



Environmental Code

TITLE 8. Tribal National Pollutant Discharge Elimination System (TNPDES) Program Ordinance (Adopted by Tribe 04/27/19)

CHAPTER 1. GENERAL PROVISIONS

SECTION 1. Short Title

This Ordinance shall be known as the **Tribal National Pollutant Discharge Elimination System (TNPDES) Program 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 creek informally known as Rancheria Creek, its tributary streams, the streambeds thereof and the riparian areas adjacent thereto, have been natural resources of profound significance to the Dry Creek Rancheria Band of Pomo Indians and the Dry Creek Rancheria Pomo people have used these resources for cultural, ceremonial, religious, fishery, seasonal residential, and other purposes fundamental to the Tribe's way of life.
- (B) The people of Dry Creek Rancheria have a primary interest in the protection, control, and conservation of the water sources which flow into and through the Dry Creek Rancheria and the quality of such waters must be protected to insure the health, economic, aesthetic, and cultural well-being of the Dry Creek Rancheria Pomo People.
- (C) Various sites along the creek known informally as Rancheria Creek, are potentially at risk of discharging contaminated or hazardous pollutants into the water sources which flow into and through the Dry Creek Rancheria and may pose significant hazards to the water quality and public health if not properly identified and contained.
- (D) The Dry Creek Rancheria Tribal Council hereby finds that the National Pollutant Discharge Elimination System (NPDES), 33 U.S.C. §1342, a provision of the Clean Water Act, is a progressive and constructive approach to ensure that the state and federal standards for clean water are being met. Enaction of the TNPDES Program involves: geographic identification of sources of pollutant discharge; examination of pollutant type and toxicity; issuance of

appropriate permit(s) for lawful, regulated pollutant discharge which clearly state the acceptable level of Pollutant to be discharged; inspection and monitoring visits to ensure permit compliance; and enforcement of appropriate actions for violators of the TNPDES Program and the rules and regulations set forth in this Ordinance.

- (E) The Dry Creek Rancheria Band of Pomo Indians possesses inherent sovereign authority to regulate on-Rancheria pollution discharges 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.
- (F) Under the 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 (EPA) as authorized to exercise exclusive jurisdiction (Tribal primacy) over all on-Rancheria surface and ground water quality matters, including over on-Rancheria portions of waters, such as those of the creek informally known as Rancheria Creek, that flow through other jurisdictions.
- (G) Regulation and elimination of the discharge of hazardous pollutants in toxic amounts into the waters of the Dry Creek Rancheria is imperative at this time in order to maintain the chemical, physical, and biological integrity of said waters for their beneficial use by members of the Dry Creek Rancheria Band of Pomo Indians and residents of the Rancheria.
- (H) Such regulation for the protection of the waters of the Dry Creek Rancheria is not adequately provided for under existing legislation thus the regulation will be furthered by the passage, adoption, and implementation of this Ordinance.

SECTION 3. Purpose

The purpose of this Ordinance is to exercise tribal regulatory authority over all water sources which flow into and through the Dry Creek Rancheria in order to protect fundamental cultural, ceremonial, religious, fishery, seasonal residential, and other purposes essential to the Tribe's way of life by adopting and administering the applicable NPDES regulations set forth in 40 CFR, Protection of Environment and 33 U.S.C. §1342, National Pollutant Discharge Elimination System.

SECTION 4. Scope

The provisions of this Ordinance shall apply to all existing and proposed Point Sources which discharge Pollutants into surface or groundwaters located in and through the Rancheria and have the potential to affect cultural, ceremonial, religious, fishery, seasonal, residential, public health and safety, water quality, and other fundamental interests of the Tribe.

SECTION 5. Authority

The Dry Creek Rancheria Band of Pomo Indians possess the legal authority, resources, and implementation procedures essential to administer the NPDES program and handle all permit matters within its jurisdiction.

CHAPTER 2. DEFINITIONS

- (A) “Board of Directors” – means the Dry Creek Rancheria Band of Pomo Indians Board of Directors, the governmental body authorized to administer Tribal business on behalf of the Tribe.
- (B) “Bypass” – means the intentional diversion of waste streams from any portion of a treatment facility.
- (C) “Chairperson of Board of Directors” – means the Chairperson of the Dry Creek Rancheria Board of Directors.
- (D) “Clean Water Act (CWA)” – means the federal law, codified at 33 U.S.C. §1251 et. seq., and as amended, governing water pollution to maintain the chemical, physical, and biological integrity of the nation’s waters.
- (E) “Clean Water Act Classes of Pollutants” – refers to the classes established by Congress for regulatory purposes of pollutants.
- (F) “Construction General Permit” – refers to the EPA-developed General Permit which covers stormwater discharges from land disturbance at construction sites.
- (G) “Conventional Pollutants” – refers to the EPA-developed General Permit which covers pollutants prevalent in domestic wastewater.
- (H) “Department of Environmental Protection (DEP)” – means the Dry Creek Rancheria Band of Pomo Indians Department of Environmental Protection.
- (I) “Dry Creek Rancheria Band of Pomo Indians” – means the federally recognized Indian Tribe organized pursuant to §16 of the Indian Reorganization Act of 1934 (48 Stat. 984) 25 U.S.C. §476 et. seq. and includes the Tribe, its departments, its employees, servants, agents and attorneys, its enterprises, political subdivisions, departments and its funded programs unless such programs would be subject to the Federal Tort Claims Act.
- (J) “Effluent Limitations” – means the waste limitations based on consideration of technology based and water-quality based requirements
- (K) “General Permit” – means a type of NPDES permit that covers a large number of similar facilities under a single “umbrella” permit.
- (L) “Individual Permit” – means a type of NPDES permit that covers a single facility for its specific discharge(s).
- (M) “Major Non-POTW” – means a Non-Publicly-Owned Treatment Works facility which scores eighty (80) or more points on the “NPDES Permit Rating Worksheet”.

- (N) “Major POTW” – means a Non-Publicly-Owned Treatment Works facility which has a design flow of 1 million gallons per day or greater.
- (O) “Multi-Sector General Permit” – refers to the EPA Developed General Permits which stormwater discharges associated with industrial activity.
- (P) “National Pollutant Discharge Elimination System (NPDES)” – refers to the permit program created in 1972 by the Clean Water Act which addresses water pollution by regulating Point Sources that discharge Pollutants to Waters of the United States.
- (Q) “National Resources Defense Council (NRDC) Consent Decree” – refers to the Court-supervised agreement between the EPA and NRDC where the EPA agreed to establish lists of 65 classes of toxic pollutants and their compounds and 21 industrial categories most likely to discharge said pollutants (“primary industries”) and to develop requirements for the toxic pollutants and primary industries.
- (R) “Non-POTW” – means a privately-owned or federally-owned treatment works facility which often treat sanitary sewage, various types of industrial, manufacturing, and commercial activity, concentrated animal feeding operations, concentrated aquatic animal production facilities, pesticide applications, and vessels and stormwater discharges (frequently referred to as “non-municipal” or “industrial” dischargers).
- (S) “Non-Conventional Pollutants” – refers to the pollutants not specifically listed as a conventional or toxic pollutant.
- (T) “Notice of Intent” – refers to the notification sent to the regulatory authority of a planned discharge which requires coverage under a specific National Pollutant Discharge Elimination System (NPDES) general permit is needed and contains information about the discharge and the Operator of that discharge.
- (U) “Ordinance” – means this National Pollutant Discharge Elimination System (NPDES) Program Ordinance of the Dry Creek Rancheria Band of Pomo Indians.
- (V) “Permitting Authority” – means the Tribal NPDES Control Officer authorized to oversee, review, and issue NPDES program permits.
- (W) “Point Source” – means any discernible, confined, and discrete conveyance, including but not limited to: any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. It does not include return flows from irrigated agriculture or agricultural storm water runoff.
- (X) “Pollutant” – means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial,

municipal, and agricultural waste discharged into water. It does not include sewage from vessels or injected wastes.

- (Y) “Publicly-Owned Treatment Works (POTW)” – refers to a treatment works owned by a state or municipality including any devices and systems used in storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature.
- (Z) “Rancheria” – means all land, air, and water located within the exterior boundaries of the Dry Creek Rancheria.
- (AA) “Rancheria Water Sources” – means any water, surface or underground, containing within, flowing through or bordering upon the Dry Creek Rancheria or any portion thereof.
- (BB) “Section 404 of the Clean Water Act” – refers to the permit program established to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Under this program no discharge of dredged or fill material may be permitted if: (1) a practicable alternative exists that is less damaging to the aquatic environment or (2) the nation’s waters would be significantly degraded.
- (CC) “Standard Conditions” – refers to the basic requirements that must be included in all NPDES permits in accordance with 40 C.F.R. § 122.41.
- (DD) “Toxic Pollutants” – refers to the 65 classes of compounds made up of 126 pollutants listed on the NRDC Consent Decree. Commonly referred to as “priority pollutants”.
- (EE) “Tribal Court” – means the presiding court of the Dry Creek Rancheria Band of Pomo Indians.
- (FF) “Tribal NPDES Control Officer” – refers to the authorized person responsible of overseeing, reviewing, and issuing NPDES program permits.
- (GG) “Tribe” – means the Dry Creek Rancheria Band of Pomo Indians.
- (HH) “Upset” – means an exceptional incident that causes an unintentional, temporary non-compliance with a technology-based effluent limitation.
- (II) “Water Transfer” – means an activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use.
- (JJ) “Waters of the U.S. ” – means those waters that are considered Waters of the United States under the CWA and its implementing regulations.”

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 NPDES Control Officer

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

SECTION 3. Roles and Responsibilities of Tribal NPDES Control Officer

The Tribal NPDES Control Officer shall be responsible for:

- (A) Describing and identifying the geographic area of coverage of Point Sources which presently or may potentially discharge Pollutants into water sources of the Rancheria;

CHAPTER 4. POLICY AND REGULATIONS

SECTION 1. Policy

It is the Tribe's policy to adopt and implement the NPDES requirements set forth in 40 CFR Part 122, wherein any person who discharges or proposes to discharge Pollutants into Waters of the United States must submit a complete application to obtain a permit to allow the discharge of Pollutants. Anyone who fails to obtain the necessary permit and yet discharges Pollutants in the water sources of the Rancheria will be subject to penalties set forth in Chapter 6 of this Ordinance.

Should the Tribal NPDES Control Officer locate a Point Source discharging Pollutants that are either listed on the Toxic Pollutant List in 40 C.F.R. §401.15 and/or do not meet the Tribe's water quality criteria set forth in the Tribal Water Quality Ordinance of the Dry Creek Rancheria Band of Pomo Indians, the Tribal NPDES Control Officer shall conduct an inspection and notify the owner of said Point Source to obtain the required permit for the discharge of said Pollutants.

SECTION 2. Regulations

Any Point Source discharging the following Pollutants or Clean Water Act Classes of Pollutants into the water sources of the Rancheria is subject to investigation and NPDES compliance review.

(A) Pollutants. Pollutants as defined by 40 CFR 122.2:

1. Biological materials;
2. Cellar dirt;
3. Chemical wastes;
4. Dredged spoil;
5. Heat, wrecked or discarded equipment;

6. Filter backwash;
7. Garbage;
8. Incinerator residue;
9. Industrial, municipal, and agricultural waste;
10. Munitions;
11. Radioactive materials;
12. Rock;
13. Sand;
14. Sewage;
15. Sewage sludge; and
16. Solid waste.

(B) Classes of Pollutants: Classes of Pollutants pursuant to the Clean Water Act:

1. Conventional Pollutants:
 - i) Biochemical oxygen demand (BOD);
 - ii) Total suspended solids (nonfilterable) (TSS);
 - iii) Ph;
 - iv) Fecal coliform; and
 - v) Oil and grease.
2. Non-Conventional Pollutants (e.g. chlorine, ammonia, nitrogen, phosphorus)
3. Toxic Pollutants: EPA's Toxic Pollutants pursuant to the NRDC Consent Decree:
 - i) Acenaphthene;
 - ii) Acrolein;
 - iii) Acrylonitrile;
 - iv) Aldrin/Dieldrin;
 - v) Antimony and (organic and inorganic) compounds;
 - vi) Arsenic and (organic and inorganic) compounds;
 - vii) Asbestos;
 - viii) Benzene;
 - ix) Benzidine;
 - x) Beryllium and (organic and inorganic) compounds;
 - xi) Cadmium and (organic and inorganic) compounds;
 - xii) Carbon tetrachloride;
 - xiii) Chlordane (technical mixture and metabolites);
 - xiv) Chlorinated benzenes (other than di-chlorobenzenes);
 - xv) Chlorinated ethanes (including 1,2-di-chloroethane, 1,1,1-trichloroethane, and hexachloroethane);
 - xvi) Chloroalkyl ethers (chloroethyl and mixed ethers);
 - xvii) Chlorinated naphthalene;
 - xviii) Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols);
 - xix) Chloroform;
 - xx) 2-chlorophenol;
 - xxi) Chromium and (organic and inorganic) compounds;
 - xxii) Copper and (organic and inorganic) compounds;
 - xxiii) Cyanides;

- xxiv) DDT and metabolites;
- xxv) Dichlorobenzenes (1,2-, 1,3-, and 1,4-di-chlorobenzenes);
- xxvi) Dichlorobenzidine;
- xxvii) Dichloroethylenes (1,1-, and 1,2-dichloroethylene);
- xxviii) 2,4-dichlorophenol;
- xxix) Dichloropropane and dichloropropene;
- xxx) 2,4-dimethylphenol;
- xxxi) Dinitrotoluene;
- xxxii) Diphenylhydrazine;
- xxxiii) Endosulfan and metabolites;
- xxxiv) Endrin and metabolites;
- xxxv) Ethylbenzene;
- xxxvi) Fluoranthene;
- xxxvii) Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis(dichloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers);
- xxxviii) Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane;
- xxxix) Heptachlor and metabolites;
 - xl) Hexachlorobutadiene;
 - xli) Hexachlorocyclohexane;
 - xl ii) Hexachlorocyclopentadiene;
 - xl iii) Isophorone;
 - xl iv) Lead and (organic and inorganic) compounds;
 - xl v) Mercury and (organic and inorganic) compounds;
 - xl vi) Naphthalene;
 - xl vii) Nickel and (organic and inorganic) compounds
- xl viii) Nitrobenzene;
- xl ix) Nitrophenols (including 2,4-dinitrophenol, dinitrocresol);
 - l) Nitrosamines;
 - li) Pentachlorophenol;
 - lii) Phenol;
 - liii) Phthalate esters;
 - liv) Polychlorinated biphenyls (PCBs);
 - lv) Polynuclear aromatic hydrocarbons (including benzantracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenz-anthracenes, and indenopyrenes);
 - lvi) Selenium and (organic and inorganic) compounds;
 - lvii) Silver and (organic and inorganic) compounds;
- lviii) 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD);
- lix) Tetrachloroethylene;
- lx) Thallium and (organic and inorganic) compounds;
- lxi) Toluene;
- lxii) Toxaphene;
- lxiii) Trichloroethylene;

- lxiv) Vinyl chloride; and
- lxv) Zinc and (organic and inorganic) compounds.

Any discharges from the following Point Source Dischargers are subject to investigation and NPDES compliance review:

- (A) Concentrated animal feeding operations (CAFOs);
- (B) Concentrated aquatic animal production facilities (CAAPs)
- (C) Direct application of herbicides and/or pesticides to water sources;
- (D) Ground water discharges with a “direct hydrologic connection” between the ground water and a surface water;
- (E) Industrial, manufacturing, commercial facilities and activities
- (F) Industrial, municipal, and construction stormwater and combined sewer overflows;
- (G) Local or regional municipal wastewater treatment plants treating the domestic sewage and industrial and commercial wastewater;
- (H) Publicly-owned treatment works (POTW);
- (I) Major POTW;
- (J) Non publicly-owned treatment works (Non-POTW)
- (K) Major Non-POTW; and
- (L) Vessel discharges;
 - 1. Rubbish, trash, garbage, etc. discharged overboard;
 - 2. Discharges when vessel is being utilized as an energy/mining/storage facility or a seafood processing facility;
 - 3. Discharges from vessels secured to storage facility or seafood processing facility;
 - 4. Discharges when the vessel is secured to the bed of water sources for the purpose of mineral/oil exploration or development;

NOTE: The distinction between a major and minor facility relates primarily to administrative, oversight, and data tracking activities.

The federal regulations set forth in 40 C.F.R 122.26(b)(14)(i)-(xi), as amended requiring the following categories of regulated industrial activities be covered under the appropriate NPDES permit are hereby incorporated by reference:

- (A) Category I: Facilities subject to federal stormwater effluent discharge standards at 40 C.F.R. Parts 405-471;
- (B) Category II: Heavy manufacturing (e.g. paper mills, chemical plants, petroleum refineries, steel mills, and foundries);
- (C) Category III: Coal and mineral mining and oil and gas exploration and processing;
- (D) Category IV: Hazardous waste treatment, storage, and disposable facilities;
- (E) Category V: Landfills, land application sites, and open dumps with industrial wastes;
- (F) Category VI: Metal scrapyards, salvage yards, automobile junkyards, and battery reclaimers;
- (G) Category VII: Steam electric power generating plants;
- (H) Category VIII: Transportation facilities that have vehicle maintenance, equipment cleaning, or airport deicing operations;

- (I) Category IX: Treatment works treating domestic sewage with a design flow of one (1) million gallons a day or more;
- (J) Category X: Construction sites that disturb five (5) acres or more; and
- (K) Category XI: Light manufacturing (e.g. food processing, printing and publishing, electronic and other electrical equipment manufacturing, public warehousing, and storage).

SECTION 3. Stormwater Discharges

Stormwater discharges are intermittent and occur when rainwater and/or snowmelt flow over land or impervious surfaces (e.g. paved streets, parking lots, building rooftops). Stormwater runoff can pick up various pollutants such as trash, chemicals, oils, and dirt/sediment that may potentially harm the Waters of the U.S.

The Tribe hereby adopts and implements the NPDES stormwater program which regulates discharges from: construction activities, industrial activities, and municipal separate storm sewer systems (MS4s). Under the NPDES stormwater program, owner(s)/operator(s) of Point Sources are required to obtain specified NPDES permits in order to prevent stormwater runoff from discharging harmful pollutants into the Rancheria's Water Sources. Further information regarding the NPDES specified permits can be located in Chapter 5 of this Ordinance.

Due to the broad scope of stormwater discharges, under the direction of Congress, the EPA developed stormwater regulations in two phases and both phases are incorporated and adopted herein:

- (A) Phase I.
 - 1. Medium and large municipal separate storm sewer systems (MS4s) for medium and large cities or certain counties with a population of one hundred thousand (100,000);
 - 2. Construction activity greater than or equal to five (5) acres;
 - 3. Industrial activity.
- (B) Phase II.
 - 1. Small municipal separate storm sewer systems (MS4s) (e.g. public universities, departments of transportation, hospitals and prisons);
 - 2. Construction activity greater than or equal to one (1) acre and less than five (5) acres.

SECTION 4. Exclusions and Prohibitions

Permits under this Ordinance shall not be issued to owners/operators of Point Sources discharging the following pollutants:

- (A) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, or galley sink wastes, or any other discharge incidental to the normal operation of a vessel;
- (B) Discharges of dredged or fill material into waters of the United States which are regulated under Section 404 of the CWA;

- (C) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to Waters of the United States are eliminated;
- (D) Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances);
- (E) Any introduction of pollutants from non-point-source agricultural or silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in 40 CFR §122.23, discharges from concentrated aquatic animal production facilities as defined in 40 CFR §122.24, discharges to aquaculture projects as defined in § 122.25, and discharges from silvicultural point sources as defined in 40 CFR §122.27;
- (F) Return flows from irrigated agriculture;
- (G) Discharges into a privately-owned treatment works, except as the Director may otherwise require under 40 CFR §122.44(m); and
- (H) Discharges from a Water Transfer.

Permits under this Ordinance shall not be issued in any of the following circumstances:

- (A) When permit conditions do not provide for compliance with the regulations and requirements of the CWA and the applicable water quality requirements of all affected States;
- (B) The EPA Region 9 Regional Administrator has objected to issuance of the permit
- (C) When anchorage and navigation in or on any Waters of the United States would be substantially impaired by the discharge;
- (D) Discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
- (E) Discharge inconsistent with a plan or plan amendment under section 208(b) of the CWA;
- (F) Discharge to the territorial sea, waters of the contiguous zone, or the oceans unless the Tribal NPDES Control Officer determines issuance of such a permit is in the public's interest;
- (G) To a new source/new discharger if the discharge from its construction/operation will cause or contribute to the violation of the CWA and the Tribe's Water Quality Standards.

CHAPTER 5. PERMIT ELIGIBILITY, REQUIREMENTS, PROCESS, AND LIMITATIONS

SECTION 1. Permit Eligibility

Permits under this Ordinance shall be issued to the owner(s)/operator(s) of Point Sources discharging pollutants into the Rancheria's water sources by the Tribal NPDES Control Officer following receipt of a correct and complete application from the owner/operator of the Point Source discharging Pollutants into water sources. To be considered correct and complete, a permit application must include all information required by Section 3 of this Chapter, as applicable to the particular application. The Tribe is hereby authorized under NPDES program to issue permits to:

- (A) Wastewater treatment facilities;
- (B) Industrial facilities;
- (C) Mining operations; and
- (D) Animal feedlots.

SECTION 2. Permit Types

Under this Ordinance, owner(s)/operator(s) of Point Sources discharging Pollutants into the Rancheria's water sources have the option of applying for an individual permit or general permit depending on the type and circumstances of the Point Source discharge:

- (A) Individual Permit – designed for individual facilities for its specific discharge(s) (appropriate when the facility's and receiving water's characteristics are unique and where site-specific waste limitations and other permit conditions are needed).
- (B) General Permit – “umbrella permit” designed for a large number of similar facilities whose permit conditions would be practically identical (e.g. groundwater cleanup, hydrostatic pressure testing, Construction General Permit, Vessels General Permit, and Multi-Sector General Permit)
 - 1. Construction General Permit: EPA-developed General Permit which covers stormwater discharges from land disturbance at construction sites. Owner(s)/operator(s) are required to obtain a permit if:
 - i) Discharges from construction activities disturb one or more acres; OR
 - ii) Discharges from smaller sites that are part of a larger common plan of development or sale.
 - 2. Vessels General Permit: EPA-developed General Permit which covers discharges incidental to the normal operation of large commercial vessels.
 - 3. Multi-Sector General Permit: EPA-developed General Permit which covers stormwater discharges associated with industrial activity.

SECTION 3. Permit Requirements and Components

- (A) Individual Permits. Individual Permits issued under this Ordinance must include the following components and contain information regarding the Point Source and Pollutants discharged:
 - 1. Cover page;

- i) Name and information of permit issuer and permit receiver;
 - ii) Description and identification of discharge points and locations
 - iii) Statutes and regulations authorizing permit
 - iv) Issuance, effective, and expiration dates of permit
- 2. Effluent Limitations
- 3. Monitoring and Reporting Requirements
 - i) Monitoring specifications (e.g. when, where, how, and how much monitoring required) and how monitoring results will be reported
- 4. Special Conditions Necessary to Protect Water Sources (non-numeric)
 - i) Special monitoring and studies
 - ii) Best management practices and compliance schedules
 - iii) Incorporation of special program requirements (e.g. pretreatment/biosolids for municipal discharges)
- 5. Standard Conditions in accordance with 40 C.F.R. § 122.41
 - i) Duty to comply;
 - ii) Duty to reapply;
 - iii) Need to halt or reduce activity not a defense;
 - iv) Duty to mitigate;
 - v) Proper operation and maintenance;
 - vi) Permit actions;
 - vii) Property rights;
 - viii) Duty to provide information;
 - ix) Inspection and entry;
 - x) Monitoring and records;
 - xi) Signatory requirement;
 - xii) Reporting requirements;
 - a. Planned change;
 - b. Anticipated non-compliance;
 - c. Transfers;
 - d. Monitoring reports;
 - e. Compliance schedules
 - f. 24-hour reporting
 - g. Other non-compliance;
 - h. Other information.
- 6. Bypass;
- 7. Upset.

(B) General Permits. General Permits issued under this Ordinance must include the following components and contain information regarding the Point Source and Pollutants discharged:

- 1. Permitting Authority's identification of the geographic area of coverage (e.g. state/county/city lines, watershed, planning area, sewer district);
- 2. Specify sources and activities authorized for coverage by the permit (referred to as "eligibility criteria");

3. Address applicable water quality-based effluent limits in a consistent manner and incorporate all terms and conditions applicable to the Point Sources covered by the permit;
4. Notice of Intent (NOI) to discharge;
5. NOI submission deadlines;
6. Discharge authorization date;
7. Regulations allowing waiver of NOI requirements for less significant categories of discharges (e.g. stormwater from small construction activity).
 - i) Public notice of General Permit must identify reasons as to why the Notice of Intent is not required.

SECTION 4. Permit Procedure

- (A) Individual Permits. The Tribe hereby adopts and implements the following procedure in issuing Individual Permits as established by the NPDES program:
 1. Owner/operator of a Point Source discharging Pollutants submits the appropriate permit application to the Permitting Authority at least one hundred eighty (180) days prior to the expected commencement of the discharge;
 2. Following receipt of the correct and complete application, the Permitting Authority will review and proceed with the preparation and issuance of an NPDES permit;
 3. Subsequent to receipt of the issued NPDES permit, the owner/operator must obtain a sample of its discharges and notify the Tribal NPDES Control Officer of the results;
 4. Once permit has been issued, the Tribal NPDES Control Officer will conduct the required inspections to ensure that the facilities comply with the conditions set forth in their permits;
 5. If the owner/operator determines that the facility is no longer in compliance with the permit's requirements, the owner/operator must notify the Tribal NPDES Control Officer immediately.
- (B) General Permits. The Tribe hereby adopts and implements the following procedure in issuing General Permits as established by the NPDES program:
 1. Permitting Authority locates and identifies a large number of similar facilities and determines that permit conditions would be practically identical for said facilities;
 2. Permitting Authority prepares and issues a General Permit which encompasses any discharger that meets the eligibility criteria established by the General Permit;
 3. Once the General Permit has been issued, the owner(s)/operator(s) must submit a Notice of Intent to the Permitting Authority to request coverage under the General Permit for any dischargers they believe meet the General Permit's eligibility criteria and typically contains basic information about the Operator and the planned discharge for which coverage is being requested;
 - i) Under the NOI, the operator is certifying that the discharge meets all of the eligibility conditions specified in the General Permit and that the operator intends to follow the terms and conditions of the permit.
 - ii) Should an NOI be found to be fraudulent, permit coverage shall be invalidated.

- iii) Should an NOI be found to be incomplete, permit coverage shall be delayed until the operator submits a completed NOI.
- 4. Upon receipt of the Notice of Intent, the Permitting Authority will conduct a review and will decide:
 - i) The dischargers listed on the NOI meet the General Permit's eligibility criteria and grants coverages of said discharges under the General Permit; or
 - ii) The facility has unique characteristics that would make it ineligible for a General Permit and the owner/operator must apply for an Individual Permit.

SECTION 6. Permit Limitations

Permits issued under this Ordinance are subject to the following limitations:

- (A) Permits are non-transferrable and only apply to the Point Source and Pollutants listed on said permit;
- (B) Permits are valid for a maximum term of five (5) years;
- (C) Permits can be renewed/reissued provided the permit holder submits a completed application;
- (D) Permits can be extended if the facility reapplies more than one hundred eighty (180) days prior to permit expiration and the Department of Environmental Protection determines that good cause exists for an extension;
- (E) Permits can be revoked should the Tribal NPDES Control Officer and/or the Tribe's Department of Environmental Protection determine NPDES non-compliance and find cause for revocation; and
- (F) Shield permit compliance – a facility in compliance with its permit is considered to be in compliance with NPDES.

SECTION 7. Monitoring and Records; Inspections

Owner(s)/operator(s) of Permits issued under this Ordinance are subject to the following pursuant to the Standard Conditions set forth under 40 C.F.R. § 122.41.

- (A) Monitoring and Records. The permittee shall monitor the discharge, obtain samples and measurements, and retain records of all monitoring information including but not limited to calibration, maintenance records, and copies of required permit reports. The permittee shall submit duplicate copies of monitoring information to the Department of Environmental Protection. Records for monitoring are required to contain the following:
 - 1. Date, exact location, and time of sampling/measurement;
 - 2. Name and information of the individual(s) who performed the sampling/monitoring;
 - 3. Date analysis was performed;
 - 4. Analytical techniques or methods used;
 - 5. Analysis results; and
 - 6. Chain-of-custody for all samples.

(B) Inspections. The permittee shall allow an authorized agent of the Department of Environmental Protection or its designated enforcement officer, upon presentation of credentials, to do the following:

1. Enter the permittee's regulated facility/activity/process or where records are kept under the conditions of the permit;
2. Access to and copy, at reasonable times, any records that are to be kept under the conditions of the permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations required under the permit; and
4. Sample/monitor, at reasonable times, for the purposes of ensuring permit compliance.

CHAPTER 6. ENFORCEMENT AND PENALTIES

SECTION 1. Enforcement Agency and Policy

The Department of Environmental Protection shall be responsible for enforcing the provisions set forth in this Ordinance. Specifically, the Department of Environmental Protection shall conduct an investigation when a complaint is received by the Tribal NPDES Control Officer or when the Tribal NPDES Control Officer or other Tribal department believes that a violation of this Ordinance has occurred.

It is the policy of the Department of Environmental Protection to encourage informal, practical, result-oriented resolutions of alleged violations and actions needed to prevent damage to Rancheria resources or harm to the health, safety, or welfare of the Rancheria population. It is also the policy of the Department of Environmental Protection, consistent with the principles of due process, to provide effective procedures for enforcement.

SECTION 2. Enforcement Activities

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

SECTION 3. Notice of Violation; Cease and Desist Order

If the Department of Environmental Protection determines that a violation of a permit condition exists following an investigation, the Department of Environmental Protection shall immediately provide written notification to the violator and the Board of Directors. Additionally, the Department of Environmental Protection is authorized to issue a Notice of Violation to the violator(s) and, if the violation occur on a property other than the violator's, the owner/operator(s). The Notice of Violation shall include a Summons to appear before the Board of Directors at an enforcement hearing at a specified date and time, and shall advise the violator(s) that failure to appear at said hearing may result in the imposition of civil penalties.

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. 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. However, if a Cease and Desist Order is issued without an accompanying Notice of Violation, the Order shall inform the violator that failure to comply with said Order shall constitute a violation of this Ordinance and shall result in the issuance of a Notice of Violation and potentially 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 Board of Directors.

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 Board of Directors 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 NPDES Control Officer, shall present the case to the Board of Directors 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 Board of Directors shall issue a written decision. If the Board of Directors determines that the violation has occurred and that the person(s) charged was (were) responsible for said violation, the Board of Directors shall include an Enforcement Order with their decision.

SECTION 7. 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 Board of Directors deems appropriate under the circumstances. An Enforcement Order may impose civil penalties in accordance with a schedule of civil penalties prescribed in the Board of Directors' 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 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 correction action, in which case, the amount of any civil penalty shall be increased by twofold of the cost incurred by the Tribal department or agency taking the corrective action.

- (A) Emergency Orders. Notwithstanding any other provision of this Ordinance, the Board of Directors may issue an emergency order if the Board of Directors 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 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.
- (B) Revocation of Permit. Failure of any permittee to comply with any Enforcement Order will result in immediate revocation of the 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. Once the Department of Environmental Protection determines the violation(s) is/are remedied and all penalty payments received, the person(s) may apply for a new permit adhering to all terms and conditions set forth in Chapter 5, Section 4 of this Ordinance.

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 Board of Director's 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 Board of Directors 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 Chapter 5, Section 8 (A)1. and Chapter 5, Section 8 (A)2.
- (B) Any person who is in violation of this Ordinance shall be liable for all costs associated with judicial enforcement of this Ordinance, court costs, and clean up or removal of Pollutants from the Rancheria's water sources.

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. APPEALS

SECTION 1. Judicial Review

Any person, who is aggrieved by the issuance or denial of a permit issued under this Ordinance regardless of 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 Tribal Court is authorized to hear such appeal.

CHAPTER 8. OTHER PROVISIONS

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. 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.



CERTIFICATION

The foregoing Tribal National Pollutant Discharge Elimination System (TNPDES) Program Ordinance was presented at a General Membership Meeting held on April 27, 2019, and was approved with a quorum present and such Code has not been rescinded or amended in any way.

CWf-

Chris Wright
Chairman

4-27-2019

Date

Margie Rojas

Margie Rojas
Secretary/Treasurer

4-27-2019

Date