.
- (G) Biostimulatory Substances: Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.
- (H) Sediment: The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

- (I) Turbidity: Turbidity shall not be increased more than [\_\_\_\_\_] (\_\_\_%) above naturally occurring background levels.
- (J) pH: The pH shall not be depressed below [\_\_\_\_\_] nor raised above [\_\_\_\_\_].
- (K) Dissolved Oxygen: Dissolved concentrations shall not be reduced below the following minimum levels at any time.

Waters designated COLD [\_\_\_\_\_]

Waters designated SPWN [\_\_\_\_\_]

Waters designated SPWN during critical spawning and egg incubation periods [\_\_\_\_\_  
\_\_\_\_\_]

- (L) Bacteria: The bacteriological quality of waters of the Reservation shall not be degraded beyond natural background levels. In waters designated for contact recreation (REC-1), the median fecal coliform concentration based on a minimum of not less than five samples for any 30-day period shall not exceed 50/100 ml., nor shall more than [\_\_\_\_\_] percent ([\_\_\_\_\_]%) of total samples during any 30-day period exceed [\_\_\_\_\_/]100 ml.
- (M) Temperature: The natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the [name of Tribe's governing body] that such alteration in temperature does not adversely affect beneficial uses. At no time or place shall the temperature of any water be increased by more than 5 degrees F above natural receiving water temperature.
- (N) Toxicity: All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal or aquatic life. Compliance with this objective will be determined by use of indicator organisms, analyses of species diversity, population density, growth anomalies, bioassays of appropriate duration or other appropriate methods as specified by the Riparian Review Committee.

- (1) The survival of aquatic life in surface waters subjected to waste discharge or other controllable water quality factors shall not be less than that for the same water body in areas unaffected by the waste discharge, or when necessary for other control water that is consistent with the requirements for "experimental water" as described in Standard Methods for the Examination of Water and Waste Water, latest edition. At a minimum, compliance with this objective as stated in the previous sentence shall be evaluated with a 96-hour bioassay.
- (2) Effluent limits based upon acute bioassays of effluents will be prescribed where appropriate, additional numerical receiving water standards for specific

toxicants will be established as sufficient data become available, and source control toxic substances will be encouraged.

- (O) Pesticides: No individual pesticide or combination of pesticides shall be present in concentrations that adversely affect beneficial uses. There shall be no bioaccumulation in pesticide concentrations found in bottom sediments or aquatic life.
- (P) Radioactivity: Radionuclides shall not be present in concentrations which are deleterious to human, plant, animal or aquatic life nor which result in the accumulation of radionuclides in the food web to an extent which present a hazard to human, plant, animal or indigenous aquatic life.

<u>Constituent</u>	<u>Maximum Contaminant Level, pCi/l</u>
Combined Radium-226 and Radium-228 Gross Alpha particle activity (Including Radium-226 but excluding Radon and Uranium)	
Tritium	
Strontium-90	
Gross Beta particle activity	

**COMMENTARY**

**The General Water Quality Criteria should be set by the tribe after consultation with an environmental biologist or other qualified professional, taking into account existing, historic and planned uses and pollution control goals of the Tribe.**

- 504 Managing Discharges Attributable to Point and Non-point Sources:** Water quality standards shall be the basis for managing discharges attributable to point and nonpoint sources of pollution. Water quality standards are not used to control, and are not invalidated by, natural background phenomena or acts of God.
- 505 Water Quality Criteria for Toxic Pollutants:** The potential benefits to human health of establishing toxic criteria include: (1) reducing the potential health risks to persons eating fish contaminated with toxic pollutants; (2) reducing the potential health risks to persons drinking contaminated drinking water; and (3) reducing the potential health risks to swimmers from dermal exposure to contaminated surface waters. The criteria listed below

consist of two measures. The “Water and Organisms” measure represents the maximum ambient water concentration for consumption of both contaminated water and fish or aquatic organisms and to all water designated MUN. The “Organisms Only” measure represents the maximum ambient water concentration for consumption of fish or other aquatic organisms and applies to all waters without an MUN designation. The exposure to concentrations above the following specified criteria shall not exceed a thirty (30) day duration. All concentrations are micrograms per liter (mg/L), except asbestos, which is million fibers per liter (MFL).

[Insert Table here]

**506 Aquatic Life Criteria:** The concentration for each compound listed below is a criteria not to be exceeded in waters for aquatic life. The Acute criteria or Critical Maximum Concentration (CMC) is the threshold value at or below which there should be no unacceptable effects to freshwater aquatic organisms and their uses if the one-hour average concentration does not exceed that CMC value more than once every three years on average. The Chronic Criteria or Criteria Continuous Concentration (CCC) is the threshold value at or below which there should be no unacceptable effects to freshwater aquatic life and their uses if the four-day average concentration does not exceed that CCC value more than once every three years on average. Where no criteria has been established, the Lowest Observable Adverse Effect Level (LOAEL) shall apply.

[Insert Table here]

**507 Biological Criteria:** The following biological criterial shall apply to the waters of the Reservation.

- (A) All surface waters shall be of sufficient quality to support aquatic biota without detrimental changes in the resident aquatic communities.
- (B) Waters of the Reservation shall be free from substances, whether attributable to point source discharges, nonpoint sources or instream activities, in concentrations or combinations which would impair the structure or limit the function of the resident aquatic community as it naturally occurs.
- (C) The structure and function of the resident aquatic community shall be measured by biological assessment methods approved by the Riparian Review Committee.
- (D) Determination of impairment or limitation of the resident aquatic community may be based on comparison with the aquatic community found at an appropriate reference site or region.

**508 Wildlife Criteria:** All surface waters shall be of sufficient quality to protect and support all life stages of resident or migratory wildlife species which lie in, on or near the waters of the Reservation.

**509 Wetlands Criteria:** The following wetlands criteria shall apply to all waters of the Reservation:

- (A) Water quality in wetlands shall be maintained at naturally occurring levels, within the natural range of variation for individual wetlands.
- (B) Physical and biological characteristics shall be maintained and protected by:
  - (1) Maintaining hydrological conditions, including hydroperiod, hydrodynamics and natural water temperature variations;
  - (2) Maintaining the natural hydrophytic vegetation; and
  - (3) Maintaining substrate characteristics necessary to support existing and characteristic uses.

**510 Modification of Standards to Reflect Attainability:** In the event that monitoring of water quality identifies areas where attainable water quality is less than what is required by the standards set out in the Tribal Water Quality Control Plan, then the [name of Tribe] may modify the Tribal Water Quality Control Plan to reflect attainability. Modification thereof shall be within the sole discretion of the [name of Tribe], but shall be subject to the provisions of the Clean Water Act, and shall be carried out in accordance with the use-attainability analysis procedures set forth in the Clean Water Act.

**511 Revision of Standards and Errors**

- (A) Revisions: The Tribal Water Quality Control Plan and standards promulgated thereunder may be revised, from time to time, or as the need arises, or as the result of updated scientific information.
- (B) Errors: Errors resulting from inadequate and erroneous data or human or clerical oversight will be subject to correction by the [name of Tribe]. The discovery of such errors does not render the remaining and unaffected provisions of the Tribal Water Quality Control Plan and standards set forth in the Plan invalid. If any provision of the Tribal Water Quality Control Plan, or the application of any provision of the Plan including any standards set out in the Plan, to any person or circumstance, should be held to be invalid, the application of such provision to other persons and circumstances and the remainder of the Tribal Water Quality Control Plan shall not

be affected thereby.

## Section 6 - Sampling and Analysis

**601 Sample Collection, Preservation and Analysis to Determine Water Quality and Maintain Standards:** Sample collection, preservation and analysis used to determine water quality and to maintain the standards set forth in the Water Quality Control Plan shall be performed in accordance with procedures prescribed by the latest EPA authoritative analytical reference, including but not limited to the latest editions of any of the following authorities: (1) American Public Health Association, *Standard Methods for the Examination of Water and Wastewater*; (2) “Methods for Chemical Analysis of Water and Wastes”; or (3) “EPA Guidelines Establishing Test Procedures for the Analysis of Pollutants.”

**602 Bacteriological Surveys:** The monthly geometric mean used in assessing attainment of standards when a minimum of five samples is collected in a 30-day period. When less than five samples are collected in a 30-day period, no single sample shall exceed the applicable upper limit for bacterial density set for in Section 503(L).

### 603 Sampling Procedures

(A) Streams: Stream monitoring stations below waste discharges shall be located a sufficient distance downstream to ensure adequate vertical and lateral mixing.

(B) Reservoirs: Sampling stations in reservoirs shall be located at least 250 feet from a waste discharge, and, otherwise, where the attainment of a water quality standard is to be assessed. Water quality measurements shall be taken at intervals in the water column at a sampling station. For toxic substances and nutrients, the entire water column shall be made in the epilimnion. In nonstratified lakes, measurements will be made at intervals throughout the entire water column.

## Section 7 - Notice of Discharges

**701 Notice of Discharge:** Except as permitted pursuant to this Ordinance, any person that discharges any pollutant into the waters of the Reservation shall immediately notify the Riparian Review Committee of such discharge and shall fully disclose the information regarding the discharge including the type of pollutant, the amount, the location and other information required by the Riparian Review Committee.

## Section 8 - Permit and Inspection Program

**801 Permits Required:** No person shall discharge any pollutant into any Reservation water from a point source or conduct dredge and fill activities in any designated wetland area of the

Reservation without first having applied for and obtained a permit from the Riparian Review Committee after approval by the [name of the Tribal governing body]. Any person who intends to alter or enlarge an existing activity described in Section [ ] of this Ordinance, or who intends to cause or direct such alteration or enlargement of such activities, shall, prior to alteration or enlargement of such activities, apply for and obtain a valid permit from the Riparian Review Committee after approval by the [name of Tribal governing body].

**[See Appendix \_\_\_\_ for a sample application form.]**

- (A) Contents of Application. Permit applications will include the following information:
- (1) Identification and address of the owner and operator of the activity, facility or process from which the discharge is to be permitted;
  - (2) Location and quantity and quality characteristics of the permitted discharge;
  - (3) Effluent limitations and requirements for treatment prior to discharge;
  - (4) Equipment and procedures required for mandatory monitoring as well as record-keeping and reporting requirements;
  - (5) Schedules of compliance;
  - (6) Procedures to be followed by tribal personnel for entering and inspecting the premises;
  - (7) Submission of pertinent plans and specifications for the facility, process or activity which is the source of the discharge;
  - (8) Restrictions on transfer of the permit;
  - (9) Procedures to be followed in the event of expansion or modification of the facility, process or activity from which the discharge occurs or the quantity, quality or frequency of the discharge; and
  - (10) Duration of the permit and renewal procedures.
- (B) 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, in a form approved by the Riparian Review Committee.
- (C) Fees. A processing and monitoring fee, as established by the Riparian Review

Committee, shall be paid to the Tribe at the time of filing. These fees shall be used for costs associated with administering the Water Quality Control Plan.

- (D) Review of Application by Tribal Departments. [Number] copies of the application and any proposed mitigation plan shall be furnished by the applicant. Upon receipt of a permit application, the Riparian Review Committee shall transmit one copy to the [name of Tribe's governing body] and [any other Tribal agencies that should be involved in the review/decision-making process] for their written recommendations. Failure of the departments to respond in writing to the Riparian Review Committee within thirty (30) days of receipt shall indicate approval or no desire to comment by the department.
- (E) Except as otherwise provided in this Ordinance, permit applicants shall demonstrate that the proposed alteration, enlargement or new regulated activity will not adversely affect water quality and is designed to avoid substantial disturbance of the soils, topography, drainage, vegetation and other water related natural characteristics of the site.
- (F) Public Notice and Hearing on Permit Application. Public notice of every complete application for a discharge permit shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge 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 of the proposed discharge.
  - (2) Notice shall be mailed to any person or group upon request.
  - (3) Upon request, the Tribe shall add the name of any person or group to a mailing list to receive copies of notices for all discharge applications within the Reservation or within a certain geographic area.
  - (4) 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 discharge permit.
- (G) Permit applications, any required environmental documents and mitigation plan proposals must demonstrate compliance with applicable Tribal regulations including but not limited to those pertaining to water quality, hazardous substances, environmental impact evaluations and riparian protection.

- (H) Nothing in any permit shall ever be construed to prevent or limit the application of any emergency power of the Tribe.

**802 Categorical Exclusions and Variances:** The [name of Tribe's governing body] may by regulation exclude categories of uses, activities or projects from requirements of this Ordinance for one or more of the following reasons:

- (A) Naturally occurring pollution;
- (B) Natural low-flow conditions;
- (C) Irretrievable human-caused conditions; and/or
- (D) Substantial and widespread economic and social impacts.

A variance to establish water quality objectives may be granted by the Riparian Review Committee after approval by the [name of Tribe's governing body], only when the applicant satisfactorily demonstrates that:

- (A) Water quality will not be permanently impaired;
- (B) Public health will not be threatened;
- (C) No significant adverse environmental effects will occur due to the limited size or scale of a proposed activity;
- (D) A mitigation plan approved by the Riparian Review Committee demonstrates that all discharges will be below established water quality standards as set forth in the Water Quality Control Plan before the expiration of the variance;
- (E) The variance does not exceed one year from the date of issuance; and
- (F) A 30-day public review period has passed with at least one public meeting.

**803 Issuance of Permit; Final Environmental Determination**

- (A) Upon compliance with this Ordinance, the Riparian Review Committee may make findings and issue the permit as provided in this Ordinance. The permit shall specify the person authorized to operate the facility and the boundaries of the facility. The permit shall contain such conditions as are necessary to protect the public health and safety and the environment.

- (B) Copies of the permit (including conditions specified therein), findings and any documents setting forth the Riparian Review Committee’s final environmental determination shall be made available for inspection and copying to any person so requesting.
- (C) Denial of Permit. The Riparian Review Committee shall deny the permit when any of the following occur:
  - (1) The Riparian Review Committee determines that the proposed discharge is not consistent with this Ordinance or other applicable tribal or federal laws.
  - (2) The Riparian Review Committee determines that it will be impossible to propose a permit that will be mutually satisfactory to the Committee and the discharger.
  - (3) Any other circumstances provided by law.

<b>COMMENTARY</b>
<p><b>1. Where a permit might meet tribal and federal legal requirements for discharges generally, the Tribe may want to reserve the right to deny a permit if the discharge is into a body of water for which the Tribe wants higher standards (i.e., no discharge). However, the Tribe should be careful to apply the standards evenly.</b></p>

- (D) Upon denial of a permit, the Riparian Review Committee shall give written notice of the denial to the discharger 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.
- (E) An operator who desires an appeal of the denial of a permit shall file with the Riparian Review Committee a written request for a re-hearing before the Committee within fifteen (15) days after receiving notice of the denial of the permit. The hearing procedures will be the same as the administrative process set out herein.

**804 Monitoring and Records; Inspections**

- (A) Monitoring and Records The permittee shall monitor the discharge pursuant to the conditions of the permit. Sampling and measurements taken for the purpose of monitoring shall be representative of the monitored activity. The permittee shall

retain records of all monitoring information, including calibration and maintenance records and copies of all reports required by the permit. Records for monitoring shall include:

- (1) The date, exact place and time of sampling or measurement;
  - (2) The individual(s) who performed the sampling or monitoring;
  - (3) The date analysis was performed;
  - (4) The analytical techniques or methods used; and
  - (5) The results of such analysis.
- (B) Inspections and Entry. The permittee shall allow an authorized agent of the Tribal Environmental Protection Agency or the designated enforcement officer, upon presentation of credential to:
- (1) Enter upon the permittee's premises where a regulated facility, activity or process is located, or where records must be kept under the conditions of the permit;
  - (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
  - (3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment) practices or operations regulated or required under the permit; and
  - (4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the appropriate Tribal Ordinance, any substances or parameters at any location.

## **Section 9 - Enforcement Program/Administrative Procedures**

**901 Enforcement Policy:** It is the policy of the Riparian Review Committee to encourage informal, practical, result-oriented resolution of alleged violations and actions needed to prevent damage to Reservation resources or harm to the health, safety or welfare of the Reservation population. It is also the policy of the Riparian Review Committee, consistent with the principles of due process, to provide effective procedures for enforcement.

**902 Enforcement Agency:** The Tribal Environmental Protection Agency shall be responsible

for enforcing the provisions of this Code. Specifically, the Tribal Environmental Protection Agency shall conduct investigations when a complaint is received by the Tribal Water Quality Control Officer or where the Tribal Water Quality Control Officer, Riparian Review Committee or other Tribal agency believes that a violation of this Ordinance has occurred.

**903 Enforcement Activities:** Where a written and verified complaint shall be filed with the Tribal Water Quality Control Officer and reviewed by the Riparian Review Committee alleging that, or where the Tribal Water Quality Control Officer or Riparian Review Committee itself shall have cause to believe that, any person is violating any discharge regulation or permit condition, the Riparian Review Committee shall cause a prompt investigation to be made.

**904 Notice of Violation; Cease and Desist Order:** If the Riparian Review Committee finds after an investigation pursuant to Section 903 of this Ordinance that a violation of any regulation or permit condition exists, the Committee 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 Riparian Review Committee 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 Riparian Review Committee 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 Riparian Review Committee 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.

**905 Informal Conferences:** The Riparian Review Committee shall afford the landowner or his or her representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the Riparian Review Committee determines that there may be either imminent environmental damage to a Reservation resource or adverse impact upon the health, safety and welfare of the

Reservation population. Informal conferences may be used at any stage in the enforcement proceedings, except that the Riparian Review Committee may refuse to conduct informal conferences with respect to any matter then pending before the Riparian Review Committee or [name of Tribal court].

**906 Reports Required:** The Riparian Review Committee 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.

**907 Enforcement Hearings:** If the landowner and the Riparian Review Committee are unable to resolve the matter via an informal conference, the Riparian Review Committee 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 Tribal Quality Control Officer, shall present the case to the Riparian Review Committee 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 Riparian Review Committee 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 Riparian Review Committee shall issue a written decision. If the Committee determines that a violation has occurred and that the person(s) charged was (were) responsible for the violation, the Committee's decision shall include an Enforcement Order.

**908 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 Riparian Review Committee deems appropriate under the circumstances. An Enforcement Order may impose civil penalties in accordance with a schedule of civil penalties prescribed in the Committee'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**

**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 Riparian Review Committee's rules in order to ensure that the Committee provides due process for all persons who are subject to its rulings.**

- (A) Emergency Orders. Notwithstanding any other provision of this Ordinance, if the Riparian Review Committee 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 Part, the Committee 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 Riparian Review Committee.

**909 Judicial Enforcement:** The [name of Tribal Court] shall have jurisdiction of all cases and controversies arising under this Ordinance.

- (A) The Riparian Review Commission may request the [name of Tribe's governing body] to authorize the Tribal Environmental Protection 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 Committee shall request the Tribal Environmental Protection Agency to 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 discharges any pollutant into the waters of the Reservation shall be liable for all costs associated with or necessary to clean up, abate or remove said pollutants from the waters of the Reservation and restore the quality of the waters of the Reservation to their condition as they existed immediately prior to the discharge.

**910 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 discharge permit, or to have conducted discharge activities without a permit, the Chairperson of the Riparian Review Committee 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 Committee 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 1000 - Appeals**

**1001 Judicial Review:** Any person who is aggrieved by the issuance or denial of a discharge 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.

### **1100 Other Provisions**

**1101 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.

**1102 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**

**FLOW CHART OF ENVIRONMENTAL AGENCIES**