

**STOCKBRIDGE-MUNSEE TRIBAL LAW**  
**WATER POLLUTION CONTROL**

**Section 34.1 Pollution of Waters - Public Policy of the Tribe**

Whereas the pollution of the waters of this reservation constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational, traditional, cultural, and other legitimate beneficial uses of water, and whereas such pollution is contrary to the best interest of the Stockbridge-Munsee Community Band of Mohican Indians (hereinafter Tribe), it is hereby declared to be the public policy of the Tribe to protect, maintain, and improve the quality thereof for public water supplies, for the propagation of wildlife, fish, and aquatic life, and for domestic, agricultural, industrial, traditional, cultural, recreational, and other beneficial uses; to provide that no waste be discharged into any waters of the reservation without first being given the degree of treatment necessary to protect the legitimate beneficial uses of such waters; to provide for the prevention, abatement, and control of new or existing water pollution; to place in priority those control measures directed toward the elimination of pollution which creates hazards to public health; to insure due consideration of financial problems imposed on water polluters through the pursuit of these objectives; and to cooperate with other agencies of the Tribe, state, and agencies of the state, and the federal government in carrying out these objectives.

**Section 34.2 Definitions**

For purposes of this Act, the following words and phrases shall have the meanings ascribed to them in this Section:

(A) "Pollution" means such artificial or induced natural contamination, or other alteration of the physical, chemical, biological, and radiological properties, of any waters of the reservation, or such discharge of any liquid gaseous, or solid substance into any waters of the reservation as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety, welfare, or to domestic, commercial, industrial, agricultural, traditional, cultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

(B) "Waters of the Reservation" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this federal Indian reservation or any portion thereof, except that bodies of water confined to and retained within the limits of private property which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the reservation" under this definition.

(C) "Person" means an individual, corporation, partnership, association, state, or political subdivision thereof, federal agency, state agency, municipality, commission or interstate body.

(D) "Pollutant" means dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, forestry, municipal, or agricultural waste.

(E) "Pollution" means artificially made, artificially induced, or natural alteration of the physical, chemical, and radiological integrity of water.

(F) "Effluent Limitation" means any restriction or prohibition established under tribal law on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into reservation waters, including but not limited to standards of performance for new sources, toxic effluent standards, and schedules of compliance.

(G) "Permit" means a permit issued under this article.

(H) "Point Source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissures, containers, rolling stock, concentration animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(I) "Schedule of Compliance" means a schedule of remedial measures and times including an enforceable sequence of actions or operations leading to compliance with any control regulation or effluent limitation.

### **Section 34.3 Environmental Protection Commission**

(A) There is hereby created a Tribal Environmental Protection Commission, as a division of the tribal government under the direction of the Tribal Council and the Commission shall exercise its power and perform its duties and functions specified in this article, said Commission shall consist of six (6) persons. It shall include the heads of the Tribal Department of Forestry, Fish and Game, Human Services, and the Tribal Health Board, and two (2) reservation residents appointed by the Tribal Chairperson with the consent of the Tribal Council. Appointments must be made so as to include appropriate agricultural, wildlife, industrial, and cultural training within its own membership; although no specific number of its members shall be required to be so trained. A majority of members must be officially enrolled members of the Tribe.

(B) Of the two (2) members appointed by the Tribal Chairperson, both shall serve four year terms, except of those first two appointed, one shall be appointed for three years, and one shall be for four years. The Tribal Chairperson may fill any vacancy in the appointed membership of the Commission, and may remove any appointed member for cause.

The heads of tribal departments may designate an administrative staff member to perform the duties of the member making the designation.

(C) All members of the Commission shall have a vote. Four (4) members shall constitute a quorum, and the concurrence of a majority of a quorum of the Commission in any matter within its powers and duties shall be required for any determination made by the Commission.

#### **Section 34.4 Duties of Environmental Protection Commission in Regard to Water Quality.**

Repealed, Resolution No. 050-98.

#### **Section 34.5 Classification of the Waters of the Reservation**

Repealed, Resolution No. 050-98.

#### **Section 34.6 Water Quality Standards**

Repealed, Resolution No. 050-98.

#### **Section 34.7 Control Regulations**

(A) The Commission shall promulgate control regulations for the following purposes:

(1) To describe prohibitions/standards, concentrations, and effluent limitations on the extent of specifically identified pollutants, such as any of those mentioned in Section 34.6 that any person may discharge into any specified class of reservation waters;

(2) To describe pre-treatment requirements, prohibitions, standards, concentrations, and effluent limitations on waste any person may discharge into any specified class of water of the reservation from any facility, process, activity, or waste pile including but not limited to: forest resources; pulp and paper mills; paperboard, builders paper and board mills; meat product and rendering processing; canned and preserved fruits and vegetables processing; sugar processing; organic chemicals manufacturing; oil and gas transportation; electric power plants; leather tanning and finishing; timber products processing.

(3) To describe precautionary measures, both mandatory and prohibitory, that must be taken by any person owning, operating, conducting, or maintaining any facility process, activity, or waste pile that does or might cause pollution of any waters of the reservation in violation of control regulations or cause the quality of any waters of the reservation to be in violation of any applicable water quality standard.

(B) In the formulation of each control regulation, the Commission shall consider the following:

(1) The need for regulations that control discharges of specified pollutants that the subject of water quality standards for the receiving waters of the reservation;

(2) The degree to which any type of discharge is subject to treatment, the availability, practicality, and technical and economic feasibility of treatment techniques; and the extent to which the discharge to be controlled is significant;

(3) The continuous, intermittent, or seasonal nature of the discharges to be controlled;

(4) Whether a regulation that is to be applicable to discharges into flowing water should be written in such a way that the degree of pollution tolerated or treatment required will be dependent upon the volume of flow of the receiving water or the extent to which the discharge is diluted therein, or the capacity of the receiving water to assimilate the discharge; and

(5) The need for specification of safety precautions that should be taken to protect water quality including, but not limited to; requirements for the keeping of logs and other records, requirements to protect subsurface waters in connection with mining exploration and surface mining and the drilling and operation of wells, and requirements as to settling ponds, holding tanks, and other treatment facilities for water that will or might enter reservation waters.

(C) The Commission shall coordinate and cooperate with the Tribal Attorney, the Tribal Health Board, and Natural Resource offices having regulatory powers in order to avoid promulgating control regulations that would be either redundant or unnecessary.

#### **Section 34.8 Individual Sewage Disposal System**

(A) Upon request of any person, the Commission shall review the adequacy of local community control of individual sewage disposal systems that are applicable in any portion of the reservation in which the soil, geological conditions, or other factors indicate the unregulated outflow from one or more individual sewage disposal systems would or might pollute the waters of the reservation. After such review and upon any finding of inadequacy, the Commission shall promulgate a control regulation for the area involved which shall identify such area by legal description and shall also specify the terms and conditions for individual sewage disposal systems construction, use, design, maintenance, spacing, and location that shall be applicable in such area.

#### **Section 34.9 Additional Authority of the Commission**

(A) In addition to the powers and duties of the Commission specified elsewhere, the Commission is empowered to:

(1) Accept and supervise the administration of loans and grants from the federal government and from other public sources, if authorized by Tribal Council, which loans and grants shall not be expended for other than purposes for which provided;

(2) Advise, consult, cooperate, and enter into agreements, if authorized by Tribal Council, with other agencies of the Tribe, the federal government, states, and other Tribes, and with groups and industries affected by the provisions of this article and policies of the Commission, but any such agreement involving authorizing or requiring compliance in this reservation with any water quality standard or control regulation shall not be effective unless or until the Commission has presented the public with an

opportunity for a hearing with respect to such standard or regulation and has adopted the same in compliance with Section 34.19 and

(3) Exercise all incidental powers necessary and proper for carrying out the purposes of the article including the powers to issue and enforce rules and orders.

### **Section 34.10 Administration of Water Quality Control Programs**

(A) The Tribal Division of Natural Resources shall administer and enforce the water quality control programs adopted by the Commission.

### **Section 34.11 Duties of the Division**

(A) The Division shall:

(1) Carry out the enforcement provisions of this article, including enforcement or civil penalty provisions, criminal prosecution of violators and such other administrative and judicial relief as may be appropriate;

(2) Administer the waste discharge permit system as provided in Sections 34.24 to 34.26;

(3) Monitor waste discharges and waters of the reservation as provided in Section 34.12; and

(4) Submit an annual report to the Commission as provided in Section 34.14.

### **Section 34.12 Monitoring**

(A) The Division shall take such samples as may be necessary to enable it to determine the quality of every reasonably accessible segment of reservation waters. In sampling such waters the Division shall give consideration to characteristics such as those listed in Section 34.2 (B), but if pollution is suspected the sampling shall not be limited or restricted by reason of the fact that no water quality standard has been promulgated for the suspected type of pollution.

(B) As to every segment of reservation waters so sampled, the Division shall endeavor to determine the nature and amount of each pollutant, whether a new or different water quality standard is needed, the source of each pollutant, the place where such pollutant enters the water, and the names and addresses of each person responsible for or in control of each entry.

(C) As to each separate pollution source identified, the Division shall:

(1) Determine what control regulation is applicable, if any;

(2) Determine whether the discharge is covered by a permit and whether any condition of the permit is being violated; and

(3) Determine what further control measures with respect to such pollution source are practicable.

(D) The Division shall inform the Commission of any unusual problem which creates difficulties in abating pollution.

### **Section 34.13 Monitoring, Reporting and Recording**

(A) The owner or operator of any facility, process or activity from which a discharge of pollutants is made into waters of the reservation or into any publicly owned treatment works shall in such form and in accordance with such specifications as the Division may require:

(1) Establish and maintain records;

(2) Make reports;

(3) Install, calibrate, use and maintain methods and equipment, including biological monitoring methods;

(4) Sample discharges; and

(5) Provide additional reasonably available information relating to discharges into publicly owned treatment works.

### **Section 34.14 Annual Report to the Commission**

(A) On or before March of each year, the Division shall report to the Commission on the effectiveness of the provisions of this Article and shall include in such report such recommendations as it may have with respect to any regulatory or legislative changes that may be needed or desired. Such report shall contain the then current information that has been obtained pursuant to Section 34.4.

### **Section 34.15 Authority to Enter and Inspect Premises and Records**

(A) The Division, through its authorized employees, has the power, upon presentation of proper credentials, to enter and inspect at any reasonable time and in a reasonable manner any property, premise, or place for the purpose of investigating any actual, suspected, or potential source of water pollution, or ascertaining compliance or noncompliance with any control regulation or any order promulgated under this Article. Such entry is also authorized for the purpose of inspecting and copying of records required to be kept concerning any effluent source.

(B) If such entry or inspection is denied or not consented to, the Division is empowered to and shall obtain from the Tribal Court for the district in which such property, premise, or place is located, a warrant to enter and inspect prior to entry and inspection. The Tribal Court of the Stockbridge-Munsee Tribe is empowered to issue such warrants upon a proper showing of the need for such entry and inspection.

### **Section 34.16 Emergencies**

(A) Whenever the Division determines, after investigation, 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 in the opinion of the Division constitutes a clear, present, and immediate danger to the health or livelihood to members of the public, the Division shall issue its written order to said person that he must immediately cease or prevent the discharge of such pollutant into such waters and thereupon such person shall immediately discontinue such discharge. Concurrently with the issuance of such order the Division may seek a restraining order or injunction pursuant to Section 34.35.

### **Section 34.17 Additional Authority and Duties of the Division**

(A) In addition to the authority specified elsewhere in this Article, the Division has the power to:

(1) Conduct or cause to be conducted studies, research and demonstrations with respect to water pollution and control, abatement, or prevention thereof, as requested by the Commission;

(2) Furnish technical advice and services relating to water pollution problems and control techniques;

(3) Designate one or more persons or agencies in any area of the reservation as an agent of the Division, to exercise and perform such powers and duties of the Division as may be specified in such designation;

(4) To certify, when requested, the existence of any facility, land, building, machinery, equipment, treatment works, sewage and disposal systems, as have been acquired, constructed, or installed in conformity with the purposes of this Article; and

(5) To take such action in accordance with rules and orders promulgated by the Commission as may be necessary to prevent, abate, and control pollution.

(B) All fees and penalties collected by the Division shall be transmitted to the Tribal Finance Office in a timely manner for deposit to the credit of the Tribal General Fund.

### **Section 34.18 Authority and Procedures for Hearings**

(A) The Commission or Division may hold public hearings, issue notices of hearings, issue subpoenas requiring the attendance of witnesses and the production of evidence, administer oaths, take such testimony as is deemed necessary, make findings and determinations, and issue orders, all in conformity with this Article.

(B) The Commission may adopt such rules and regulations governing procedures and hearings before the Commission or Division as may be necessary to assure that such hearings will be fair and impartial.

(C) At any hearing, any person who is affected by the proceeding and whose interests are not already adequately represented, shall have the opportunity to be a party thereto upon prior application to and in the sole discretion of and approval by the Commission or Division, as the case may be, and such person shall have the right to be heard and to cross examine any witness.

(D) After due consideration of the written and oral statements, the testimony, and the arguments presented at any such hearing, the Commission or Division, as the case may be, shall enter its written findings and final order, based upon evidence in the record.

(E) In all proceedings before the Commission or Division with respect to any alleged violation of any control regulation, permit or order, the burden of proof shall be upon the Division.

(F) The Commission or Division may designate a Hearing Officer who shall have the power to issue notices of hearing, to issue subpoenas requiring the attendance of witnesses and the production of evidence, to administer oaths, and to take such testimony as may be necessary and such Hearing Officer shall certify and file recommended findings and conclusion and a proposed order with the Commission or Division as appropriate, for adoption or modification by such Commission or Division. The Commission or Division may designate a Hearing Officer if the purpose of the hearing is to develop control regulations, or is held pursuant to Section 34.20.

The Hearing Officer may be an employee of the Division.

### **Section 34.19 Procedures to Be Followed in Setting Standards and Control Regulations**

Repealed, Resolution No. 050-98.

### **Section 34.20 Administrative Reconsideration**

Any party directly affected by an order or determination of the Commission or Division shall have thirty (30) calendar days from the effective date to seek judicial review. During the time permitted for seeking judicial review, the party seeking judicial review shall apply to the Commission or Division, as appropriate for a hearing or rehearing with respect to, or reconsideration of, such order or determination. The determination by the Commission or Division whether to grant or deny the application for a hearing, rehearing, or reconsideration shall be made within ten (10) days after receipt by the Commission or Division. Such determination by the Commission may be made by telephone, mail, or at a meeting. If the application for a hearing, rehearing or reconsideration is granted, then the order or determination to which such application pertains shall not be considered final for purposes of judicial review, and the Commission or the Division may affirm, reverse, or modify, all or part of the order or determination. After this the order or determination shall be final.



### **Section 34.21 Enforcement Hearings - Judicial Review**

(A) Any final order or determination by the Division or the Commission shall be in writing, supported by written findings, and subject to judicial review in accordance with the provisions of this Article and any other applicable provisions of the Tribal Code or Tribal Court Rules of Civil Procedure.

(B) Any proceeding for judicial review of any final order or determination of the Division or the Commission shall be filed in the Tribal Court within thirty (30) days after said order or determination has been served upon the party affected. Such period shall be stayed while an application for a hearing, rehearing, or reconsideration is pending pursuant to Section 34.20

(C) (1) Except with respect to emergency orders issued pursuant to Section 34.16, any person to whom a cease and desist order, clean-up order, or other order has been issued by the Division or Commission, or against whom an adverse determination has been made, may petition the Tribal Court for a stay of the effectiveness of such order or determination. Such petition shall be filed in the Tribal Court in which is located the pollution sources.

(2) Such petitions may be filed prior to any such order or determination becoming final or during any period in which is located the Pollution sources affected.

(3) Such stay shall be granted by the court if there is probable cause to believe that refusal to grant a stay will cause serious harm to the affected person or any other person, and:

(a) That the alleged violation or activity to which the order or determination pertains will not continue, or if it does continue, any harmful effects on waters of the reservation will be alleviated promptly after the cessation of the violation or activity; or

(b) That the refusal to grant a stay would be without sufficient corresponding public benefit.

(D) Any party may move the court to remand the case to the Division or the Commission in the interests of justice, for the purpose of adducing additional specified and material evidence and findings thereon; but the burden shall be on such party to show reasonable grounds for the failure to adduce such evidence previously before the Division or Commission.

(E) If the court does not stay the effectiveness of an order of the Commission or Division, the court shall enforce compliance with that order by issuing a temporary restraining order or injunction at the request of the Commission or Division.

### **Section 34.22 Samples, Secret Processes**

(A) If samples of water or water pollutants are taken for analysis and a violation of any permit or control regulation is suspected, a representative portion of the same shall be furnished at cost upon request to the person who is believed to be responsible for such suspected violation. A

representative portion of such sample shall be furnished to any suspected violator at cost whenever any remedial action is taken with respect thereto by the Division. A duplicate of every analytical report pertaining to such sample shall be furnished as soon as practicable to such person.

(B) Any information relating to any secret process, method of manufacture or production, or sales or marketing data, which may be acquired, ascertained, or discovered, whether in any sampling investigation, emergency investigation, or otherwise, shall not be publicly disclosed by any member, officer, or employee of the Commission or Division, but shall be kept confidential. Any person seeking to invoke the protection of this Section in any hearing shall bear the burden of proving its applicability. This Section shall never be interpreted as preventing full disclosure of effluent data.

### **Section 34.23 Rules of Civil Procedure - Applicability**

(A) Except as otherwise specified in this Article, service or process, notices, and other papers shall be in accordance with the Rules of Civil Procedure established for the Tribal Court.

## PERMITS

### **Section 34.24 Permits Required for Discharge of Pollution - Administration**

(A) No person shall discharge any pollutant into any reservation water from a point source without first having applied for, nor after December 31, 1988, without having obtained a permit from the Division for such discharge. Each application for a permit duly filed under the federal Clean Water Act shall be deemed to be a permit application filed under this Article, and each permit issued pursuant to the Federal Act shall be deemed to be a temporary permit issued under this Article which shall expire when the federal permit expires.

(B) The Tribe shall examine applications for and may issue, suspend, revoke, modify, deny, and otherwise administer permits for the discharge of pollutants into reservation waters. Such administration shall be in accordance with the provisions of this Article and regulations, if any, promulgated by the Tribe.

(C) The Tribe shall promulgate such regulations as may be necessary for the orderly and effective administration of permits for the discharge of pollutants. Such regulations shall be consistent with the provisions of this Article and shall be in furtherance of the policy contained in Section 34.7 and may pertain to and implement, among other matters, permit and permit applications contents, procedures, requirements and restrictions with respect to the following:

- (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 premises;
- (7) Submission of pertinent plans and specifications for the facility, process, or activity which is the source of the waste 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;
- (10) Duration of the permit not to exceed five years, and renewal procedures;
- (11) Authority of the Tribe to require changes in plans for specifications for control facilities as a condition for the issuance of a permit;
- (12) Identification of control regulations over which the permit takes precedence and identification of control regulations over which a permit may never take precedence;
- (13) Notice requirements of any intent to construct, install, or alter any process, facility, or activity that is likely to result in a new altered discharge; and
- (14) Effectiveness under this Article of permit applications submitted to and permits issued by the federal government under the federal Clean Water Act.

(D) The Tribe may authorize temporary permits to be issued pending completion of review procedures otherwise required prior to issuance of a permit, but no temporary permit may be issued for more than a period of two years nor shall any temporary permits be renewed.

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

(F) Every permit issued for a sewage treatment works shall contain such terms and conditions as the Tribe determines to be necessary or desirable to assure continuing compliance of applicable control regulations. Such terms and conditions may require that whenever deemed necessary by the Tribe to assure such compliance the permittee shall:

- (1) Require pretreatment of effluent from industrial, governmental, or commercial facilities processes and activities before such effluent is received into the gathering and collection system of the permittee;

(2) Prohibit any connection to any municipal permittee's interceptor and collection system that would result in receipt by such municipal permittee of any effluent other than sewage required by law to be received by such permittee;

(3) Include specified terms and conditions of its permit in all contracts for receipt by the permittee of any effluent not required to be received by a municipal permittee;

(4) Initiate engineering and financial planning for expansion of the sewage treatment works whenever throughput and treatment reaches 80% of design capacity;

(5) Commence construction of such sewage treatment works expansion whenever throughput and treatment reaches 95% of design capacity or, in the case of a municipality, either commence such construction or cease issuance of building permits within such municipality until such construction is commenced, except that building permits may continue to be issued for any construction which would not have the affect of increasing the input of sewage to the sewage treatment works of the municipality involved; and

(6) Inclusion of the requirements authorized by paragraph (4) of this subsection (F) shall be presumed unnecessary to assure compliance upon a showing that the area served by a governmental sewage treatment works has a stable or declining population; but this provision shall not be construed as preventing periodic review by the Tribe should it be felt that growth is occurring or will occur in the area.

(G) Every permit issued for a discharge from any facility, process, or activity that includes any dam, settling pond, or hazard within or related to its system shall include such terms and conditions as the Tribe determines necessary to prevent or minimize the discharge of any pollutant into any reservation waters in potentially dangerous quantities.

(H) For the purposes of defraying costs incurred by the Tribe in their monitoring of waste discharged into reservation waters pursuant to a permit issued under this Section, the permittee shall pay to the Tribe a fee of one hundred dollars (\$100.00) prior to the commencement of each year covered by the permit beyond the first year. Until such fee is paid, when due, the permittee shall not be in good standing under this Article.

### **Section 34.25 Application - Fee - Public Participation**

(A) "Minor municipal discharge" is a discharge from a publicly owned wastewater treatment plant which is less than all cases in subparagraph (1) of this paragraph.

(B) "Minor industrial discharge" is one which does not discharge over fifty thousand (50,000) gallons in the aggregate on any one day of the year from one or more discharge points and which does not contain toxic pollutants.

(C) "Irrigation return flow" means tailwater, tile drainage, or surfaced groundwater flow from irrigated land, in a system operated by public or private organizations or individuals, if:

- (1) There is a point source of discharge (e.g., a pipe, a ditch, or any other defined or discrete conveyance), whether an artificial or a natural feature of the land, purposely maintained as a drainage structure;
- (2) The return flow is from land areas of more than three thousand (3,000) contiguous irrigated acres or three thousand (3,000) noncontiguous irrigated acres which use the same artificial drainage system or natural feature of the land purposely maintained as a common drainage structure;
- (3) The discharge from the lands (as opposed to the water supply to the lands) is controlled by one public or private organization or one individual. Irrigation return flow is concerned with the drainage from irrigated land. It does not include the delivery of irrigation water.

(D) "Feedlots" includes:

(1) "Small feedlots", by type and capacity:

- (a) Slaughter and feeder cattle - up to 1,000;
- (b) Mature dairy cattle - up to 700;
- (c) Swine weighing over 55 lbs. - up to 2,500;
- (d) Sheep - up to 10,000;
- (e) Turkey - up to 55,000;
- (f) Chickens, with continuous overflowing watering - up to 100,000;
- (g) Chickens, with liquid manure handling systems - up to 30,000;
- (h) Ducks - up to 5,000.

(E) FEES

A. Minor municipal and industrial discharges - \$50

B. Irrigation return flow - \$10

C. Small feedlots - \$10

(F) The permits shall run from the date of issuance, and the annual fees shall be paid to the Tribe.

(1) Upon receipt of an application, the Tribe shall prepare a tentative determination to issue or deny the permit, and if it is to be issued, its tentative determination as to the terms and conditions of such permit.

(2) 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:

- (a) Notice shall be circulated within the geographical areas of the proposed discharge.
- (b) Notice shall be mailed to any person or group upon request.
- (c) The Tribe shall add the name of any person or group upon request to a mailing list to receive copies of notices for all discharge applications within the state or within a certain geographical area.
- (d) The Tribe shall promulgate such regulations as are necessary and appropriate to provide an opportunity for public hearing, when appropriate, prior to granting or denial of a discharge permit by the Tribe.

### **Section 34.26 Permits - When Required and When Prohibited**

(A) The Tribe shall issue a waste discharge permit in accordance with regulations promulgated under this Article.

(B) No discharge shall be permitted which will violate any duly promulgated reservation-wide or local land use plan unless all requirements and conditions of applicable ordinances and regulations have been met or will be met pursuant to a schedule of compliance.

(C) No discharge shall be permitted which will violate a control regulation unless the waste discharge permit contains effluent limitations and a schedule of compliance specifying treatment requirements as determined by the Division. Such requirements shall require the best practical or available treatment consistent with the federal Clean Water Act.

(D) No discharge shall be permitted that by itself or in combination with other pollution will result in pollution of the receiving waters in excess of the pollution permitted by an applicable water quality standard unless the permit contains effluent limitations and a schedule of compliance specifying treatment requirements.

(E) In any case in which a permit for a discharge has been applied for but final disposition of such application has not been made, such discharge shall not be a violation of any provisions of this Article or regulations promulgated under this Article unless the Tribe proves that absence of final administrative disposition of such application has resulted from the failure of the applicant to furnish information reasonably required or requested in order to process the application.

### **Section 34.27 Nuclear, Toxic, and Radioactive Wastes**

(A) It is unlawful for any person to discharge, deposit, generate, or dispose of any radioactive, toxic, or other hazardous waste underground in liquid, solid, or explosive form.

### **Section 34.28 Agricultural Wastes**

(A) The Tribe may not issue any permit for any flow or return flow of irrigation water into reservation waters.

(B) The Tribe may not issue any permit for animal waste on farms and ranches.

### **Section 34.29 Tribes to Be Notified of Suspected Violations and Accidental Discharges - Penalty**

(A) Any person or any agency of the Tribe may apply to the Tribe to investigate and take action upon any suspected or alleged violation of any provision of this article or of any order, permit, or regulation issued or promulgated under the authority of this Article.

(B) Any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the reservation contrary to the provisions of this article shall, as soon as he has knowledge thereof, notify the Division of Natural Resources. Any person who fails to notify the Tribe as soon as practicable is deemed in violation of this Article and, upon an administrative finding thereof, shall be levied an administrative civil penalty of not more than five hundred dollars (\$500.00), or by imprisonment upon conviction for a misdemeanor for a violation of this Article for not more than six (6) months, or by both such administrative penalty and criminal penalty.

### **Section 34.30 Notice of Alleged Violations**

(A) Wherever the Tribe has reason to believe that there has occurred a violation of an order, permit, or control regulation issued or promulgated under authority of this Article, the Tribe shall cause written notice to be served personally or by certified mail return-receipt requested upon the alleged violator or its agent for service of process. The notice shall state the provision alleged to be violated, the facts alleged to constitute a violation, and any may include the nature of any corrective action proposed to be required.

(B) Each cease and desist and clean-up order issued pursuant to Sections 34.33 and 34.34 shall be accompanied by or have incorporated in it the notice provided for in subsection (A) of this Section unless such notice shall thereto have been given.

### **Section 34.31 Hearing Procedures for Alleged Violations**

(A) In any notice given under Section 34.30 the Tribe may require the alleged violator to appear before it for a public hearing and to answer each alleged violation. Such hearing shall be held no sooner than fifteen (15) days after service of the notice, except the Tribe may set an earlier date for hearing if it is requested by the alleged violator if an emergency exists.

(B) If the Tribe does not require an alleged violator to appear for a public hearing, the alleged violator may request the Tribe to conduct such a hearing. Such request shall be in writing and shall be filed with the secretary of the Tribe no later than thirty (30) days after service of the

notice under Section 34.30. If such a request is filed, a hearing shall be held within a reasonable time.

(C) If a hearing is held pursuant to the provisions of this Section, it shall be public.

### **Section 34.32 Suspension, Modification, and Revocation of Permit**

(A) Upon a finding and determination, after hearing, that a violation of a permit provision has occurred, the Tribe shall suspend, modify, or revoke the pertinent permit, or take such other action with respect to the violation as may be authorized pursuant to regulations promulgated by the Tribe.

### **Section 34.33 Cease and Desist Orders**

(A) If the Tribe determines, with or without a hearing, that there exists a violation of any provision of this Article or of any order, permit, or control regulation issued or promulgated under authority of this Article, the Tribe (or its appropriate agency) may issue a cease and desist order. Such order shall set forth the provision alleged to be violated, the facts alleged to constitute the violation, and the time by which acts or practices complained of must be terminated.

### **Section 34.34 Clean-up Orders**

(A) The Tribe (or its appropriate agency) may issue orders to any person to clean up any material which he, or his employee, or his agent has accidentally or purposely dumped, spilled, or otherwise deposited in or near reservation waters which may pollute them. The Tribe may also have the Tribal Attorney proceed and take appropriate action.

### **Section 34.35 Restraining Orders and Injunctions**

(A) In the event any person fails to comply with a cease and desist order or clean-up order that is not subject to stay pending administrative or judicial review, the Tribe may request the Tribal Prosecutor to bring, and if so requested it shall be his duty to bring, a suit for a temporary restraining order, preliminary injunction, or permanent injunction to prevent any further or continued violation of such order. In any such suit the final findings of the Tribe based upon evidence in the record, shall be prima facie evidence of the facts found therein.

(B) Suits under this Section shall be brought, where practicable, in the Tribal Court of the district where the discharge occurs. Emergencies shall be given precedence over all other matters pending in such court. The institution of such injunction proceeding by the Tribe shall confer upon such court exclusive jurisdiction to determine finally the subject matter of the Proceeding.



### **Section 34.36 Civil Penalties**

(A) Any person who violates any provision of any permit issued under this Article or any final cease and desist order or clean-up order shall be subject to a civil penalty of not more than five hundred dollars (\$500 ) per day for each day during which such violation occurs.

(B) Upon application of any of the Division, penalties shall be determined after a hearing as to the amount thereof and may be collected by the Tribe by action instituted in Tribal Court by the Tribal Attorney for collection of such penalty. A stay of any order of the Tribe pending judicial review shall not relieve any person from any liability under subsection (A) of this Section, but the reason for the request for judicial review shall be considered in the determination of the amount of the Penalty.

(C) Any person who discharges any pollutant into any reservation waters commits a violation of this ordinance if such discharge is made:

(1) In violation of any permit issued under this Article; or

(2) In violation of any cease and desist order or clean-up order issued by the Tribe (or its appropriate agency) which is final and not stayed by court orders; or

(3) Without a permit, if a permit is required by the provisions of this Article for such discharge, unless there is then pending an application for such a permit; or

(4) In violation of any applicable control regulation, unless a permit has been issued therefore or unless there is then pending an application for such a permit.

(D) Prosecution under paragraphs (1) through (4) of subsection (C) of this Section shall be commenced only upon complaint filed by the Tribe.

(E) Any person who commits criminal pollution of reservation waters shall be fined, for each day the violation occurs, as follows:

(1) If the violation is committed with criminal negligence or recklessly, the maximum fine shall be one hundred fifty dollars (\$150).

(2) If the violation is committed knowingly or intentionally, the maximum fine shall be two hundred dollars (\$200).

(3) If two separate offenses under this Article occur in two separate episodes during a period of two years, the maximum fine for the second offense shall be double the amounts specified in paragraphs (1) and (2) of this subsection.

### **Section 34.37 Falsification and Tampering**

(A) Any person who knowingly makes any false statement, representation, or certification in any application, record, plan, or other document filed or required to be maintained under this Article, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Article is guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than three hundred dollars (\$300), or by imprisonment in the tribal jail for not more than six (6) months, or by both fine and imprisonment.

### **Section 34.38 Proceedings by Other Parties**

(A) The factual or legal basis for proceedings or other actions that shall result from a violation of any control regulation insure solely to the benefit of the people of the Tribe, and is not intended by this Article, in any way, to create new private rights or to enlarge existing private rights. A determination that water pollution exists or that any standard has been disregarded or violated, whether or not a proceeding or action may be brought by the Tribe, shall not create by reason thereof any presumption of law or finding of fact which shall be for the benefit of any person other than the Tribe.

(B) A permit issued pursuant to this Article may be introduced in any court of law as evidence that the permittee's activity is not a public or private nuisance. Introduction into evidence of such permit and evidence of compliance with the permit conditions shall constitute a prima facie case that the activity to which the permit pertains is not a public or private nuisance.

## **GENERAL PROVISIONS**

### **Section 34.39 Streambed Alteration**

(A) Alteration work shall not be permitted within the high water mark of any stream without receiving a permit from the Tribal Council.

(1) Any person proposing the project shall submit a work plan to the Tribal Council for their review. As a part of the review process, the Tribal Council may consult the U.S. Fish and Wildlife Service and the Bureau of Indian Affairs for recommendations. On this basis, the Council will either issue a permit, deny a permit, or request further review.

(B) There shall be no heavy equipment allowed within the confines of any stream. In-stream work shall be completed with equipment situated out of the stream channel.

### **Section 34.40 Minimum In-stream Flow**

(A) Under this Article, minimum in-stream flow for cultural a traditional uses, fish and aquatic life, recreation and esthetic purposes are legitimate beneficial uses.

(B) Parties proposing to de-water major reservation streams for irrigation purposes or agricultural use must demonstrate to the Tribe that the proposed activities will not interfere with a minimum stream-flow no less than ten (10) cubic feet per second (cfs) for the purpose of subsection (C).

(C) A minimum stream flow of 10 cfs shall be retained in all other streams at all times, unless the natural flow, due to natural conditions, is less than 10 cfs.

### **Section 34.41 Lakeshore Management**

(A) A permit is required by any person who proposes to do any work which will alter or diminish the course, current, or cross sectional area of a lake or its lakeshore. Without limitation, the following activities are, when conducted below mean annual high water elevation, examples of work for which a permit is required. Construction of channels and ditches; dredging of lake bottom areas to remove muck, silt, or weeds; lagooning; filling; constructing breakwaters or pilings, wharves, and docks.

(B) Any person proposing work within a lakeshore area shall submit a work plan to the Tribal Council for their review. The Tribal Council will make the final decision on whether or not and how any work is accomplished, with the aid of the U.S. Fish and Wildlife Service and the Bureau of Indian Affairs where appropriate.

Factors to be considered during the review process are that the work will not, during either its construction or utilization:

- (1) materially diminish water quality;
- (2) materially diminish habitat for fish or wildlife;
- (3) interfere with navigation or other lawful recreation;
- (4) create a public nuisance;
- (5) create a visual impact discordant with natural scenic values, as determined by the Tribal Council, where such values form the predominant landscape elements; or
- (6) materially impair cultural or traditional uses of lakes and lakeshore areas.

(C) A person who performs work in a lake without a permit for that work shall, if required by the Tribal Council, restore the lake to its condition before it was disturbed, and is subject to the provisions for violations, remedies, and penalties under this Article as contained in Section 34.36 et seq.

### **Section 34.42 Obstructions to Fish Passage**

(A) No object may be built in or across a stream that will block or inhibit the free passage of fish past that point.

(B) Any person proposing such work must submit a written project proposal to be reviewed by the Tribal Council in conjunction with the U.S. Fish and Wildlife Service, Bureau of Indian Affairs, or other appropriate parties at a public meeting. If approval is received, and a permit granted, permit conditions must be adhered to which will facilitate the passage of fish.

### **Section 34.43 Forestry**

(A) Effective December 31, 1988, forest logging shall be prohibited within an area within ten (10) chains (660 feet) of the bank of any reservation stream determined by the Tribe to have the potential to support a population of fishes or which serves as a spawning ground for the same.

(B) Logging roads shall be prohibited within the area described in subsection (A) except for permitted activities under subsection (C).

(C) Any person proposing access roads or trails or stream crossings along or over streams determined by the Tribe to have the potential to support a population of fishes or which serves as a spawning ground for the same shall submit a written project proposal to the Tribal Council for a permit to conduct such activities. The Tribal Council shall make the final decision as to whether such activities will be permitted and what conditions shall be required in order to preserve the species or species habitat.

(D) Any person who seeks to harvest timber must submit a written project proposal to the Tribal Council for a permit to conduct such activities. The Tribal Council shall make the final decision whether such activities will be permitted and under what conditions such activity will be permitted in order to:

(1) Preserve the resulting water quality in order to meet the standards of that particular watershed, as established by the Tribe pursuant to its stream classification system under this Article; and

(2) Avoid general deterioration of water quality through erosion from the practice of clear cutting of timber.

### **Section 34.44 Oil & Gas Recovery Activities, Surface Mining**

(A) Effective December 31, 1988, oil and gas exploration and recovery activities (underground injection is prohibited) and surface mining activities shall be prohibited within an area 1,000 feet from the banks of any reservation stream or lake determined by the Tribe to have the potential to support a population of fishes of which serves as a spawning ground for the same.

(B) Any person seeking to engage in such activities covered under subsection (A) within one-half mile of a tribally designated stream under that subsection must submit a written project proposal to the Tribal Council for a permit to conduct such activities. The Tribal Council shall make the final decision as to whether such activities will be permitted and what conditions shall be required to preserve the species or species habitat.

(C) Effective December 31, 1988, oil and gas exploration and recovery activities, and surface mining activities, which will affect reservation streams and lakes will require a tribal permit.

(D) Any person seeking to engage in such activities covered under subsection (C) of this Section must submit a written project proposal to the Tribal Council for a permit to conduct such activities. The Tribal Council shall make the final decision as to whether such activities will be permitted and what conditions will be required to:

(1) Assure that the resulting water quality will meet the standards of that particular watershed as established by the Tribe pursuant to its stream classification system under this Article; and

(2) Assure that all resulting effluent discharges from such operations shall be retained or treated in a proper manner so as to protect the watershed from degradation from the tribally established standard for that stream or watershed.

#### **Section 34.45 \*Livestock**

(A) Effective December 31, 1988, corrals designed and constructed for holding, loading, and unloading livestock are prohibited within an area one hundred (100) feet from the banks of any reservation stream or lake unless permitted by the Tribe under subsection (C) of this Section.

(B) Effective December 31, 1988, livestock watering, feeding, and salting locations are prohibited within an area one thousand (1,000) feet from the banks of any reservation stream or lake unless permitted by the Tribe under subsection (E) of this Section.

(C) Any person desiring to engage in activities covered under subsections (A) and (B) of this Section must submit in writing a project proposal to the Tribal Council. The Tribal Council shall make a final decision as to whether such activities will be permitted and what conditions will be imposed. Factors the Tribe may consider may include:

(1) Fish preservation and spawning habitat preservation; and

(2) Water quality protection to meet the standards of that particular watershed, as established by the stream classification system.

\* (NOTE: If Agricultural Wastes is adopted, this Section may be deleted.)

## **Section 34.46 Severability**

(A) If any provision of this Article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Article which can be given effect without regard to the invalid provision or applications, and to this end the provisions of this Act are severable.

### LEGISLATIVE HISTORY

Ordinance Committee approved to go to Tribal Council for review at the April 20, 1988 Committee meeting with appropriate changes.

Approved by Tribal Council for posting at the November 1, 1988 Tribal Council Meeting.

Officially adopted by Resolution #1122 on January 3, 1989 at the Tribal Council Meeting.

Recommended changes by the BIA passed by the Tribal Council Resolution #1161 on July 18, 1989.

A BIA list of approved ordinances on file there as of 1993 shows they have the Water Quality Ordinance on file.

Water Pollution Control amended by Resolution No. 1552-95, Nov. 7, 1995, by deleting a section entitled "Criminal Pollution" and adding that section with some changes to the preceding section entitled "Civil Penalties". The numbering system also changed at this time so section number cited in Resolution differs from current.

Amended by Council deleting sections 34.4, 34.5, 34.6 and 34.16 on August 5, 1998, by Resolution No. 050-98.