

## **TITLE 14: ENVIRONMENTAL PROTECTION**

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## **CHAPTER 1: ENVIRONMENTAL PROTECTION OFFICE**

### ***Subchapter 1. General Provisions***

#### **§ 1 TITLE.**

This title shall be known and may be cited as the "Jicarilla Apache Environmental Protection Code."

#### **§ 2 PURPOSE.**

It is the policy of the Jicarilla Apache Nation to preserve and protect the Nation's environment, in order to ensure the health, safety and welfare of all residents within the Nation's jurisdiction, as defined in Article II of the Revised Constitution. To this end, this Title provides for a coordinated program, to be managed by and under the authority of the Environmental Protection Office, to regulate air quality, water quality, solid waste management, pesticide use, and other environmental matters within the jurisdiction of the Jicarilla Apache Nation, and to ensure that economic development will occur in a manner consistent with the preservation of the Nation's resources, cultural heritage, and environment.

#### **§ 3 EFFECTIVE DATE.**

The effective date of this ordinance shall be the date of its approval by the Secretary of the Interior after its enactment by the Legislative Council.

#### **§ 4 REVISION.**

Environmental Protection Ordinance No. 84-0-235, enacted January 20, 1984, is revised as of the effective date of this ordinance.

#### **§ 5 SCOPE.**

Unless specifically provided otherwise in this Title, the provisions of this Chapter shall apply to all Chapters of this Title.

**§ 6 APPLICABILITY.**

The provisions of this Title shall apply to all persons residing, doing business, or otherwise located within and all property located within the territory defined by J.A.N.C. § 1-1-5.

**§ 7 DEFINITIONS.**

For purposes of this Title:

(A) **AFFECT** and **EFFECT** mean having an aesthetic, cultural, ecological, economic, historic, social, or health-related effect or impact regardless of duration or whether direct, indirect, or cumulative, or whether beneficial or not;

(B) **APPLICANT** means any person requesting a permit required by this Title;

(C) **ARCHAEOLOGICAL RESOURCES PROTECTION ACT** means the Archeological Resources Protection Act of 1979 and amendments thereto, codified as amended at 16 U.S.C. §§ 470aa - 470mm, as enacted as of the effective date of this Title and thereafter amended;

(D) **BIA** means the U.S. Bureau of Indian Affairs;

(E) **BLM** means the U.S. Bureau of Land Management;

(F) **CLEAN AIR ACT** means Act of that name and amendments thereto, codified as amended at 42 U.S.C. §§ 7401-7671q, as enacted as of the effective date of this Title and thereafter amended;

(G) **CLEAN WATER ACT** means the Federal Water Pollution Control Act and amendments thereto, codified as amended at 33 U.S.C. §§ 1251-1387, as enacted as of the effective date of this Title and thereafter amended;

(H) **DIRECTOR** means the Program Director of the Environmental Protection Office, or his authorized representative;

(I) **ERCDC** means the Jicarilla Apache Nation Energy Resource Conservation and Development Commission;

(J) **EMISSION** means any substance or energy entering the environment as a direct or indirect result of human activity, which alters or has the potential to alter the physical, chemical, biological, radiological, cultural, or aesthetic properties of the environment, but shall not include water, water vapor, nitrogen (N<sub>2</sub>), carbon dioxide (CO<sub>2</sub>), or oxygen (O<sub>2</sub>); water, gas, or other material that is injected

into a well to facilitate production of oil or gas; or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by the Nation, and if the Nation determines that such injection or disposal will not result in the degradation of ground or surface water;

(K) **ENVIRONMENTAL REPORT** means any environmental assessment, environmental impact statement, or other such report required under the National Environmental Policy Act and regulations promulgated thereunder, including without limitation the Department of the Interior Manual Environmental Quality Regulations, 516 DM 1-7, and the BIA Environmental Quality Handbook, 30 BIAM; the National Historic Preservation Act and regulations promulgated thereunder, including without limitation 36 C.F.R. Parts 60, 63, 65, 68, and 800; the Archeological Resources Protection Act and regulations promulgated thereunder, including without limitation 36 C.F.R. Part 296; regulations promulgated by the Council on Environmental Quality, including without limitation 40 C.F.R. Parts 1500-08; and tribal law; provided that federal agencies preparing environmental reports are requested to designate the Nation as a cooperating agency whenever such designation is consistent with regulations promulgated under the National Environmental Policy Act.

(L) **EPA** means the U.S. Environmental Protection Agency;

(M) **EPO** means the Jicarilla Apache Nation Environmental Protection Office;

(N) **EXECUTIVE DIRECTOR** means the Executive Director of the Natural Resources Department;

(O) **GAME AND FISH DEPARTMENT** means the Jicarilla Apache Nation Game and Fish Department;

(P) **INTERESTED PERSON** means a person that is actually injured or immediately threatened by a physical or monetary effect caused by another's conduct where the asserted injury or threat is redressable by a favorable decision by the Nation;

(Q) **LAND ADMINISTRATION OFFICE** means the Jicarilla Apache Nation Land Administration Office;

(R) **NATIONAL ENVIRONMENTAL POLICY ACT** means the National Environmental Policy Act of 1969 and amendments thereto, codified as amended at 42 U.S.C. §§ 4321-4347, as enacted as of the effective date of this Title and thereafter amended;

(S) **NATIONAL HISTORIC PRESERVATION ACT** means the Act of that name and amendments thereto, codified as amended at 16 U.S.C. §§ 470 to 470x-6, as enacted as of the effective date of this Title and thereafter amended;



(T) **NATURAL RESOURCES DEPARTMENT** means the Jicarilla Apache Nation Natural Resources Department;

(U) **OGA** means the Jicarilla Apache Nation Oil and Gas Administration;

(V) **PERMITTING AGENCY** means any agency, department, or office of the Nation authorized to issue licenses or permits authorizing activity within the Reservation;

(W) **PERSON** means any individual, partnership, firm, public or private corporation, company, association or society of persons, the federal, state, or local governments or any of their agencies, programs, or other subdivisions, any Indian nation, tribe or pueblo, including the Jicarilla Apache Nation, or any of its agencies, programs, or other subdivisions, or any other legal entity or its legal representatives, agents or assigns, provided that for purposes of enforcement of this Title, **PERSON** shall also include any responsible corporate officer;

(X) **RCRA** means the Resource Conservation and Recovery Act of 1976 and amendments thereto, codified as amended at 42 U.S.C. §§ 6901-6992k, as enacted as of the effective date of this Title and thereafter amended;

(Y) **NATION** when referring to territory means all lands within the territory defined by J.A.N.C. § 1-1-5; **NATION** when referring to the governmental entity means the Jicarilla Apache Nation;

(Z) **NATION'S ENVIRONMENT** means the natural and physical environment within the Nation, including without limitation lands, air, water, vegetation, wildlife, and archeological and cultural resources, and the relationship of individuals with that environment, including without limitation sacred sites and aesthetic values;

(AA) **SECRETARY OF THE INTERIOR** means the United States Secretary of the Interior or the authorized designee thereof;

(BB) **SIGNIFICANT** means severe in light of the relevant contexts and regardless of duration or whether direct, indirect, or cumulative, or whether beneficial or not;

(CC) **COUNCIL** means the Jicarilla Apache Nation Legislative Council;

(DD) **NATION'S COURT** means the Court of the Jicarilla Apache Nation;

(EE) **NATION'S LAW** means any law, ordinance, or resolution enacted by the Council, including without limitation the Jicarilla Apache Nation Code, or any regulation promulgated by the Nation pursuant to authority granted by the Council, or any part or provision of such law, ordinance, resolution, or regulation;

(FF) ***NATION LAW ENFORCEMENT OFFICER*** means a Game and Fish Conservation Officer or a Police Officer of the Nation.

**§ 8 CONSTRUCTION.**

This Title shall be liberally construed to carry out its purpose. The effectiveness and enforceability of this Title shall not depend on the adoption of any regulations unless otherwise required by law. Nothing contained in this Title or regulations promulgated hereunder shall be construed to diminish, limit, or otherwise adversely affect any right or remedy held or available to the Jicarilla Apache Nation, nor shall it be construed to waive the Nation's sovereign immunity except as specifically provided in this Title.

**§ 9 COMPLIANCE WITH OTHER LAWS AND REGULATIONS.**

Compliance with this Title and regulations promulgated hereunder shall not relieve a person of the obligation to comply with other applicable laws and regulations.

**§ 10 SEVERABILITY.**

If any provision of this Title, or the application of this title to any person or circumstance, is held invalid, the remainder of this Title and the application of such provision to other persons or circumstances shall remain unaffected.

***Subchapter 2. Administration***

**§ 11 DUTIES AND RESPONSIBILITIES OF THE DIRECTOR.**

(A) When implementing this title, the Director is authorized to:

(1) Issue, suspend, and revoke permits, permit renewals, transfers, exemptions, and variances, and consult with other permitting agencies, pursuant to Subchapter 3 of this Chapter;

(2) Assess fees for applications, permits, licenses, emissions and other activities, as provided in this Title;

(3) Enforce this Title and orders, permits, and regulations issued or promulgated hereunder, pursuant to Subchapter 4 of this Chapter;

(4) Prescribe regulations as necessary to implement this Title, pursuant to Section 29 of this Chapter;

(5) Conduct hearings concerning any aspect of or matter within the authority of this Section and, in connection therewith, compel the attendance of witnesses and the production of records, pursuant to Section 30 of this Chapter;

(6) Issue guidelines and encourage voluntary cooperation with the provisions of this Title and regulations promulgated hereunder;

(7) Provide to the public pertinent educational materials and information on matters regulated under this Title;

(8) Enter into cooperative agreements with other governmental agencies for coordinating regulation of activities affecting the Nation's environment;

(9) Accept, receive, and administer grants or other funds from public and private agencies, including the federal government, to carry out any purposes of this Title; and

(10) Perform such other activities as the Director may find necessary to carry out his or her duties and responsibilities under this Title.

(B) All actions of the Director are subject to the administrative review and control of the Executive Director, who has the discretionary authority at any time to issue a decision on any matter pending before the EPO. If the Executive Director asserts his authority under this subsection, his decision shall constitute the final action of the EPO on the matter for purposes of any further appeal or review allowed by law. If the Executive Director does not assert his authority under this subsection, the decision of the Director shall constitute the final decision of the EPO on the matter for purposes of any further appeal or review allowed by law.

## **§ 12 DELEGATION OF AUTHORITY.**

Except for prescribing regulations, the Director may delegate to any officer or employee of the EPO any duties and responsibilities of the Director under this Title as the Director may deem necessary or expedient.

**§ 13 PUBLIC AVAILABILITY OF INFORMATION.**

(A) *General Rule.* Except as otherwise provided in this Section, any complaints, documents, records, reports, or information submitted to, filed with, subpoenaed by, or otherwise obtained by the Director under this title shall be available to the public under regulations to be issued by the Director.

(B) *Confidentiality Determination.* Any complaints, documents, records, reports, or information, or any portion thereof, obtained by the Director under this title shall be deemed confidential and shall not be available to the public upon a showing satisfactory to the Director that such record, report, information, or portion thereof, would, if made public, divulge methods or processes entitled to protection as trade secrets.

(C) *Use of Confidential Information.* Notwithstanding a confidentiality determination pursuant to the preceding subsection, the Director may disclose such complaint, document, record, report, or information, or portion thereof, to other officers, employees, or authorized representatives of the Nation or the United States concerned with implementing and enforcing this Title or other provisions of the Nation's law, or when relevant to any proceeding conducted under this title or under other administrative or judicial proceedings of the Nation.

(D) *Regulations.* The Director may prescribe regulations implementing this Section.

**§ 14 USE OF FUNDS.**

One hundred percent (100%) of fees assessed under this Title and fifty percent (50%) of fines assessed or imposed under this Title shall be deposited into a duly established account and expended solely for the use of the Natural Resources Department pursuant to a budget approved by the Council. Any money in such account at the end of each fiscal year shall not revert to the General Fund and shall remain available for appropriation as provided in this Section.

**§ 15 EPO PROGRAM PRIORITIES.**

(A) *Policy.* The Jicarilla Apache Nation is committed to implementing environmental programs to protect the health, safety, welfare, resources, and environment of the Nation. The needs and resources of the Nation will, however, dictate which environmental programs to implement and enforce, and in what order. Thus, even though the authority to implement a particular program may exist under this Title, the needs and particular circumstances of the Nation will determine whether and when that program is in fact implemented and enforced.

(B) *Procedure.* Consistent with the foregoing policy, the Director shall submit annually to the Executive Director, and the Executive Director shall approve, a plan which describes programs that the

Director will implement and enforce over a one to three year period. Once the Director and the Executive Director determine that a particular program or portion thereof will be implemented and enforced, and sufficient funding exists, the Director shall comply with all relevant statutory and regulatory requirements for that program or portion thereof.

## **§ 16 COORDINATION WITH ENERGY RESOURCE CONSERVATION AND DEVELOPMENT COMMISSION.**

(A) *ERCDC Authority.* The ERCDC has the authority under Ordinance No. 90-O-534-6, as amended, to regulate the development and production of energy resources within the Nation and to minimize waste and environmental degradation resulting from those activities. Nothing in this Title shall diminish that authority. Unless otherwise provided by ordinance of the Council, the ERCDC shall have primary authority to regulate oil and gas development and production activity that is subject to federal regulation by the U.S. Bureau of Land Management or would be subject to state regulation by the New Mexico Oil Conservation Division if the activity took place outside the Nation.

(B) *EPO Authority.* The EPO has the authority under this Title to enforce environmental protection laws within the Nation, including when those laws apply to environmental impacts from activity that is part of the development and production of energy resources. Unless otherwise provided by ordinance of the Council, the EPO shall have primary authority to regulate the environmental impacts of oil and gas development and production activity that are subject to regulation by the Environmental Protection Agency under federal law, including but not limited to the Clean Air Act; the Clean Water Act; RCRA; the Comprehensive Environmental Response, Compensation and Recovery Act, as amended, 42 U.S.C. §§ 9601 *et seq.*; the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 77 U.S.C. §§ 136 *et seq.*; the Oil Pollution Act of 1990, as amended, 46 U.S.C. §§ 1007 *et seq.*; the Toxic Substances Control Act, as amended, 7 U.S.C. §§ 136 *et seq.*; the Safe Drinking Water Act, as amended, 42 U.S.C. §§ 300f *et seq.*; and the Superfund Amendments and Reauthorization Act, as amended, 42 U.S.C. §§ 11002 *et seq.*

(C) *ERCDC and EPO Cooperation.* The ERCDC and the EPO shall cooperate with each other to avoid conflicting regulation of energy resource development activity. The ERCDC shall consult with the EPO for technical assistance and advice on environmental issues that come before the ERCDC. The EPO shall consult with the ERCDC for technical assistance and advice on issues relating to energy resource development that come before the EPO.

## **§ 17 [RESERVED].**

*Subchapter 3. Permitting***§ 18 APPLICATION REQUIREMENT.**

Whenever a person is required to apply for a permit under this title, that person shall submit to the Director for approval a completed permit application, on a form prescribed by the Director, together with all other information, as required by this title or regulations promulgated hereunder.

**§ 19 PERMIT FEES.**

The Director shall establish by regulation fees for filing permit applications and for issuing and renewing permits and may so establish fees for permit transfers. All such fees may be based in part on the time necessary for review or administration of the corresponding permitting action.

**§ 20 EPO PERMITTING PROCEDURE.**

(A) *Completeness.* The Director shall review permit applications for completeness and may allow applicants an opportunity to revise permit applications to remedy deficiencies.

(B) *Document Availability.* The Director shall maintain a file of all permit applications, documents accompanying such applications, and permits issued under this Title. This file shall be available for public inspection and comment under regulations issued by the Director. If any applicant or permittee is required to submit information entitled to protection from disclosure under J.A.N.C. § 14-1-13, the applicant or permittee may submit such information separately and the requirements of J.A.N.C. § 14-1-13 shall apply to such information. The contents of a permit shall not be entitled to protection under J.A.N.C. § 14-1-13.

(C) *Notices.* Before making a final determination regarding any permit issued under this Title, including before issuing, renewing, modifying, revoking, or denying a permit, the Director shall give written notice of the proposed action to the applicant or permittee, any interested person who has filed with the Director a written request to be notified, to the public, by publishing in local newspapers and posting at the Nation's offices, and any other persons required to be given notice by this Title.

(D) *Hearings.* Within thirty (30) days of service or publication of notice under the preceding subsection concerning a permit determination, any interested person may request the Director in writing for a hearing on such permit determination. If the Director receives such a hearing request, the Director shall schedule and hold a public hearing on the permit determination within thirty (30) days after receipt of the request, or as soon thereafter as reasonably practical, and shall give notice of the date, time, place, and subject matter of the hearing to all persons required to be notified under this Title.



**§ 21 EPO PERMIT DETERMINATIONS.**

(A) *Issuance.* The Director shall issue permits for fixed terms, pursuant to the requirements of this Title and regulations promulgated hereunder. If an applicant proposes to modify an activity subject to a permit, and/or the Director determines that modifications are necessary to comply with requirements of this title or regulations promulgated hereunder, the permit shall specify the time allowed to complete the modifications. The approval of a permit application and issuance of a permit does not relieve the applicant from the responsibility to comply with all applicable provisions of this Title and regulations promulgated hereunder.

(B) *Renewals.* Upon expiration of a permit, the Director may renew the permit upon condition that the activity being permitted meets or will meet all applicable requirements of this Title, subject to authorized schedules of compliance. When a permittee has made a timely and sufficient application for a renewal in accordance with regulations promulgated hereunder, an existing permit for an activity of a continuing nature shall not expire until the Director has made a final determination regarding the application for renewal.

(C) *Transfers.* A permit may not be transferred from one location, facility, or activity to another, except as otherwise specifically provided in this Title. A permit may be transferred from one person to another for the same activity, provided that the permittee notifies the Director in advance in writing of the transfer, and the Director finds that the transferee is capable of conducting the activity in compliance with the permit and applicable requirements of this title and regulations promulgated hereunder.

(D) *Suspension and Revocation.* The Director may suspend or revoke a permit for failure to comply with terms or conditions of the permit; fraud, deceit, or submission of inaccurate information to the Director; or failure to comply with the applicable provisions of this Title or regulations promulgated hereunder.

**§ 22 PERMITTING BY OTHER AGENCIES.**

(A) *Designation of Types of Licenses and Permits.* In consultation with the EPO, each permitting agency of the Nation shall, as necessary on an ongoing basis, designate each type of license and permit that authorizes activity which may significantly affect the Nation's environment. Only those types of license and permit designated pursuant to the preceding sentence shall be subject to the remaining requirements of this Section.

(B) *Submission of Environmental Documentation.* Before a permitting agency issues a license or permit of a type designated under subsection (A) of this Section, the license or permit applicant shall submit to the permitting agency a written statement describing the reasonably foreseeable environmental impacts of the proposed activity, including without limitation an analysis of existing environmental

conditions that may be affected and the nature, duration, and extent of the reasonably foreseeable environmental impacts. The statement shall be accompanied by copies of any environmental reports regarding the proposed activity that are otherwise required by law to be prepared.

(C) *Interagency Notification.* Before issuing a license or permit of a type designated under subsection (A) of this Section, a permitting agency shall notify the Executive Director and the EPO in writing of the proposed license or permit and provide to the EPO a copy of any environmental documentation submitted pursuant to the preceding subsection. Within ten (10) days after receipt of the notice, the Executive Director shall notify in writing any other agency within the Natural Resources Department that has authority over any aspect of the activity authorized under the proposed license or permit and shall notify the permitting agency of which other agencies have been notified of the proposed license or permit.

(D) *EPO Assistance.* Within thirty (30) days after receipt of the notice and environmental documentation, if any, from the permitting agency, the EPO shall provide technical assistance and advice to the permitting agency as necessary to evaluate the possible environmental impacts of the proposed license or permit and shall notify the permitting agency in writing whether the proposed activity would violate any provision of this title.

(E) *Other Agency Comments.* Within twenty (20) days after receipt of notice from the Executive Director, any other notified agency shall notify the permitting agency in writing whether the proposed activity would violate any provision of the Nation's law that the notified agency enforces.

(F) *Permitting Agency Action.* The permitting agency shall, in consultation with the EPO, impose reasonable conditions on the license or permit as necessary to mitigate negative environmental impacts from the permitted activity and to prevent violations of this Title. The permitting agency shall, in consultation with the applicable agencies of the Nation, impose reasonable conditions on the license or permit as necessary to prevent any violations of other laws of the Nation identified in the agencies' comments. The permitting agency shall notify the EPO and any other commenting agency in writing of the final decision on the license or permit.

(G) *Appeal.* The EPO may appeal to the Council a final decision under J.A.N.C. § 14-1-22(A), and the license or permit applicant or any timely commenting agency may appeal to the Council a final decision under J.A.N.C. § 14-1-22(F). The appeal shall be filed with the Nation Secretary within ten (10) work days of service of the final decision which the appeal concerns. The Council shall hear the appeal within thirty (30) calendar days after the appeal is filed, and the decision of the Council shall be final and not subject to further review.



***Subchapter 4. Enforcement***

**§ 23 RECORD-KEEPING, MONITORING, REPORTING, AND INSPECTIONS.**

By order, permit, or regulation, the Director may require any person required to obtain a permit under this Title to:

(A) Establish and maintain records regarding compliance with all applicable provisions, prohibitions, and requirements of this Title and orders, permits, and regulations issued or promulgated hereunder;

(B) Install, maintain, and use approved monitoring equipment, or use such other audit procedures or methods as prescribed by the Director to monitor, sample, or otherwise quantify emissions at such locations, at such intervals, during such periods, and in such manner as prescribed by this Title or regulations promulgated hereunder;

(C) Prepare and submit compliance certifications or other reports;

(D) Submit to inspection by the EPO and produce all existing books, records, and other documents evidencing tests, inspections, or studies which may reasonably relate to compliance with all applicable provisions, prohibitions, and requirements of this Title and orders, permits, and regulations issued or promulgated hereunder whenever the Director has reasonable cause to believe that the permittee has violated or is violating any such provision, prohibition, or requirement; and

(E) Record, maintain, and submit such other information as the Director may reasonably require.

**§ 24 GENERAL ENFORCEMENT AUTHORITY.**

Whenever, on the basis of any information available to the EPO, the Director finds that any person has violated or is violating any provision, prohibition, or requirement of this Title or an order, permit, or regulation issued or promulgated hereunder, the Director may:

(A) Issue and serve on such person a compliance order, an assessment of restitution or an administrative civil penalty, or a field citation in accordance with J.A.N.C. § 14-1-25;

(B) Seize property in accordance with J.A.N.C. § 14-1-26;

(C) Bring a civil action in the Nation's Court, including without limitation an action for assessment collection, forfeiture, injunctive relief, exclusion, or removal in accordance with J.A.N.C. § 14-1-27(B)-(D); and/or

(D) Refer a criminal violation to the Nation Prosecutor for prosecution in accordance with J.A.N.C. § 14-1-27(E) and/or refer any such criminal matter or portion thereof to the appropriate regional office of the EPA.

An action under J.A.N.C. § 14-1-24(A) or (B) may not be instituted more than one (1) year after the first alleged date of violation which the action concerns. An action under J.A.N.C. § 14-1-24(C) or (D) may not be instituted after the later of thirty (30) days after a related action under J.A.N.C. § 14-1-24(A) or (B) of this Section becomes final or two (2) years after the first alleged date of violation which the action under J.A.N.C. § 14-1-24(C) or (D) concerns.

## § 25 COMPLIANCE ORDERS, ASSESSMENTS, AND CITATIONS.

(A) *General Requirements.* Except as otherwise provided in this Section, an order or assessment issued under J.A.N.C. § 14-1-24(A):

- (1) Shall state the nature of the violation with reasonable specificity;
- (2) May specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements;
- (3) May assess either restitution as compensation for damage caused by the violation or a civil penalty of up to \$10,000 per day per violation, provided that the Director may compromise, modify, or remit, with or without conditions, any restitution or civil penalty assessed under this Section;
- (4) Shall state that the alleged violator is entitled to a hearing pursuant to regulations promulgated under this Chapter, if such hearing is requested in writing within thirty (30) days after the date of issuance of the order;
- (5) Shall become effective immediately upon the expiration of thirty (30) days after issuance if no hearing is requested or, if a timely request for a hearing is made, upon final decision thereon by the Director;
- (6) May be conditional and may require a person to refrain from particular acts unless certain conditions are met;
- (7) Shall be sent by copy to the appropriate regional office of the EPA and, if the order is issued to a corporation, to the appropriate corporate officers and registered agent of the corporation;
- (8) Shall not limit or otherwise affect the Nation's authority to enforce other provisions of tribal law; and

(9) Shall not affect any person's obligations to comply with any provision, prohibition, or requirement of this title or an order, permit, or regulation issued or promulgated hereunder.

*(B) Emergency Compliance Orders.*

(1) Notwithstanding any other provision of this Title or a permit issued or regulation promulgated hereunder, the Director may issue emergency compliance orders as necessary to protect public health or welfare or the environment if the Director determines that an activity presents an imminent and significant danger to public health or welfare or the environment, and it is not practical to assure prompt protection of public health or welfare or the environment by commencement of a civil action pursuant to J.A.N.C. § 14-1-27.

(2) Notwithstanding any other provision of this Title or a permit issued or regulation promulgated hereunder, emergency compliance orders may prohibit, restrict, or condition any activity that contributes or may contribute to the emergency shall be effective immediately upon issuance and shall remain in effect for a period fixed by the Director, not to exceed sixty (60) days, subject to the provisions of J.A.N.C. § 14-1-25(B)(3). An emergency compliance order constitutes final action by the Director for purposes of J.A.N.C. § 14-1-31.

(3) If the Director brings an action pursuant to J.A.N.C. § 14-1-27 concerning the subject matter of an emergency compliance order, or the person subject to the emergency compliance order files a timely petition for judicial review pursuant to J.A.N.C. § 14-1-31, the order shall remain in effect for fourteen (14) days after the date the action or petition is filed, or for such other period as ordered by the court in which the action or petition is brought.

*(C) Field Citations.*

(1) Notwithstanding any other provision of this subchapter, the Director may by regulation implement a field citation program through which designated officers or employees of the Nation may issue field citations assessing civil penalties not to exceed \$1,000 per day per violation for minor violations of any provision, prohibition, or requirement of this Title or any order, permit, or regulation issued or promulgated hereunder. Regulations implementing a field citation program shall authorize issuance of citations by officers and employees of agencies of the Nation other than the EPO only upon prior agreement by such other agencies.

(2) Regulations implementing a field citation program shall provide that, within thirty (30) days after issuance of a field citation, the person to whom the citation was issued may elect to pay the civil penalty or request a hearing on the citation in compliance with regulations promulgated under J.A.N.C. § 14-1-30. Such citation regulations shall also provide that if a timely request for a hearing is not made, the civil penalty shall be final and the opportunity for judicial review shall be waived.

(3) Payment of a civil penalty assessed in a field citation shall not constitute a defense to further enforcement under this Title except for the days of violation for which the civil penalty assessed in a field citation is paid.

*(D) Calculation of Civil Penalties.*

(1) In determining the number of days of violation for which a civil penalty is assessed under this subchapter, if the Nation has notified the violator of the violation in writing and the Nation makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(2) In determining the amount of a civil penalty assessed under this subchapter, the Nation shall consider the history, seriousness, and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator's full compliance history, including the severity and duration of past violations, if any; the economic affect of the civil penalty on the violator; as an aggravating factor only, the economic benefit, if any, resulting from the violation; and any other factors that the Nation deems relevant.

(3) In lieu of or in addition to a monetary civil penalty, the Nation may require remediation of damage caused or performance of community service, or both.

*(E) Administrative Enforcement.* Any order, assessment, or citation issued under this Section may be served and enforced administratively by the EPO, the Jicarilla Apache Police Department, and/or the Game and Fish Department consistent with the requirements of this Title, provided that officers and employees of the EPO shall be accompanied by Nation's law enforcement officers when entering facilities believed to be in violation and demanding compliance or when terminating activities or operations at facilities not in compliance.

**§ 26 SEIZURE OF PROPERTY.**

(A) *Basis.* In lieu of or in addition to being made subject to a lien as otherwise provided by law, any property or interest therein in actual or constructive possession of a person that has violated or is violating any provision, prohibition, or requirement of this Title or any order, permit, or regulation issued or promulgated hereunder, and used in connection with that violation may be seized and held to secure payment of a civil penalty or restitution assessment, to secure the person's appearance in Court,

or to be forfeited as provided in J.A.N.C. § 14-1-27. Seizure under this Section shall be authorized regardless of whether the owner of the property or the interest therein participated in, had knowledge of, or consented to the illegal use of the property.

(B) *Persons Authorized to Seize Property.* Property subject to seizure under this Section may be seized by any tribal law enforcement officer upon an order issued by the Court or without a court order if the seizure is incident to an arrest or service of an order, assessment, or citation under this Title.

(C) *Custody of Seized Property.* Property seized under this Section shall be held in the custody of the seizing agency, subject only to the orders of the Court, including without limitation orders for sale of the property at public auction to collect any assessments made under this title and orders issued in a forfeiture proceeding.

(D) *Release of Property.* Unless a forfeiture proceeding concerning property seized under this Section is initiated pursuant to J.A.N.C. § 14-1-27, such property shall be released to its owner upon the earliest of the following:

(1) Thirty (30) days after seizure of the property;

(2) Payment of the civil penalty or restitution assessment for which the property was seized as security;

(3) Upon a finding by the Court that such civil penalty or restitution assessment is not warranted; or

(4) In the case of a criminal charge, upon a finding by the Court that the owner of the property is not guilty of the alleged violation on which the seizure was based.

## § 27 JUDICIAL ENFORCEMENT.

(A) *Jurisdiction.* Any action under this Section shall be brought in the Jicarilla Apache Nation Court. Such court shall have jurisdiction to restrain a violation of any provision, prohibition, or requirement of this Title or any order, permit, or regulation issued or promulgated hereunder; require compliance or forfeiture; impose civil penalties and criminal penalties as provided in this subchapter; collect any fees or noncompliance civil penalties owed the Nation under this Title; and award any other appropriate relief.

(B) *Civil Proceedings Generally.* The Director may file an action for a temporary restraining order, a preliminary injunction, a permanent injunction, forfeiture, exclusion, or removal, or any other relief provided by law, including without limitation assessment and/or recovery of civil penalties or restitution in any of the following instances:



(1) Whenever a person has violated or is violating any provision, prohibition, or requirement of this title or any order, permit, or regulation issued or promulgated hereunder, including without limitation failure to allow or carry out record-keeping, monitoring, reporting, or inspection activities and failure to comply with a compliance order, a civil penalty or restitution assessment, a field citation, or a duty to pay a fee; or

(2) Whenever a person is creating an imminent and significant danger to the public health or welfare or the environment within the Nation, in which case the Director shall pursue injunctive relief but not assessment of civil penalties, unless the danger is caused by a violation, as specified in J.A.N.C. § 14-1-27(B)(1).

*(C) Civil Forfeiture Proceedings.*

(1) Within thirty (30) days after seizing property pursuant to J.A.N.C. § 14-1-26, the Director may initiate an in rem judicial forfeiture proceeding against the seized property in addition to or in lieu of any other judicial enforcement action under this Section. The forfeiture complaint shall describe with reasonable specificity the property at issue and the basis for forfeiture.

(2) The Court shall give written notice of forfeiture proceedings to all known or reasonably ascertained persons with an interest in the seized property, including any lien interest. All such persons shall be required to answer the complaint and file any adverse claim to the property within thirty (30) days after notice is given.

(3) Upon notice to all interested persons, the Court shall conduct a hearing to adjudicate whether the property and/or any known interests therein have been forfeited to the Nation, and shall enter an appropriate judgment. The Court may deny forfeiture of an interest in property if the owner of the interest proves that he or she did not participate in, have knowledge of, or consent to the illegal use of the property; or that he or she took all reasonable measures to prevent the illegal use of the property; or that the person committing the violation obtained possession of the property without his or her consent.

(4) Property forfeited to the Nation and proceeds from the sale thereof shall be retained by the Nation and used to equip and finance enforcement activities under this Title.

*(D) Exclusion Orders.* In addition to or in lieu of any other enforcement action under this subchapter, the Nation may move in the Court for a determination whether grounds exist for exclusion and/or removal from the Nation of any nonmember of the Nation pursuant to J.A.N.C. § 2-10-1.

*(E) Criminal Penalties.* Any person subject to the criminal jurisdiction of the Nation who intentionally:

(1) Violates any provision, prohibition, or requirement of this Title or any order, permit, or regulation issued or promulgated hereunder;

(2) Makes any false material statement, representation, or certification in, or omits material from, or alters, conceals or fails to file or maintain any notice, application, record, report, plan, or other document or information required to be filed or maintained pursuant to this title, or an order, permit, or regulation issued or promulgated pursuant to this Title; or

(3) Falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this Title, or an order, permit, or regulation issued or promulgated pursuant to this title shall, upon conviction, be punished by a fine of not more than Five Hundred Dollars (\$500.00) per violation, or imprisonment for not more than six (6) months, or both, or be subject to any other penalty imposed by the court that is available under tribal law. The Director may refer any criminal violation under this subsection to the EPA pursuant to J.A.N.C. § 14-1-24(D).

## **§ 28 CITIZEN COMPLAINTS.**

(A) *Authority.* Any person may file a complaint with the Director alleging a violation of any provision, prohibition, or requirement of this Title or any order, permit, or regulation issued or promulgated hereunder or existence of an imminent and significant danger to the public health or welfare or the environment within the Nation.

(B) *Notice.* In cooperation with other federal, tribal, and state agencies as necessary, the EPO shall investigate any complaint filed pursuant to this Section and shall report to the person filing the complaint regarding the results or status of the investigation within thirty (30) days after the filing. If an investigation performed pursuant to this Section is not completed within thirty (30) days after the filing of the complaint on which it is based, the EPO shall notify the person filing the complaint of the results of the investigation when it is completed.

### ***Subchapter 5. Administrative Procedures and Judicial Review***

## **§ 29 RULEMAKING.**

The Director shall comply with the following requirements for any regulation proposed under this Title.

(A) *Interagency Consultation.* Before publishing notice of the proposed regulation, the Director shall consult with all other tribal agencies that may be affected by the proposed regulation to ensure that it satisfies all relevant administrative tribal interests.

(B) *Notice of Proposed Rulemaking.* The Director shall publish notice of proposed regulation in local newspapers and post such notice at the Nation's Offices. The notice shall state where the public can obtain a copy of the proposed regulation and shall specify the period available for public comment and the date, time, and place of a public hearing on the proposed regulation.

(C) *Rulemaking Docket.* The Director shall establish a rulemaking docket no later than the date of notice of the proposed regulation, shall maintain the docket as necessary during the rulemaking process, and shall make the docket available to the public for inspection and copying during regular business hours. The docket shall contain a copies of transcripts for any testimony taken and each document submitted to or relied on by the Director in the rulemaking process.

(D) *Comment Period and Hearing.* The Director shall provide a comment period of at least thirty (30) days, within which any person may submit written comments, data, or documentary information, and present orally their views, data, or arguments at the hearing scheduled for consideration of the proposed regulation. If no person notifies the Director of an intent to participate in the hearing on a proposed regulation in advance thereof, the Director may cancel the hearing without advance notice. If a hearing is held on a proposed regulation, the Director shall keep the docket open for at least ten (10) days thereafter to provide an opportunity for submission of rebuttal and supplementary information.

(E) *Regulation Finalization.* After conclusion of the comment period, the Director shall revise each proposed regulation as deemed appropriate by the Director and finalize it as provided herein. All final regulations under this Title shall be based on the record of the rulemaking proceeding contained in the docket and shall be accompanied by an explanation of the need therefor, the reasons for any major changes from the proposed regulation, and a response to each significant comment submitted in written or oral presentations during the comment period.

(F) *Approval and Promulgation.* The Director shall submit final regulations to the Council for approval, with the accompanying documentation required in J.A.N.C. § 14-1-29(E). If the Council does not act on final regulations within forty-five (45) days after their submission for approval, the Executive Director may promulgate the regulations as final and approved.

### § 30 OTHER ADMINISTRATIVE PROCEEDINGS.

(A) *Hearings.* The Director shall prescribe regulations establishing hearing procedures which meet due process standards and govern all administrative hearings authorized under this Title.

(B) *Reconsideration.*

(1) Within thirty (30) days after any original administrative proceedings held pursuant to this Title becomes final, the deciding agency may convene a reconsideration proceeding therefor subject to the same procedural requirements as the original administrative proceeding except further reconsideration.



(2) An agency may convene a reconsideration proceeding regarding a matter decided in an original administrative proceeding if an interested person raises an objection thereto and can demonstrate that the objection is of central relevance to the outcome of the proceeding and that it was impractical to raise the objection during the original proceeding or the grounds for the objection arose after the allowable comment period during the original proceeding.

(3) If an agency declines to convene a reconsideration proceeding, the person seeking such reconsideration may seek review of that decision in Court subject to the requirements of Section 31 of this Chapter.

(4) Reconsideration proceedings shall not postpone the effectiveness of the subject administrative action, although such action may be stayed by the deciding agency or the Court for up to three months.

**(C) Subpoenas.**

(1) In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative proceeding under this Title, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths.

(2) Any person served with a subpoena under this Section may challenge the lawfulness thereof in Court, naming as defendant the Director in his or her official capacity and not in any other manner, provided that in any such action, relief shall be limited to declaratory relief.

(3) In case of refusal to obey a subpoena issued under this Section, the Court shall have jurisdiction to issue an order requiring such person to appear before the Director and give testimony or produce papers, books, or documents, or both, and any failure to obey such order may be punished by the Court as contempt.

**§ 31 JUDICIAL REVIEW.**

(A) *Authorization.* Except as otherwise provided in J.A.N.C. § 14-1-25(C)(2), any interested person may file in Court a petition for review of any final action taken by the Director hereunder, including without limitation issuance or denial of permits, issuance of orders, assessments, citations, or subpoenas, seizures, and promulgation of regulations, plans, or standards.

**(B) Time Limitations.**

(1) Except as otherwise provided in this subsection (B), any petition for review under this Section shall be filed with the Court within thirty (30) days from the date that notice of such final

administrative action is first published, or, if notice is not published, first served upon the alleged violator or such other person required to be served under this title.

(2) Notwithstanding any other provision of this Section, if a petition for review is based solely on grounds arising after the thirtieth day after notice or service of the final administrative action, the petition shall be filed with the Court within thirty (30) days after such grounds arise.

*(C) Issue Limitations.*

(1) For any final administrative action under this Title for which there was afforded an opportunity for comment and/or hearing, only an objection that was raised with reasonable specificity during the administrative proceedings may be raised in a petition for review.

(2) Any final administrative action that is otherwise subject to judicial review under this Section may not be otherwise challenged in judicial proceedings for enforcement.

*(D) Service on Agency and Filing of Record.*

(1) Service of a petition for review on the Director shall be made as provided in J.A.N.C. § 2-6-4(C).

(2) Within thirty (30) days after service of a petition for review on the Director, the Director shall file in the Court a certified copy and certified index of the record on which the subject final administrative action was based.

*(E) Scope of Review.*

(1) Except for petitions for review brought pursuant to J.A.N.C. § 14-1-31(B)(2), the Court in reviewing a final administrative action under this Title shall limit its review to issues and evidence that were before the Director at the time of the final administrative action for which the petition for review was filed.

(2) In any judicial review of a final administrative action, relief shall be limited to declaratory relief and the Court shall have no jurisdiction to grant any other relief.

*(F) Standards for Review.* In reviewing any final administrative action of the Director undertaken pursuant to this Title, the Court may reverse any such action that it finds to be:

(1) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;

(2) In excess of statutory jurisdiction, authority, or limitations or short of statutory right;

- (3) Without observance of procedure required by law; or
- (4) Unsupported by substantial evidence.

## CHAPTER 2: WEED CONTROL AND PESTICIDE REGULATION

### § 1 TITLE.

This Chapter shall be known and may be cited as the "Jicarilla Apache Nation Weed Control and Pesticide Regulation Ordinance."

### § 2 PURPOSE.

This Chapter is designed to control pests within the Nation in an efficient and ecological manner and to regulate the use of chemical pesticides within the Nation to protect the environment, livestock, agricultural uses, and the health and safety of all residents within the Nation.

### § 3 EFFECTIVE DATE.

This Chapter was enacted on February 7, 1992 by Ordinance No. 92-O-282-2, amended on April 2, 1993 by Resolution No. 93-R-445-4, and amended on July 20, 2000 by Ordinance No. 2000-O-331-07. Each such enactment of the Council was effective on the date of its approval by the Secretary of the Interior.

### § 4 DEFINITIONS.

For purposes of this Chapter:

(A) **APPLICATOR** means a person who uses or supervises the application of a regulated or restricted pesticide or herbicide;

(B) **FIFRA** means the Federal Insecticide, Fungicide, and Rodenticide Act and amendments thereto, codified as amended at 7 U.S.C. §§ 136-136y, as enacted as of the effective date of this title and thereafter amended;

(C) **INTERDISCIPLINARY REVIEW TEAM** means a designated team to review weed control compliance and pesticide use proposals, the activities of which shall be coordinated by the Pesticide Control Office, and which shall consist of one representative from each of the following: the Nation's

EPO Pesticide Control Office, Land Administration Office, Game and Fish Department, Department of Agriculture, Water Wells Office and Oil and Gas Administration and the Jicarilla Agency Office; if not otherwise included among the above, the agency of the Nation or other government with responsibility over the land that will be affected by weed control or proposed pesticide use; and, if applicable, the member of the Nation who holds land use rights on land that will be affected by weed control or proposed pesticide use; provided that such team shall be authorized to act only with the presence of five (5) of the above representatives and only with the concurrence of a majority of present team representatives;

(D) **NMPCA** means the New Mexico Pesticide Control Act, codified as amended at NMSA 1978 §§ 76-4-1 to 76-4-39, as enacted as of the effective date of this Title and thereafter amended;

(E) **OSHA** means the Occupational Safety and Health Act of 1970 and amendments thereto, codified as amended primarily at 29 U.S.C. §§ 651-78, as enacted as of the effective date of this Title and thereafter amended;

(F) **PEST** means any organism, including without limitation any virus, bacteria, insect, weed, mollusk, or vertebrate that competes for food or water with, is harmful to, or otherwise annoys people, domestic animals, or desirable plants;

(G) **PESTICIDE** means any chemical, natural substance, or composition used to kill or affect the growth or health of a plant and/or pest regulated by FIFRA or designated as a regulated pesticide by the Pesticide Control Office;

(H) **PESTICIDE CONTROL OFFICE** means the office within the Environmental Protection Office responsible for implementing this Chapter;

(I) **RESTRICTED PESTICIDE** means any pesticide designated as restricted by the Pesticide Control Office pursuant to J.A.N.C. § 14-2-5;

(J) **WEED** means a plant that aggressively invades economic crops or native plant communities; is poisonous to livestock, wildlife, or fisheries; carries undesirable insects, disease, or parasites; or otherwise interferes with tribal purposes.

## § 5 PESTICIDE CONTROL OFFICE.

(A) *Establishment and Authority.* A Pesticide Control Office is established within the Environmental Protection Office to implement a weed and pesticide control program pursuant to this Chapter. The Pesticide Control Office shall update and maintain all rules and regulations implementing this Chapter in accordance with the latest scientific and technological information available on weeds and pesticides.

(B) *Duties and Responsibilities.* In addition to the duties and responsibilities listed in J.A.N.C. § 14-1-11, the Director, through the Pesticide Control Office, shall:

(1) Administer weed control and pesticide regulation programs as respectively provided in J.A.N.C. §§ 14-2-6 and 14-2-7;

(2) Obtain the advice and assistance of tribal, federal, state, county, and municipal government agencies, private agencies, and persons with technical expertise in the adoption and implementation of weed control and pesticide control programs and coordinate activities and cooperate with such other governmental agencies having similar or related responsibilities within their respective jurisdictions;

(3) Designate restricted pesticides based on FIFRA;

(4) Regulate, restrict, or prohibit the sale, purchase, production, processing, transportation, handling, storage, application, disposal, or other use of restricted pesticides within the Nation, including without limitation: imposing such limits within designated geographical areas, times, and circumstances; requiring, issuing, or approving certifications, permits, or licenses for such activities; and regulating, requiring, restricting, or prohibiting the use of designated facilities, equipment, materials, and methods for such activities; and

(5) Enter in a lawful manner any public or private premises within the Nation to observe or inspect any stores of any pesticides or any apparatus, aircraft, vehicle, equipment, supplies, materials, handling or storage areas, facilities, disposal sites, or devices that are used or intended for use in production, processing, transportation, handling, storage, application, disposal, or other use of restricted pesticides within the Nation.

## § 6 WEED CONTROL.

(A) *Duty to Control Weeds.*

(1) All persons on the Nation have a duty to control weeds.

(2) All oil and gas operators shall maintain the oil and gas well sites under their control clear of weeds that may pose a fire hazard or otherwise interfere with or pose safety problems in operating the well. If an oil and gas operator does not maintain its well sites free of weeds, the Director shall notify the oil and gas operator in writing and provide the operator with a specified time within which to clear the weeds. If the operator fails to clear the weeds after such notice, the Director shall clear the weeds and bill the operator. Failure to maintain a well site free of weeds and/or comply with a notice issued under this subsection shall constitute a violation of this Chapter.

(3) All governmental and other entities possessing rights-of-way through the Nation shall maintain those rights-of-way clear of weeds to the fullest extent practical. If such an entity does not maintain a weed-free right-of-way to the fullest extent practical, the Director shall notify the entity in writing and provide the entity with a specified time within which to clear the weeds. If the entity fails to clear the weeds after such notice, the Director shall clear the weeds and bill the entity. Failure to maintain a right-of-way free of weeds to the fullest extent practical and/or comply with a notice issued under this subsection shall constitute a violation of this Chapter.

(4) The Director, through the Pesticide Control Office, shall work closely with the BIA Jicarilla Agency in developing programs to control weeds within the Nation in addition to those specified in this Chapter. The Director and the Agency may develop weed control programs using tribal employment programs. The Director may develop a youth conservation corps program to assist in weed control and preservation of the Nation's environment while providing education and employment opportunities for Jicarilla Apache youth.

(5) The Interdisciplinary Review Team shall advise the Pesticide Control Office regarding resolution of weed control problems within the Nation.

(B) *Preferred Method of Weed Control.* The preferred method of controlling weeds within the Nation is through mechanical, biological, or cultural means. Herbicides may be used as part of an integrated weed control scheme if mechanical, biological, or cultural means cannot feasibly satisfy the requirements of this Chapter and regulations promulgated hereunder. The cost of alternatives to herbicide use may be considered but shall not be determinative as to the feasibility of non-herbicidal weed control.

## § 7 PESTICIDE APPLICATION REGULATION.

(A) *Incorporation of Federal and Other Laws.* All applicable laws, regulations, and standards of the EPA and the Occupational Safety and Health Administration regarding pesticides, including without limitation FIFRA and regulations promulgated thereunder, OSHA and regulations promulgated thereunder, and the NMPCA and regulations promulgated thereunder, are hereby incorporated into this Chapter and made applicable to all pesticide use within the Nation. Pesticide standards under FIFRA, OSHA, and NMPCA, and regulations promulgated under those statutes shall constitute minimum standards for pesticide regulation within the Nation, and the Director may adopt stricter standards by regulation. Each violation of these applicable laws and regulations shall constitute an independent violation of this Chapter and shall be subject to enforcement pursuant to J.A.N.C. §§ 14-1-23 through 14-1-28. In addition, the Nation shall report any violations of applicable provisions, prohibitions, or requirements of FIFRA and OSHA, or regulations promulgated under those statutes, to the appropriate federal agency for enforcement.



(B) *Prohibited Pesticide Use.* No pesticide shall be used within the Nation in a manner inconsistent with its label or if it has been banned by the Nation, EPA, or the State of New Mexico.

(C) *Pesticide Applicators.*

(1) All pesticide applicators operating within the Nation shall possess a valid commercial or private applicators' license from the EPA or the State of New Mexico.

(2) All pesticide applicators operating within the Nation shall register with the Pesticide Control Office. Pursuant to regulations promulgated under this Chapter, the Director shall issue applicator permits and charge fees for such permitting.

(3) As a condition of the right to operate within the Nation, all pesticide applicators shall conduct follow-up monitoring of water quality standards and movement of pesticides outside the target area upon request from the Pesticide Control Office as provided in a pesticide use permit.

(4) By entering the Nation, all pesticide applicators and anyone handling, transporting, or storing pesticides voluntarily submits to the jurisdiction of the Nation and its laws, ordinances, and courts.

(D) *Pesticide Use Permits.* Every pesticide use within the Nation must be approved by the Pesticide Control Office before introduction of pesticides within the Nation. A person desiring to use pesticides within the Nation shall submit to the Pesticide Control Office an application for a pesticide use permit. Within twenty (20) days after submission of such application, the Interdisciplinary Review Team shall review the application and forward the application and its recommendation(s) therefor to the Pesticide Control Office. The Interdisciplinary Review Team may suggest and the Pesticide Control Office may impose modifications to proposed pesticide use or conditions upon its use, including without limitation follow-up testing and monitoring. An application for a pesticide use permit shall include the following:

(1) Complete information on the pesticide proposed for use, including its EPA registration number, all warnings and restrictions applicable to the pesticide, whether the pesticide is banned in any state, the recommended application rate on the pesticide label, and the proposed application rate within the Nation;

(2) A list of the pests intended for control by the pesticide and the goals and objectives of the application;

(3) Proof of financial responsibility, in a form satisfactory to the Pesticide Control Office, including without limitation liability insurance, surety bond, deposit of money, or a certified check;

(4) A description of the pesticides previously used at the site and in the immediate vicinity, if known by the applicant;



(5) A discussion of the alternatives to the use of the pesticide and why such alternatives are not being pursued;

(6) A description of the site where the pesticides are to be used, including a description of any sensitive areas or concerns near the site which might be adversely affected by the pesticide application, including without limitation nearby lakes, wetlands, riparian areas, land management objectives, soil-related concerns, and threatened or endangered species;

(7) A list of all people, livestock, wildlife, farmland, and rangeland that may come into contact with the pesticide; the pesticide's effect on people, plants and animals; and a discussion of the possibility of the pesticide's movement off target and/or entry into the water system and the pesticide's ability to break down in water;

(8) A statement regarding the applicator's compliance with provisions of the Nation's laws governing preference in employment and contracting; and

(9) Copies of applicable pesticide labels and material safety data sheets.

## **§ 8 ENFORCEMENT.**

This Chapter is subject to enforcement pursuant to the provisions of J.A.N.C. §§ 14-1-23 through 14-1-28.

### **CHAPTER 3: UNLINED SURFACE IMPOUNDMENTS**

#### **§ 1 TITLE.**

This Chapter shall be known and may be cited as the "Jicarilla Apache Unlined Surface Impoundments Ordinance."

#### **§ 2 PURPOSE.**

The purpose of this Chapter is to ensure that the Nation's environment is protected from any unlined surface impoundment utilized in connection with oil and gas exploration, production, processing or transportation.

#### **§ 3 EFFECTIVE DATE.**

This Chapter was enacted on March 3, 1995 by Ordinance No. 95-O-308-03. Amendments to this Chapter enacted on July 20, 2000 by Ordinance No. 2000-O-331-07 shall become effective when approved by the Secretary of the Interior.

#### **§ 4 DEFINITIONS.**

For purposes of this Chapter:

(A) **AGENCY REALTY OFFICE** means the Realty Office of the BIA Jicarilla Agency;

(B) **ALLUVIAL AREAS** mean surface areas consisting of detrital material which has been transported by water or other erosional forces and deposited at points along the flood plain of a watercourse and is typically composed of sands, silts and gravels which exhibit high porosity and permeability;

(C) **BLM GUIDELINES** means the Unlined Surface Impoundment Closure Guidelines published in the notice to lessees and operators entitled "Closure Standards for Unlined Surface Impoundments" (NTL 94-1 FDO/ADO) issued by the BLM Farmington and Albuquerque District;

(D) **ENVIRONMENTALLY SENSITIVE AREAS** means those portions of the Nation that are:

(1) Within the valleys of the San Juan, Navajo, Rio Puerco, or Chama Rivers and bounded by the topographic line on either side of the river that is one hundred (100) vertical feet, measured perpendicularly to the river channel, above the river channel; or

(2) Within the surface water drainages or alluvial areas within fifty (50) vertical feet, measured perpendicularly to the drainage channel, of all major perennial and ephemeral creeks, canyons, washes, arroyos, and draws within the Nation; or

(3) Within a radius of one thousand (1,000) horizontal feet around any fresh water spring, well, or domestic or public water source in existence on January 1, 1994; or

(4) Within one hundred (100) vertical feet, measured perpendicularly to the water surface, of all lakes, playas, or stock or livestock watering ponds within the Nation;

(E) **MICROBIAL BIOREMEDIATION** means any remediation process conducted within the Nation which adds to waste material any laboratory-cultured microorganisms intended to stimulate and enhance the hydrocarbon degradation process;

(F) **RCRA SUBTITLE C NONEXEMPT WASTES** means nonexempt wastes as defined by 40 C.F.R. Part 261; and

(G) **UNLINED SURFACE IMPOUNDMENT** means produced water pits, dehydrator pits, blow down pits, tank drain pits, pipeline drip collector pits, compressor scrubber pits, flare pits, drill cuttings pits, drilling fluid pits, and all other pits which receive wastes resulting from oil and gas development activity or operations, which pit receives anything other than water containing less than 10,000 milligrams per liter (parts per million) total dissolved solids, unless the pit is lined in a manner that prevents all waste material and associated fluids from coming in contact with the lands and waters of the Nation.

## § 5 SCOPE.

The requirements of this Chapter, including without limitation the portions of the BLM Guidelines identified in J.A.N.C. § 14-3-7, shall apply to all unlined surface impoundments within the Nation, whether or not the impoundment is subject to the regulatory authority of the BLM.

## § 6 PROHIBITION OF NEW UNLINED SURFACE IMPOUNDMENTS.

No unlined surface impoundment that was not in existence as of March 3, 1995 shall be constructed or used within the Nation.

## § 7 CLOSURE OF EXISTING UNLINED SURFACE IMPOUNDMENTS.

(A) *Closure Deadlines.* Any unlined surface impoundment which was in existence within any environmentally sensitive area of the Nation as of March 3, 1995 shall be closed in conformity with this Chapter no later than December 31, 1996 or such earlier date required by the BLM. All other unlined surface impoundments within the Nation shall be closed in conformity with this Chapter no later than December 31, 1998 or such earlier date required by the BLM.

(B) *BLM Guidelines.* All requirements and procedures in Parts I through VIII of the BLM Guidelines are hereby adopted as the law of the Nation except as modified or expanded by the following requirements, including without limitation the following criteria which shall be added to the ranking criteria established by Section II.A.2.a of the BLM Guidelines for determining appropriate soil remediation:

### Distance to Nearest Ephemeral Stream (dry wash)

The operator shall determine the horizontal distance to all down gradient ephemeral streams having a width of at least ten (10) feet.

### Distance to an Ephemeral Stream $\geq$ 10 feet in width

	<u>Ranking Score</u>
$\leq$ 100 horizontal feet	10
$\geq$ 100 horizontal feet	0

### Distance to Nearest Lake, Playa, or Watering Pond

The operator shall determine the horizontal distance to all down gradient lakes, playas and livestock or wildlife watering ponds.

### Distance to a Lake, Playa, or Watering Pond

	<u>Ranking Score</u>
$\leq$ 100 horizontal feet	10
$\geq$ 100 horizontal feet	0

### (C) *Site Assessment Plans.*

(1) On or before September 3, 1995, the person responsible for each unlined surface impoundment required to be closed under this Chapter shall submit a site assessment plan to the EPO, the OGA and the Agency Realty Office to determine the extent to which the Nation's environment may have been affected by operation of the impoundment.

(2) The site assessment plan shall include a plan of operations, proposed sampling and testing procedures, identification of proposed testing facilities, the location of all impoundments to be closed, identification of the contact person, proposed dates for activity at each location, proposed procedures to identify contamination of ground water, and any other information required by the EPO.

(3) After consultation with the Agency Realty Office and the OGA, the EPO shall approve, reject, or approve with modifications the plan, with the concurrence of the OGA.

**(D) Remediation Plans.**

(1) Before beginning any remediation or closure activities, the person responsible for the unlined surface impoundment shall submit a remediation plan for the impoundment to the BLM, the EPO, the OGA and the Agency Realty Office, or successor agencies.

(2) The remediation plan shall include a plan of operations, sampling and testing results, the location of all impoundments to be remediated, identification of the contact person, proposed dates for activity at each location, proposed remediation methods, identification of any ground water contamination and proposed remediation methods, a site specific environmental assessment, and any other information required by the EPO.

(3) Remediation plans shall be accompanied by a USGS topographical 7.5 minute quadrangle map of the unlined surface impoundment area indicating the location of each impoundment relative to surface drainages and any fresh water wells, springs, or domestic water sources in the vicinity. The location of one or more impoundments may be shown on the map, and the map may apply to remediation plans for any number of impoundments if the map is legible and impoundment locations are clearly shown and identified.

(4) The EPO shall conduct an on-site inspection of the area to be remediated before approving a remediation plan. After consultation with the Agency Realty Office and the OGA, the EPO shall approve, reject, or approve with modifications the plan, with the concurrence of the OGA.

(5) The EPO shall not approve any remediation plan which proposes the use of microbial bioremediation, but shall refer the proposed plan to the Energy Conservation and Development Commission for approval or rejection.

(6) The EPO shall not approve any remediation plan for an unlined surface impoundment subject to regulation by the BLM which has not been approved by the BLM and shall not approve any remediation plan for any unlined surface impoundment subject to regulation by the BIA which has not been approved by the BIA.

(7) The EPO may require remediation to more stringent levels than those proposed by the BLM Guidelines if warranted by site specific conditions, including without limitation native soil type, location relative to populated areas, and future use of the site.

(8) Any determination by the BLM that remediation is not necessary based on an evaluation of risk that remaining contaminants do not pose a threat to the Nation's environment shall not be binding on the EPO in determining the level of remediation required by this Chapter.

(9) The EPO shall monitor remediation activities to assure compliance with the approved remediation plan.

(E) *Final Closure.*

(1) Upon completion of all approved remediation actions, the person responsible for the unlined surface impoundment shall submit a final closure plan for the impoundment to the EPO, the OGA and the Agency Realty Office.

(2) The closure plan shall include a plan of operations, post-remediation testing results, the location of all impoundments to be closed, identification of contact person, proposed dates for activity at each location, proposed closure methods, a schedule for reporting the results of all closure activities, a schedule for surface restoration, and any other information required by the EPO.

(3) After consultation with the OGA and the Agency Realty Office, the EPO shall approve, reject, or approve with modifications the proposed closure plan, with the concurrence of the OGA.

(4) All back fill materials to be used in closing an impoundment must be approved by the EPO.

(5) The EPO shall monitor closure activities to assure compliance with the approved closure plan.

(6) The person responsible for the unlined surface impoundment shall submit a final closure report to the EPO, the OGA and the Agency Realty Office, documenting that the closure plan has been completed as approved.

(F) *BLM Sundry Notices.* The person responsible for the unlined surface impoundment shall submit to the EPO, the OGA and the Agency Realty Office a copy of all sundry notices filed with the BLM pursuant to the BLM Guidelines.

(G) *RCRA Subtitle C Nonexempt Wastes.* Immediate notice and subsequent written notice shall be given by the person responsible for the unlined surface impoundment to the EPO, the OGA and the Agency Realty Office whenever any RCRA Subtitle C nonexempt wastes are discovered at the site of

any unlined surface impoundment for which the person is responsible or whenever the responsible person has reason to believe that any RCRA Subtitle C nonexempt wastes may have been disposed of at any unlined surface impoundment site. The EPO may require an investigation and appropriate testing of any unlined surface impoundment site within the Nation to determine the existence and extent of any such contamination.

**§ 8 SUPERSESION OF FEDERAL REGULATIONS.**

This ordinance supersedes any conflicting regulation of the Department of the Interior contained in Title 25, Code of Federal Regulations, pursuant to the inherent authority of the Nation recognized by 25 C.F.R. §§ 211.29 and 225.1(d).

**§ 9 ENFORCEMENT.**

This Chapter is subject to enforcement pursuant to the provisions of J.A.N.C. §§ 14-1-23 through 14-1-28.

## **CHAPTER 4: SOLID WASTE MANAGEMENT**

### **§ 1 TITLE.**

This Chapter shall be known and may be cited as the "Jicarilla Apache Nation Solid Waste Management Ordinance."

### **§ 2 PURPOSE.**

This Chapter provides for the management, regulation and disposal of solid waste in order to prevent pollution of land, ground water and air and to protect the public health and welfare; encourages source reduction, reuse and recycling; and provides for community education on solid waste issues.

### **§ 3 EFFECTIVE DATE.**

The effective date of this Chapter shall be the date of its approval by the Secretary of the Interior after its enactment by the Council.

### **§ 4 DEFINITIONS.**

For purposes of this Chapter:

(A) **AGRICULTURAL WASTE** means animal manure, orchard prunings, and unused residue from crop harvesting;

(B) **ASHES** means the residue from the burning of wood, coal, or other solid combustible materials;

(C) **COMMERCIAL COLLECTION** means all solid waste collection activities not defined as residential collection;

(D) **COMMERCIAL SITE** means a distinct parcel of land which is intended for the construction of, or on which is located, a structure used for commercial, retail, or manufacturing purposes, provided that commercial sites owned by the same person shall be treated as separate commercial sites for the purposes of solid waste collection unless otherwise designated by the Solid Waste Management Program;



(E) **DISPOSAL** means the deposit, discharge, dumping, injection, leaking, placing, or spilling of any waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including groundwater;

(F) **GARBAGE** means animal and vegetable waste materials that are organic matter resulting from the handling, preparation, or consumption of foods and thus are likely to become putrid;

(G) **HANDLING** means the storage, accumulation, packaging, collection, disposal, transportation, reduction, or other management or movement of solid waste;

(H) **HAZARDOUS WASTE** means waste material that:

(1) Exhibits any one of the following characteristics that is measurable or reasonably detectable: ignitability, corrosivity, reactivity, or toxicity and, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(a) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or incapacitating reversible illness; or

(b) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; or

(2) Is listed as hazardous waste under federal law in 40 C.F.R. Part 261, subpart D;

(I) **INDUSTRIAL WASTE** means large quantities of waste from industrial operations, including without limitation bales of paper or rags, wood chips, or scrap materials;

(J) **MINING WASTE** means slag, tailings, and rubble from mining and mineral processing activities;

(K) **OPERATOR** means any person who operates, controls, or otherwise supervises a solid waste management facility;

(L) **OWNER** means any person who owns or leases a solid waste management facility;

(M) **POLLUTION PREVENTION** means activities that reduce the amount of waste or recyclable material that is generated and introduced into the waste stream, including without limitation landfills and other solid waste disposal facilities;

(N) **RECYCLABLE MATERIAL** means material that would otherwise become solid waste if not recycled and that can be collected, separated, or processed and used in the form of raw material or products;

(O) **RECYCLING** means any process by which recyclable materials are collected, separated, processed, reused, or returned to use in the form of raw materials or products;

(P) **RESIDENTIAL COLLECTION** means solid waste collection from residential sites;

(Q) **RESIDENTIAL SITE** means a distinct parcel of land that is intended for construction of, or on which is located, a residential dwelling, provided that residential sites owned by the same person shall be treated as separate residential sites for purposes of solid waste collection unless otherwise designated by the Solid Waste Management Program;

(R) **SOLID WASTE** means any garbage, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other waste, including solid, liquid, semi-solid, or gas-containing waste resulting from agricultural, commercial, community, industrial, mining, and residential activities and operations, and excluding domestic sewage, hazardous waste, radioactive materials, solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under the Clean Water Act, and well site pit wastes;

(S) **SOLID WASTE LANDFILL FACILITY** means a discrete area of land or excavation, whether publicly or privately owned, that receives residential waste and may receive other types of solid waste that is not:

(1) An area where wastes are applied onto or incorporated into the soil surface for agricultural purposes or for treatment and disposal;

(2) A facility such as a holding, storage, settling, or aeration pit, pond, or lagoon that is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of liquid waste or waste containing free liquid and that is not an injection well;

(3) An injection well; or

(4) A waste pile;

(T) **SOLID WASTE MANAGEMENT FACILITY** means any facility or part of a facility, including a solid waste landfill facility, and including without limitation land, vehicles, and structures on and improvements to land, used in collection, transportation, processing, storage, or disposal of solid waste;

(U) **SOLID WASTE MANAGEMENT PROGRAM** or **SWMP** means the division within the EPO responsible for implementing this Chapter;

(V) **STORAGE** means the accumulation of solid waste after generation and before and after collection, processing, composting, recycling, transportation and/or disposal;

(W) **TRANSFER STATION** means a fixed, supplemental collection and transportation facility, used by persons and/or route collection vehicles to deposit collected solid waste from off-site into a larger transfer vehicle for transport to a solid waste handling or disposal facility, excluding residential solid waste storage containers and commercial, industrial, institutional, or recreational waste collection facilities that service exclusively those establishments; and

(X) **WASTE** pile means a noncontainerized accumulation of solid, nonflowing waste that is stored or used for treatment.

## § 5 SOLID WASTE MANAGEMENT PROGRAM.

(A) **Authority.** A Solid Waste Management Program is hereby established within the EPO to oversee solid waste management issues within the Nation and implement this Chapter.

(B) **Powers and Duties.** In addition to the duties and responsibilities listed in J.A.N.C. § 14-1-11, the Director, through the Solid Waste Management Program, shall:

(1) Prepare an integrated solid waste management plan for the proper handling of solid waste, as provided in J.A.N.C. § 14-4-7;

(2) Develop and administer outreach and public education programs to assist all persons within the Nation to understand and comply with solid waste management policies, prohibitions, requirements, and regulations;

(3) Explain the benefits of neighborhood solid waste collection systems; and

(4) Emphasize the use of cost-effective practices of solid waste management that minimize affects on the Nation's environment, including source reduction, pollution prevention, and recycling.

(C) **Cooperation with Public Works Department.** The existing Dulce solid waste landfill facility and transfer station are operated and maintained by the Nation's Public Works Department. The Director shall coordinate with the Public Works Department to ensure that these and future landfill and transfer stations are operated and maintained in accordance with requirements of this Chapter and regulations promulgated hereunder and consistent with the solid waste management plan prepared pursuant to J.A.N.C. § 14-4-7.

**§ 6 PROHIBITED ACTS.**

(A) *List of Prohibited Acts.* It shall be unlawful for any person to:

(1) Dispose of any solid waste in a manner that will harm the Nation's environment, endanger the public health, safety and welfare, or create a public nuisance;

(2) Collect, dispose of, transport, process, store, or otherwise handle any solid waste in any manner or at any facility that is not in compliance with the provisions of this Chapter, regulations promulgated hereunder, or other applicable laws;

(3) Construct, operate, modify, or close a solid waste management facility without the appropriate permit from the Director;

(4) Use a solid waste management facility to dispose of any waste not defined as solid waste (including without limitation bulk or non-containerized liquids, petroleum waste, lead-acid batteries, hazardous waste, radioactive materials, sewage, or septage);

(5) Dispose of solid waste at a solid waste facility that has been officially designated as closed by the Director;

(6) Violate any duty to allow or carry out inspection, entry, or monitoring activities; and

(7) Violate any other provision, prohibition, or requirement of this Chapter or any order, permit, plan, or regulation issued or promulgated hereunder.

(B) *Exceptions.* To respect and preserve Jicarilla Apache culture and traditions while protecting public health and the Nation's environment, the Director shall issue regulations under this Chapter that identify certain types of materials generated by religious, ceremonial, or other traditional events that will be subject to provisions under those regulations instead of those under J.A.N.C. § 14-4-6(A).

**§ 7 SOLID WASTE MANAGEMENT PLANNING, POLICIES AND CRITERIA.**

(A) *Solid Waste Management Plan.* The Director shall develop a solid waste management plan that addresses solid waste management facility siting, transfer stations, solid waste transportation, pollution prevention, recycling, and other related issues. The plan shall be revised from time to time as necessary based on changing needs and conditions.

(B) *Solid Waste Management Criteria.* The Director shall issue regulations, pursuant to the provisions of J.A.N.C. § 14-1-29, specifying requirements for recycling and for solid waste management

facilities, including solid waste collection and transportation, solid waste landfill facilities and composting facilities, and transfer stations. Such regulations shall include the following, as applicable:

- (1) Siting criteria;
- (2) Design requirements, including without limitation requirements for liners, leachate collection, and methane gas monitoring and control; operating requirements; record-keeping and reporting requirements; and requirements for the preparation of contingency plans in the event of emissions;
- (3) Groundwater monitoring, sampling, analysis, and corrective action requirements;
- (4) Solid waste storage requirements that account for mechanical pick-up and manual retrieval of storage containers;
- (5) Procedures for the proper handling of residential and commercial solid waste;
- (6) Record-keeping and reporting requirements, consistent with J.A.N.C. § 14-4-10;
- (7) Closure criteria and post-closure care requirements for solid waste landfills, including without limitation requirements for installing final covers; and
- (8) Financial responsibility requirements, including without limitation financial assurance requirements for damage claims, closure, post-closure care, and corrective actions concerning solid waste landfills.

## **§ 8 PERMITS.**

The Director shall issue permits for solid waste management facilities, including solid waste landfill facilities, transfer stations, and composting and recycling facilities, in accordance with the provisions of J.A.N.C. §§ 14-1-18 through 14-1-22.

## **§ 9 OPERATOR CERTIFICATION.**

The operating requirements promulgated pursuant to J.A.N.C. § 14-4-7(C) shall include a requirement that operators of solid waste management facilities must be certified at least to the level of the standard operator requirements mandated by the New Mexico Solid Waste Management Regulations.

**§ 10 RECORD-KEEPING AND REPORTING.**

The record-keeping and reporting requirements promulgated under J.A.N.C. § 14-4-7(C) shall require owners and operators to maintain records concerning the type and weight or volume of solid waste handled; the origin of the solid waste; information on ownership of and number of employees at the facility; any deviations from approved design or operational plans; and any other information determined to be necessary by the Director. The Director may by regulation require criminal background checks of employees at and owners of the facility.

**§ 11 ENFORCEMENT.**

This Chapter is subject to enforcement pursuant to the provisions of J.A.N.C. §§ 14-1-23 through 14-1-28.



## **CHAPTER 5: WATER QUALITY**

The EPO shall apply ground and surface water quality standards established by the New Mexico Water Quality Control Commission until such time as the Nation establishes other applicable water quality standards within the Nation.

## **CHAPTER 6: AIR QUALITY**

The EPO shall apply air quality standards established by the State of New Mexico until such time as the Nation establishes other applicable air quality standards within the Nation.

## **CHAPTER 7: UNDERGROUND STORAGE TANKS**

The EPO shall apply the technical standards and corrective action requirements for underground storage tanks established by the EPA, codified at 40 C.F.R. Part 280, until such time as the Nation establishes other applicable underground storage tank standards and requirements within the Nation.

## **CHAPTER 8: UNDERGROUND INJECTION CONTROL**

The EPO shall apply the underground injection control program established by EPA for Indian lands in New Mexico, codified at 40 C.F.R. Part 147, Subpart HHH, until such time as the Nation establishes other applicable underground injection control standards within the Nation.

### **TITLE 14 HISTORY**

**Title 14, Environmental Protection**, was enacted by Ordinance No. 78-O-53 on August 15, 1978 and was repealed and re-enacted by Ordinance No. 84-O-235 on January 20, 1984. Ordinance No. 92-O-204-12 enacted on December 5, 1991, amended Chapters 1 and 6. On July 20, 2000 Ordinance No. 2000-O-331-07 was enacted revising Title 14, Environmental Protection Code in its entirety. The Ordinance was received and recommended for approval by the Bureau of Indian Affairs on July 31, 2000. The effective date of approval is based upon the 120 days and therefore deemed approved on November 28, 2000. The Ordinance reads as follows:

WHEREAS, the Tribal Council is authorized by Article XI, Section 1(d) of the Revised Constitution of the Jicarilla Apache Tribe to enact ordinances to promote the peace, safety, property, health and general welfare of the people of the Reservation; and

WHEREAS, the Tribal Council has established the Environmental Protection Office within the Natural Resources Department in order to enhance the ability of the Tribe to protect the environment of the Reservation; and

WHEREAS, the Environmental Protection Office has proposed the revision of the Tribe's existing environmental protection ordinance; and

WHEREAS, the Natural Resources Department has reviewed the proposed revisions and recommends that the revised Environmental Protection Code be enacted; and

WHEREAS, the Tribal Council has reviewed the proposed Environmental Protection Code and finds that it is in the best interests of the Tribe.

## **Environmental Protection**

NOW, THEREFORE, BE IT ORDAINED, that the Tribal Council of the Jicarilla Apache Tribe hereby enacts the revised Environmental Protection Code, Title 14 of the Tribal Code, in the attached form. [Text of Ordinance]

**Title 14, Chapter 2, Weed Control and Pesticide Regulation**, was enacted by Ordinance No. 92-O-282-2 on February 7, 1992. The Ordinance received affirmative Secretarial approval on September 4, 1992. Tribal Council Resolution No. 93-R-445-4 was enacted on April 2, 1993, directing certain changes for clarification to Ordinance No. 92-O-282-2. On July 20, 2000 Ordinance No. 2000-O-331-07 was enacted revising Title 14, Environmental Protection Code in its entirety. Ordinance No. 2000-O-331-07 amended Chapter 2, Weed Control and Pesticide Regulation. The Bureau of Indian Affairs received and recommended approval of Ordinance No. 2000-O-331-07 on July 31, 2000. Therefore, based upon the 120 days the effective date is November 28, 2000.

**Ordinance No. 92-O-282-2** reads as follows:

BE IT ORDAINED, by the Tribal Council of the Jicarilla Apache Tribe,

That, in the exercise of its inherent sovereign powers of self-government in order to protect the health and safety of its members, its land and natural resources, its cultural and political integrity; and

That, pursuant to the authority confirmed by acts of Congress and federal regulation, and the inherent power and authority of the Jicarilla Apache Tribe and the power and authority vested in the Tribe by the Constitution of the Jicarilla Apache Tribe, the Jicarilla Apache Tribe hereby adopts the following provisions governing the use of pesticides and control of weeds within the boundaries of the Jicarilla Apache Reservation. [Text of Ordinance]

**Resolution No. 93-R-445-4** reads as follows:

WHEREAS, by Ordinance No. 92-O-282-2, dated January 7, 1991 the Tribal Council enacted and adopted this Ordinance, which was approved by the Secretary of the Interior and

WHEREAS, the Office of Environmental Protection has been established and in reviewing the Ordinance have recommended certain changes for clarification, these being as follows:

Insert #1 - "pest" [Adds new definition, § 1(E)(5)]

Insert #2 - "as amended and the New Mexico Pesticide Control Act (NMCA) as amended." [Amends § 4(A)]

Insert #3 - "valid New Mexico or National EPA commercial applicators' license or private applicators' license." [Amends § 4(C)(1)]

## **Environmental Protection**

BE IT RESOLVED, by the Tribal Council of the Jicarilla Apache Tribe to amend Ordinance No. 92-O-282-2, dated January 7, 1991 as indicated above and directed these changes to be incorporated into the Ordinance and are not intended to change, amend or revise the original intent and purpose of the Ordinance.

**Title 14, Chapter 3, Unlined Surface Impoundments**, was enacted by Ordinance No. 95-O-308-03 on March 3, 1995. Article X, Section 2 of the Jicarilla Apache Tribal Constitution provides that any resolution, ordinance or other enactment which, by its terms or in conformity with applicable Federal law, is not approved within 120 days, shall become effective. The effective date of Ordinance 95-O-308-03 is based upon the 120 days, and therefore deemed approved as of July 3, 1995. Ordinance No. 2000-O-331-07 enacted on July 20, 2000 amended Chapter 3, Unlined Surface Impoundments. Ordinance No. 2000-O-331-07 was effective on November 28, 2000, based upon the 120 days. That Ordinance reads as follows:

WHEREAS, the Jicarilla Apache Tribal Council is authorized by Article XI, Section 1 of the Revised Constitution of the Jicarilla Apache Tribe to enact ordinances to promote the health and general welfare of the Jicarilla Apache Tribe; and

WHEREAS, Article XI Section 1(a) of the Revised Constitution of the Jicarilla Apache Tribe vests in the Tribal Council the responsibility for management of the lands and natural resources of the Tribe; and

WHEREAS, the Council has determined that the use of unlined surface impoundments to hold fluids produced in connection with oil and gas exploration, production, processing and transportation creates an unacceptable risk of damage to the Reservation environment; and

WHEREAS, the Mineral and Water Resources Committee has recommended adoption of the attached Unlined Surface Impoundments Ordinance to regulate the use and closure of such impoundments; and

WHEREAS, the Jicarilla Apache Tribe has the inherent sovereign authority, recognized by 25 CFR § 211.29, to regulate businesses and mineral operations within the Jicarilla Apache Reservation and to supersede otherwise applicable regulations of the Department of the Interior applicable to oil and gas leases issued under the 1938 Indian Mineral Leasing Act; and

WHEREAS, the Jicarilla Apache Tribe has the inherent sovereign authority, recognized by 25 CFR § 225.1(d), to regulate businesses and mineral operations within the Jicarilla Apache Reservation conducted under agreements authorized by the 1982 Indian Mineral Development Act; and



## **Environmental Protection**

WHEREAS, the Tribal Council has determined that adoption of the attached ordinance will be in the best interests of the Reservation environment and the proper development of the oil and gas resources of the Tribe.

NOW, THEREFORE, BE IT ORDAINED by the Tribal Council of the Jicarilla Apache Tribe that the attached Unlined Surface Impoundments Ordinance is hereby enacted to be codified as Title 14, Chapter \_\_\_\_ of the Jicarilla Apache Tribal Code. [Text of Ordinance]

The Jicarilla Apache Council authorized the Environmental Protection Office to enforce **Title 14, Environmental Protection**, by Tribal Council Resolution No. 95-R-132-10 enacted on October 7, 1994. The Resolution reads as follows:

WHEREAS, Title 14 Environmental Protection of the Jicarilla Apache Tribal Code provides for the regulation and enforcement of activities that directly affect the Reservation environment; and

WHEREAS, the Jicarilla Apache Tribe established the Jicarilla Environmental Protection Office in January 1993 to identify environmental concerns on the Reservation and propose remedial and/or preservation action; and

WHEREAS, it is in the best interest of the Jicarilla Apache Tribe to authorize the Environmental Protection Office to conduct enforcement activities of the Jicarilla Apache Tribal Code, Title 14; and

WHEREAS, the Environmental Protection Office will conduct training and implementation of enforcement activities directly related to Title 14 of the Jicarilla Apache Tribal Code.

NOW, THEREFORE, BE IT RESOLVED, the Jicarilla Apache Tribal Council has designated the Jicarilla Environmental Protection Office to enforce ordinances, regulations, identify environmental concerns, and enact Tribal Environmental Laws to protect the Environment of the Jicarilla Apache Reservation.