



Environmental Code

TITLE 7. AIR QUALITY ORDINANCE

(Adopted by the Tribe 04/27/19)

CHAPTER 1. GENERAL PROVISIONS

SECTION 1. Short Title

This Ordinance shall be known as the **Tribal Air Quality Ordinance of the Dry Creek Rancheria Band of Pomo Indians**.

SECTION 2. Findings

The Dry Creek Rancheria Tribal Council hereby finds as follows:

- (A) The people of Dry Creek Rancheria have a primary interest in the protection and control of the air and other natural resources affected by the improper emission of air contaminants within the Rancheria, and the quality of such air and other natural resources must be protected to insure the health, economic, aesthetic, and cultural well-being of the Dry Creek Rancheria Pomo People.
- (B) The increasing volume and variety of air contaminants being emitted on the Rancheria and the often-inadequate existing methods of managing air contaminants have the potential of contributing to air pollution and to the general deterioration of the Rancheria's environment and creating conditions which threaten the health, safety, and welfare of tribal members and residents of Dry Creek Rancheria.
- (C) The Dry Creek Rancheria Band of Pomo Indians possesses inherent sovereign authority to regulate on-Rancheria air quality that affect fundamental Tribal interests and public health and safety, including when such activities are conducted by nonmembers of the Tribe on privately owned land within the Rancheria.
- (D) Under the Clean Air Act (42 U.S.C. §§7401-7671), Indian tribes can be treated as states for purposes of the Act (42 U.S.C. §7601(d)), and the EPA Administrator may establish elements of tribal implementation plans.

- (E) It is in the best interest of the Dry Creek Band of Pomo Indians and residents of the Dry Creek Rancheria to establish and maintain a comprehensive tribal air quality policy, the objectives of which are to manage and control emissions of air contaminants in the air of the Rancheria in order to protect the health, safety, and welfare of tribal members and to preserve the environment.

SECTION 3. Purpose

The general purposes of this Ordinance are to:

- (A) Implement, regulate, and enforce environmental standards and criteria and exercise comprehensive Tribal regulatory authority over all air quality within the exterior boundaries of the Dry Creek Rancheria;
- (B) Prevent air pollution on the Rancheria by setting ambient air quality standards that are at least as stringent as federal standards under the federal Clean Air Act;
- (C) Prevent the deterioration of the environment, standard of living, quality of life, health, safety, and welfare of all persons within the exterior boundaries of the Rancheria;
- (D) Protect fundamental Tribal cultural, ceremonial, religious, fishery, and economic stability of residential, agricultural, commercial, industrial, forest, wetlands, riparian and environmentally sensitive lands within the exterior boundaries of the Rancheria; and
- (E) Provide and promote Tribal environmental protection and services within the Rancheria and to regulate environmental activities under the principles of Tribal sovereignty.

SECTION 4. Authority

This Tribal Air Quality Ordinance is hereby adopted by the Dry Creek Rancheria Tribal Council pursuant to Article VII of the Tribe's Articles of Association authorizing the Tribal Council to undertake such actions.

SECTION 5. Scope

The provisions of this Ordinance shall apply to all existing and proposed activities that have the potential to adversely affect air quality on the Rancheria, and to all activities which have the potential to affect cultural, ceremonial, religious, fishery, seasonal residential, public health, safety, welfare, land, air, or water quality and other fundamental interests of the Tribe and residents of the Rancheria. Activities to be regulated hereunder include but are not limited to:

- (A) Emissions of air contaminants into the air;
- (B) Industrial, commercial, or other activities that may result in the emission of air contaminants;

- (C) Emissions caused by recreational off-road driving of vehicles, automobiles, all-terrain-vehicles, and motorcycles;
- (D) All other activities that involve the emission of air contaminants into the air within the exterior boundaries of the Rancheria.

CHAPTER 2. DEFINITIONS

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

- (A) "Board of Directors" means the Dry Creek Rancheria Band of Pomo Indians Board of Directors.
- (B) "Erosion Control Plan" means a tribally-approved plan for erosion control prior to any construction or earth-moving activities on Tribal Lands.
- (C) "Personnel Policies and Procedures" means the Tribe's personnel policies and procedures, as applicable to a Tribal employee.
- (D) "Rancheria" means all land, air, and water located within the exterior boundaries of the Dry Creek Rancheria and tribal trust lands.
- (E) "Resident" means any person who resides on Tribal Lands.
- (F) "Tribal Air Quality Control Officer" means the person designated by the Board of Directors to serve in that capacity pursuant to this Code.
- (G) "Tribal Lands" means all tribal trust lands, including the Rancheria.

CHAPTER 3. TRIBAL ENVIRONMENTAL PROTECTION DEPARTMENT

SECTION 1. Designation as Lead Tribal Agency

The Tribal Department of Environmental Protection shall be the lead department for implementing this Ordinance.

SECTION 2. Creation of Tribal Air Quality Control Officer

There is hereby created in the Tribal Department of Environmental Protection the position of Tribal Air Quality Control Officer. The Tribal Air Quality Control Officer shall serve under the direction of the Director of the Tribal Department of Environmental Protection and shall be hired in accordance with the Tribe's administration Personnel Policies and Procedures. The Tribal Air Quality Control Officer shall coordinate with the United States Environmental Protection Agency and any other pertinent federal or state agency, as necessary to implement the regulations and procedures set forth in this Ordinance.

SECTION 3. Roles and Responsibilities of Tribal Air Quality Control Officer

The Tribal Air Quality Control Officer shall be responsible for:

- (A) Developing and maintaining a comprehensive program for prevention, control, and abatement of air pollution throughout the entire Rancheria, including a program for control of emissions from all significant sources of air pollution;
- (B) Promulgating ambient air quality goals for every portion of the Rancheria;
- (C) Identifying, inspecting, and defining the different degrees or types of air pollution;
- (D) Identifying, inspecting, and documenting each type of facility, process, or activity which produces, or which potentially or accidentally might produce, significant emission of air contaminants;
- (E) Promulgating an emission control regulation for each such facility, process and activity identified in Subsection (D) of this Section, except for motor vehicles and airplanes to the extent prohibited by federal law.
- (F) Monitoring and reporting of air contamination sources which presently, or may potentially, adversely affect the air quality of the Rancheria;
- (G) Adopt and promulgate emission control regulations which require the use of effective practical air pollution controls for each significant source, potential source, and type of source of air contamination throughout the entire Rancheria;
- (H) Reviewing and recommending regulations to be adopted following notice and hearings or written opportunity for public comments to carry out the purposes of this Title;
- (I) Installing and maintaining monitoring equipment or methods; and
- (J) Recording sample emissions.

CHAPTER 4. POLICY, REGULATIONS, AND MONITORING

SECTION 1. Policy

It is the Tribe's policy to adopt and implement regulations which protect and improve the air quality within the Rancheria to the maximum extent possible. The regulations set forth shall require the use of effective practical air pollution controls for each significant source, potential source, and type of source throughout the entire Rancheria.

The Tribe hereby finds that the following emissions shall be subject to emission control regulations.

- (A) Visible pollutants;
- (B) Particulates;
- (C) Sulfur oxides, sulfuric acids, hydrogen sulfide, nitrogen oxides, carbon oxides, hydrocarbons, fluorides and any other chemical substance;

- (D) Odors;
- (E) Open burning activity, including but not limited to incidental refuse, dumps, agricultural purposes, junk automobiles;
- (F) Organic solvents;
- (G) Photochemical substances; and
- (H) Toxic gases.

SECTION 2. Regulations

(A) Burning Regulations

- (1) Residents may burn non-toxic waste in open pits provided no such burning interferes with the health or peaceful enjoyment of other Residents.
- (2) The following is a list of safety precautions that must be followed by Residents who engage in the open burning of non-toxic wastes:
 - i. Non-toxic wastes shall only be burned on a day declared a burn day by El Dorado County for outdoor burning;
 - ii. Burn pile size shall be four (4) feet in diameter or less to ensure maximum safety;
 - iii. Flammable materials and vegetation shall be cleared away within a ten (10) foot radius of the pile;
 - iv. Only burn close to a water supply;
 - v. Only burn when an adult is in attendance; and
 - vi. Ensure that the burn fire is completely extinguished before leaving the area.
- (3) At times, larger fires may occur in traditional structures or areas such as a round houses, sweat lodges or dance arbors. The leader of the ceremony, dance, etc. is responsible for exercising good judgment as it pertains to fire safety.
- (4) In the performance of their regular duties, the Facilities Department, and the Tribal Fire-Fuels Crew may have larger fires or burn piles. The Facilities Department Director and Tribal Fire-Fuels Director are responsible for exercising good judgment as it pertains to fire safety, however nothing in this Code creates any new liability or otherwise waives tribal sovereign immunity.

(B) Off-Road Driving Regulations

- (1) Recreational off-road driving of vehicles, including automobiles, all-terrain-vehicles, and motorcycles, is prohibited in areas deemed sensitive to disturbance and in areas identified by Tribal Council or Tribal Department of Environmental Protection, (see attached map of sensitive areas). When off-road, vehicles shall not be driven faster than fifteen (15) miles per hour.

(C) Dust Control Regulations

(1) Construction. All construction activities taking place within the Rancheria shall perform the following best management practices to reduce dust emissions:

- i. Water all active construction areas as needed;
- ii. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer);
- iii. Pave, apply water, or apply (non-toxic) soil stabilizers on all unpaved areas and staging areas at construction sites;
- iv. Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets;
- v. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more);
- vi. Enclose, cover, water, or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.);
- vii. Restrict or ban work on days of high winds (greater than thirty (30) miles per hour) or when air quality violations are expected;
- viii. Limit traffic speeds on unpaved roads to fifteen (15) miles per hour;
- ix. Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
- x. Replant vegetation in disturbed areas as quickly as possible; and
- xi. Designate a person or persons to oversee the implementation of a comprehensive dust and erosion control program that includes a provision to increase watering, if necessary.

(2) Construction Activities and Earth Work. All construction activities taking place within the Tribal Lands must conform with all the following practices when applicable:

- i. Complete all necessary studies and submit the completed permitting signoff sheet before ground breaking takes place.
- ii. An Erosion Control Plan must be in place and be reviewed and approved by the Environmental Department before breaking ground on any construction activities and or performing earth works on Tribal Land.
- iii. Erosion Control Plans must be followed at all times during construction activities and earth works. If changes are made to an existing Erosion Control Plan the Environmental Department must be provided with an updated copy, with time to review and approve prior to such work being done.
- iv. Apply Title 22 Reclaimed Water on all active construction areas as needed;

- v. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two (2) feet of space below the top of the truck bed;
- vi. Pave, apply water, or apply (non-toxic) soil stabilizers on all unpaved areas and staging areas at construction sites;
- vii. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten (10) days or more);
- viii. Enclose, cover, water, or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.);
- ix. Install sandbags or other erosion control measures to prevent silt runoff to public roadways, and all waterways;
- x. Replant vegetation or distribute appropriate seed in disturbed areas as quickly as possible.

SECTION 3. Monitoring

- (A) The Tribal Department of Environmental Protection shall periodically monitor air quality on the Rancheria.
- (B) For each new commercial development project proposed on the Rancheria (proposed project), the contractor shall implement a monitoring program for construction and operational emissions, unless the Tribal Council anticipates no air emissions from both the construction and operation of the proposed project. If the Tribal Council anticipates air emissions from either the construction or operation of the proposed project, then a monitoring program is required only for the portion of the proposed project that is anticipated to produce air emissions. The monitoring program shall be in place before any air emissions from the proposed project are anticipated to occur.

CHAPTER 5. EDUCATION

The Tribal Department of Environmental Protection shall develop and implement an educational program that will educate the Tribal Members about the air quality effects of land use and transportation decisions on the Rancheria. The program shall include staff attendance at appropriate educational workshops, and staff meetings with planners, the United States Environmental Protection Agency, and other tribal land use planners.

CHAPTER 6. ENFORCEMENT AND PENALTIES

SECTION 1. Enforcement Agency and Policy

It is the policy of the Department of Environmental Protection to encourage informal, practical, result-oriented resolution of alleged violations and actions needed to prevent damage to the Rancheria resources or harm to the health, safety, or welfare of the Rancheria population.

Department of Environmental Protection shall be responsible for enforcing the provisions set forth in this Ordinance. Should the Department of Environmental Protection determine that any person, firm, corporation, or other legal entity is found to be violating the provisions of this Ordinance, the Department of Environmental Protection shall consult with the Tribal Council to determine the fines for each violation according to the severity of the violation.

SECTION 2. Enforcement Activities

If a written and verified complaint is filed with the Tribal Air Quality Control Officer and reviewed by the Department of Environmental Protection alleging, or where the Tribal Air Quality Control Officer shall have cause to believe, that any person is violating any air quality regulation, the Department of Environmental Protection shall conduct a prompt investigation.

SECTION 3. Notice of Violation; Cease and Desist Order

(A) Notice of Violation. If the Department of Environmental Protection finds, after conducting an investigation pursuant to Chapter 6, Section 2 of this Ordinance, that a violation of any regulation exists, the Department of Environmental Protection shall promptly notify the alleged violator and the Tribal Council in writing.

(1) In the case of an apparent violation of this Ordinance, the Department of Environmental Protection is authorized to issue a Notice of Violation to the person(s) 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 owner/operator.

(B) Cease and Desist Order. Should the violator(s)/owner/operator(s) fail to remedy the violations, the Department of Environmental Protection is authorized to issue a Cease and Desist Order to prevent the violation from continuing.

(1) Failure to comply with a Cease and Desist Order constitutes a violation of this Ordinance.

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.

SECTION 4. Informal Conferences

The Department of Environmental Protection shall afford the violator or his/her representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the Department of Environmental Protection determines that there may be either imminent environmental damage to the Rancheria and/or detrimental impact on the health, safety, or welfare of the Rancheria population. Informal

conferences may be used at any stage in the enforcement proceedings, except that the Department of Environmental Protection may refuse to conduct informal conferences with respect to any matter then pending before the Tribal Council.

SECTION 5. Reports Required

The Department of Environmental Protection shall retain written documentation of all conferences including the date/time, location, attendees, discussed matter, and any decisions reached with respect to further enforcement action.

SECTION 6. Enforcement Hearings

Should the violator and the Department of Environmental Protection be unable to resolve the matter via informal conference, the Tribal Council is authorized to conduct adjudicatory hearings to determine if a violation of this Ordinance has occurred. At the hearing, the Department of Environmental Protection, in cooperation with the Tribal Air Quality Control Officer, shall present the case to the Tribal Council to establish that the violator(s) charged has/have committed a violation of this Ordinance. Any violator charged shall be entitled, at his/her expense, to retain counsel or another representative.

- (A) Burden of Proof. The Department of Environmental Protection shall have the burden of proving that a violation of this Ordinance has occurred and that the person charged was responsible for said violation. The Board of Directors may determine that a violation of this Ordinance has occurred if it finds that the charges are supported by substantial evidence that supports a finding that a violation has occurred.
- (B) Enforcement Orders. Within thirty (30) days after the date of any enforcement hearing, the Tribal Council shall issue a written decision. Should the Board of Directors determine that the violation has occurred and that the person(s) charged was (were) responsible for said violation, the Tribal Council will include an Enforcement Order with its decision.

SECTION 7. Civil Penalties and Corrective Action

An Enforcement Order shall direct anyone found to have committed a violation of this Ordinance to take such corrective action as the Tribal Council deems appropriate under the circumstances. An Enforcement Order may impose civil penalties in accordance with a schedule of civil penalties prescribed in the Tribal Council's rules. Alternatively, an Enforcement Order may impose civil penalties if a person found to have committed a violation of this Ordinance does not take corrective action in accordance with the Order within a prescribed period of time. If anyone who has been found to have committed a violation does not take corrective action within the prescribed period of time, an appropriate department or agency of the Tribal government may take the necessary correction action, in which case, the amount of any civil penalty shall be increased by double the actual costs incurred by the Tribal department or agency taking the corrective action.

- (A) Emergency Orders. Notwithstanding any other provision of this Ordinance, the Tribal Council may issue an emergency order if the Tribal Council determines that a failure to comply with this Ordinance presents an imminent and substantial threat to the public

health, welfare, or environment, and further determines, following consultation with the Tribe's attorney(s), that it is not practicable to otherwise assure prompt protection of 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.

SECTION 8. Judicial Enforcement

The Tribal Court shall have jurisdiction over all cases and controversies arising under this Ordinance.

- (A) The Department of Environmental Protection may request the Tribal Council to authorize the Department of Environmental Protection to file an action in Tribal Court for a temporary restraining order, preliminary/permanent injunction, or any other relief provided by law, including the assessment and recovery of civil penalties, clean up, and any other administrative costs associated with the enforcement of this Ordinance (except that any suit against the Tribe, a tribal department, or agency shall be for injunctive relief only and not for penalties or other monetary damages, to which the Tribe does not waive its sovereign immunity), 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 Tribal Council shall request the Department of Environmental Protection 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, emits air pollutants or hazardous air pollutants into the air within the boundaries of the Rancheria shall be liable for all costs necessary to, or associated with, clean up, abatement or closure of the source and restoration of the quality of air of the Rancheria to its condition as it existed immediately prior to the emissions

SECTION 9. Special Provisions for Tribal Departments and Agencies

In such case that an allegation of a violation committed by the Board of Directors or any Tribal agency or department is presented to the Department of Environmental Protection, the Department shall inform the Board and the Chairperson of the Board shall convene a special meeting of the Board to consider the initiation of action to ensure compliance with this Code.

CHAPTER 7. SEVERABILITY AND SOVEREIGN IMMUNITY

SECTION 1. Severability

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

SECTION 2. No Waiver of Sovereign Immunity

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.



CERTIFICATION

The foregoing Air Quality Ordinance was presented at a General Membership Meeting held on April 27, 2019, and was approved with a quorum present and such Ordinance has not been rescinded or amended in any way.

Chris Wright
Chairman

Date

Margie Rojas
Secretary/Treasurer

Date