

POTAWATOMI LAW AND ORDER CODE

**TITLE 9
ENVIRONMENTAL PROTECTION**

**CHAPTER 9-1
GENERAL PROVISION**

Section 9-1-1. Purpose.

The purpose of this Title is to insure that proper and meaningful consideration of environmental, cultural, historical, and ecological factors is made by any person or the Tribe prior to its approval of activities on the Prairie Band of Potawatomi Indian Reservation which may significantly affect that environment in whole or in part.

Section 9-1-2. Administration.

The Tribal Council shall assign a person or agency to carry out the day-to-day functions under this Title.

Section 9-1-3. Effective Date.

This Title becomes effective on the date of approval by the Prairie Band of Potawatomi Indians' General Council at a duly organized annual meeting with a quorum voting as to the effective date.

Section 9-1-4. Permits.

Every person seeking action hereunder shall obtain a business or operator's permit from the Tribe if so required by the ordinances of the Tribe or federal laws or regulations. Any violation of this Title shall be grounds for suspension or revocation of a person's business or operator's permit.

Section 9-1-5. Definitions.

(A) **Activity.** "Activity" means any industrial or commercial development project, any development project involving the disturbance of more than one (1) acre of land surface, any development activity in a part of the Reservation designated environmentally sensitive, or any research project, other than activity connected with oil and gas operations.

(B) **Applicant.** "Applicant" means the person requesting a permit to conduct activities on the Reservation which are regulated by this Title, other than oil and gas activity.

(C) **Council** “Council” means the elected governing body of the Prairie Band of Potawatomi Indians.

(D) **Development Project.** “Development project” means any activity which directly or indirectly seeks to develop, use or modify Reservation resources.

(E) **Environmentally Sensitive Area.** “Environmentally sensitive area” means a part of the Reservation considered by the Council to be so subject to environmental disturbance as to warrant special rules to govern resource development.

(F) **Non-Compliance.** “Non-compliance” means any neglect, failure or refusal to do or perform an act set forth in this Title.

(G) **Oil and Gas Activity.** “Oil and gas activity” means any activity on tribal lands engaged in pursuant to leases entered into under the Indian Mineral Leasing Act of 1938, 25 U.S.C. § 396a-396g; land subject to development contracts issued pursuant to the Indian Mineral Development Act of 1982, Public Law 97-382, 25 U.S.C. § 2121-2108; or activities undertaken solely by the Tribe.

(H) **Oil and Gas Contractor.** “Oil and gas contractor” means a contractor with the Tribe under contract negotiated pursuant to the Indian Mineral Development Act of 1982; under joint exploration and development contract entered into with the Tribe prior to the effective date of the 1982 Act; or under contract to conduct activities on land operated by the Tribe outside of these Acts.

(I) **Oil and Gas Lessee.** “Oil and gas lessee” means a person holding rights to explore, develop or operate on tribal lands for oil and gas under a lease issued pursuant to the Indian Mineral Leasing Act of 1938, or the Indian Mineral Development Act of 1982.

(J) **Operator’s Permit.** “Operator’s permit” means the permit issued by the Tribe required by the ordinances of the Tribe.

(K) **Permit Holder.** “Permit holder” means the holder of a tribal environmental permit issued under this except for oil and gas exploration and development.

(L) **Person.** “Person” means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or its legal agents, or assigns.

(M) **Pollutant.** “Pollutant” 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, cultural or aesthetic properties of the environment.

(N) **Research Project.** “Research project” means a project or study conducted to gain knowledge about Reservation resources.

(O) **Reservation.** “Reservation” means the Prairie Band of Potawatomi Indian Reservation. For the purpose of this Title, the term Reservation shall be as defined in Article I of the Prairie Band Potawatomi Nation’s Constitution.

(P) **Reservation Environment.** “Reservation environment” means the functioning system composed of all living and entities and objects within the boundaries of the Reservation together with interactions and the inputs to and outputs of that system.

(Q) **Reservation Resources.** “Reservation resources” means the physical and biological resources of the Tribe within the boundaries of the Reservation, including but not limited to land, water, air, minerals, cultural or historical sites and objects, animal and plant life, and aesthetic values.

(R) **Tribe.** “Tribe” means the Prairie Band of Potawatomi Indians of Kansas.

(S) **Tribal Environmental Permit.** “Tribal environmental permit” means a permit issued by the Tribe pursuant to this Title to carry out an action covered by this Title.

(T) **Violation.** “Violation” means a Breach of any right, duty, requirements or provision of this Environmental Protection Title.

CHAPTER 9-2 COMPLIANCE AND ENFORCEMENT PROCEDURES

Section 9-2-1. Non-compliance.

Any person who fails to comply with any provision of this Title shall be subject to the penalties and other protective actions set forth herein. In the event of non-compliance, the person or agency designated by the Council to be responsible for enforcement shall serve the violator, in person or by mail, with a notice of non-compliance which shall specify non-compliance with the provisions of this Title or the terms of the plan of development submitted pursuant to this Title and shall specify the action which must be taken to correct such non-compliance, as well as the time limits within which such action shall be taken.

Section 9-2-2. Orders to Cease Activity.

In the event of non-compliance with this Title, with any notice of non-compliance, or with any applicable federal law or regulation, the person or agency designated by the Council to be responsible for enforcement may order the cessation of such activity without additional notice to the violator if the non-compliance is not cured in five (5) calendar days. If deemed

necessary, after the five (5) day period of non-compliance, vehicles and equipment may be impounded, or access restricted to an area or site until the non-compliance is cured. The violator shall be served, in the case of violation of this Title, with a statement of the reasons for the cessation order, and actions needed to be taken before the order will be lifted. A copy of this cessation order and the statement of reasons for the order shall be delivered to the Chairman of the Tribe.

Section 9-2-3. Enforcement by United States.

The Secretary of the Interior, or his authorized delegate, including the Superintendent, Horton Agency, Horton, Kansas, along with officials of the Bureau of Land Management, or agents or employees of these officials, are hereby requested and authorized to enforce the provisions of this Title and take any enforcement action authorized by this Title or federal laws or regulations which do not interfere with action being taken by the Tribe.

**CHAPTER 9-3
REMEDIES AND PENALTIES**

Section 9-3-1. Remedies.

In the event a violator fails to take action in accordance with the notice of non-compliance or cessation order served on him, pursuant hereto, the person or agency in charge of enforcement may continue its cessation actions or impoundment of vehicles and equipment; may request Secretary to serve notice of intent to cancel the lease or mineral agreement, specifying the basis for notice; may request the Secretary to proceed as provided in the federal regulations, and to assess penalties as provided by these federal regulations; may assess civil penalties as set forth in Section 9-3-2 herein; and may take any other action deemed appropriate.

Section 9-3-2. Civil Penalties.

In addition to the penalties provided by federal regulations, the violator shall pay to the Tribe a civil penalty of up to five thousand dollars (\$5,000.00) per day for each day of such violation or continued violation of an order of non-compliance if such penalties are assessed by the person or agency designated by the Council to be responsible for enforcement of this Title. The person or agency in charge of enforcement shall serve the violator, in person or by mail, with a notice of assessment of penalties, which shall be due and payable to the Tribe within twenty (20) days of this notice. Failure to pay any penalties imposed shall be considered an additional violation of this Title.

CHAPTER 9-4 REGULATIONS

Section 9-4-1. Regulations.

The Council shall establish regulations for the administration of this Title which shall be posted in one or more public places on the Prairie Band of Potawatomi Indian Reservation. Such regulations shall provide for a process for Council approval of proposed activities, contact with land assignment holders, and permit issuance.

CHAPTER 9-5 ACTIVITIES

Section 9-5-1. Scope.

This Section shall be applicable to any person conducting activities on or bringing before the Tribal Council, for its approval, any plan or activity to be performed upon the Reservation which may significantly affect the environment of the Prairie Band of Potawatomi Indian Reservation, excepting oil and gas operations, which are under Section 9-6-1 *et seq.* hereof.

Section 9-5-2. Determination by the Tribal Council.

Every proponent of an activity upon the Reservation excepting oil and gas activity, appearing before the Tribal Council to gain approval of a proposal shall include in the presentation of the proposal a statement the environmental consequences of the activity. Should the Tribal Council feel the activity may have a significant environmental effect, it shall require that a statement be filed with the Tribal Council in accordance with Section 9-5-3 herein. The Council hereby reserves the power to delegate the function of reviewing the written statement for comments to aid the Tribal Council in its determination of the environmental consequences of the proposed activity.

A determination by the Tribal Council that a proposed activity may have a significant effect shall be final.

Section 9-5-3. Statement to be Submitted.

(A) In the event a written statement is required by the Tribal Council, it shall be submitted to the Tribal Council for review at least two (2) weeks prior to the Tribal meeting at which final approval of the proposed activity is sought.

(B) The written statement shall include the following inventory data as may be deemed pertinent by the Tribal Council or other authority delegated by the Council:

- (1) A detailed baseline inventory of all plant and animal life observed in the area by the proposed activity.
- (2) A discussion of the water quality and quantity in the area, including but not limited to, chemical and radiological analyses in selected wells and surface water courses, groundwater levels in selected wells, sediment transport, soil erosion and surface run off indicators.
- (3) A discussion of the air quality in the area, including but not limited to, background radiation study in selected areas, and a suspended particulate matter evaluation.
- (4) A discussion of the soil properties in the area, including but not limited to, soil characteristics with respect to suitability for roads, cuts and fills and pipeline cover, background radiation in soils by topography and vegetation, slope porosity, permeability and capillarity, texture, density and stratification.
- (5) An assessment of the cultural properties and uses of the area, including but not limited to:
 - (a) Inventory of historic, religious and archaeological sites.
 - (b) Inventory of unique physical features and scenic features.
 - (c) Number of people living and working with in the area.
 - (d) Inventory of the present land use within the area, including but not limited to, precipitation, air movement, temperatures and seasonal variation.
 - (e) An assessment of the general climatic conditions of the area, including but not limited to, precipitation, air movement, temperatures and seasonal variation.

(C) The written statement shall include considerations as to how the proposed activity will affect the inventoried area. To this end, the statement shall include an assessment of both the beneficial and detrimental impacts of the proposed activity upon the following, if applicable:

- (1) Social, political and economic structure of the area, both present and future.
- (2) Cultural structure of the area, past, present and future.
- (3) Physical characteristics of the area, both present and future, and including geographic, topographic, geologic, meteorologic and hydrologic effects.
- (4) Land use and water use within the area, both present and future.
- (5) Resources of the area, including but not limited to, depletion, short and long-term implications, possibility of recovery, recycling or restoration, and effect upon regional resource development, especially with regard to the Prairie Band of Potawatomi Indian Reservation.

(D) If applicable, specific consideration shall be included regarding possible detrimental impacts on the above five (5) areas because of the following:

- (1) Hazardous materials used in the proposed activity.

- (2) Airborne emissions and effluents both in the construction and operational phases of the activity.
- (3) Solid waste disposal, both in the construction and operational phases of the activity.
- (4) Noise emissions, both in the construction and operational phases of the activity.
- (5) Any other uncontrolled emissions or discharges, both in the construction and operational phases of the activity.

(E) The written statement shall include a discussion of all alternatives to the proposed activity, including both the short and long term benefits and detriments of each alternative, any adverse environmental and/or ecological impacts which cannot be avoided, and any irreversible and irretrievable commitments of resources.

(F) Non-classified baseline data and other environmental data previously prepared for the Tribe, may be made available to the applicant on request to the person or agency designated by the Tribal Council.

CHAPTER 9-6 OIL AND GAS ACTIVITIES

Section 9-6-1. Purpose.

This Section is designed to insure that proper consideration of environmental and ecological factors, and long range planning is given by the Council prior to approval of oil and gas leasing, contracting or operations on the Reservation. This Section shall further insure that all oil and gas operations on the Reservation shall be carried out in an environmentally sound manner, and that a procedure for enforcing such compliance shall be provided.

Section 9-6-2. Scope.

This Section shall be applicable to any person conducting oil and gas operations on the Reservation, including those who bring before the Council for its approval any proposed oil and gas development plan or activity to be performed on the Reservation which may significantly affect the environment of the Prairie Band of Potawatomi Indian Reservation. Federal agencies preparing environmental assessments or environmental impact statements pursuant to the National Environmental Policy Act and regulations issued pursuant to the authority thereof are requested to cooperate in fulfilling the requirement of this Title as well as those of federal laws and regulations. Federal agencies are further requested to designate the Tribe as a cooperating agency whenever such designation is consistent with regulations issued pursuant to the National Environmental Policy Act.

Section 9-6-3. Planning.

Prior to any operation on lands leased for oil and gas pursuant to the Indian Mineral Lease Act of 1938, 25 U.S.C. § 396a-396g, lands subject to development contracts pursuant to the Indian Mineral Development Act of 1982, Public Law 97-382, 25 U.S.C. § 2101-2108, or operations conducted solely by the Tribe, the lessee, sublessee, assignee, contractor, subcontractor or operator, or agents or successors thereof, shall comply with applicable provision of the National Environmental Policy Act, 42 U.S.C. § 4321-4347, applicable regulations promulgated by the Council on Environmental Quality, 40 C.F.R. § 1508.9, Environmental Quality Handbook, 30 BIAM Supp.; National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*, and regulations promulgated thereunder, 36 C.F.R. Parts 60, 63 and 800; and the Archaeological and Historic Preservation Act, 16 U.S.C. § 469a-1, *et seq.* Copies of all draft environmental assessments, environmental impact statements, and reports required under the above statutes and regulations, shall be provided to the Council or the agency or the official delegated by the Tribal Council to review these documents, at least thirty (30) days prior to final review of the document by the Secretary. A copy of all final environmental assessments, environmental impact statements or other similar requests shall be filed with the Tribe, regardless of by whom these documents were prepared.

Section 9-6-4. Plan of Development.

(A) In addition to the environmental assessments and studies required by statutes and federal regulations, each lessee, sublessee, assignee, contractor, subcontractor or agents or successors thereof, as the case may be, shall file with the Tribe a plan of development which shall indicate well locations, drilling schedule, pipeline locations, road locations and locations of other surface removal activities which shall be coordinated with development of adjacent tracts so that duplication of roads, pipelines and other clearing will be avoided. The Tribe may require that lessees, sublessees, assignees, contractors, subcontractors, interest holders or operators, or agents or successors thereof, holding leases or contracts adjacent to lands being developed be required to plan road, pipeline and other clearing in conjunction with plans for development presented to the Tribal Council in accordance with this paragraph whether or not such persons or entities intend immediate development.

(B) It is an objective of this Section that lessees, sublessees, assignees, contractors, subcontractors, operators, or agents or successors thereof, and other holding leases or contracts for oil and gas development on the Reservation, or interests therein or rights thereto, develop the properties which they hold diligently and in accordance with approved drilling schedules.

(C) The lessee or contractor, or any other person submitting a development plan, may be required to appear before the Council or any other person or agency designated by the Council to review the plan of development required by this Section.

(D) The plan of development to be submitted under Subsection 9-6-4(A) shall, when approved by the Council, be considered as an additional stipulation of the lease

or contract involved, and the lessee, sublessee, assignee, contractor, subcontractor or operator, or agents or successors thereof, shall comply with the conditions thereof unless waived by the Council. Upon approval of the plan or proposed activity, the Council shall authorize issuance of a tribal environmental permit with such conditions and mitigation measures as the Council deems appropriate. The permit holder shall be subject to all provisions of this Title, including enforcement.

CHAPTER 9-7 APPEALS AND SEVERABILITY

Section 9-7-1. Appeals.

Any person aggrieved by any action taken by a tribal official or person or agency designated by the Council to be responsible for enforcement of this Title, may appeal to the Council. An appeal shall not stay any order to cease activity, impound vehicles or equipment and/or restrict access to the site of any operation, or pay penalties unless a stay is granted by the Council.

(A) Any penalties paid by a person in violation of an order of non-compliance may be rebated by order of the Tribal Council upon hearing an appeal taken under this Section.

(B) The Tribal Council may affirm or reverse any decision of a tribal official or person or agency designated to be responsible for enforcement of this Title, or issue such other orders or take such action as it deems appropriate.

(C) The Tribal Council may allow such presentations, evidence or arguments as it deems appropriate.

(D) A decision of the Tribal Council shall be final.

Section 9-7-2. Severability.

If any part of application of this Title is held invalid, the remainder of the Title, or its application to other situations or persons shall not be affected.

(Title 9 enacted by PBP TC No. _____, _____; amended by PBP TC No. 2005-024, March 3, 2005)

