

Washoe Tribe of Nevada and California

Law & Order Code

TITLE 17 — ENVIRONMENTAL PROTECTION CODE

[Last Amended: 8/12/05. Issue Date: 7/21/06.]

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Washoe Tribe of Nevada and California

Law & Order Code

TITLE 17 — ENVIRONMENTAL PROTECTION CODE

[Last Amended: 8/12/05. Issue Date: 7/21/06.]

17-10 GENERAL PROVISIONS

17-10-010 Purpose

The Tribe recognizes that the actions of persons who are not continuously located or residing on Tribal lands often profoundly affects the health, safety, and welfare of the Tribe, its members and territory. Such an impact is especially significant for environmental matters. Because of the Tribal concern and interest in protecting the environmental quality and integrity of its lands and health and safety of its members, the Tribe finds it necessary to have the ability to call persons who so impact their territory to account for their acts or omissions in Tribal Court. The Tribe therefore intends the following ordinance to provide the means by which the Tribe may exercise Tribal Court jurisdiction over such persons.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-10-020 Definitions

For the purpose of this Code:

1. "Indian" means any person of Indian descent who is a member or, is eligible for membership in any Indian Tribe.
2. "Person" includes any individual Indian or non-Indian, corporation, Tribe, association, governmental agency (State or Federal), or other entity.
3. "Tribal Court(s)" means any judicial or other type of adjudicatory body recognized by the Tribe, including but not limited to Tribal Trial and Appellate Courts, Courts of Indian Offenses, and the Inter-Tribal Courts of Appeal.
4. "Territory" means all areas within the present exterior boundaries of the Tribe, including trust or non-trust land, all allotments including those held in fee, the Tribal colonies, all dependent Indian communities, waters, roads and bridges, and any future holdings.

5. "Act" is any activity carried out by a person or an agent of the person.
6. "Omission" means the failure to do something to deter or prevent occurrence of injury or negative impact.
7. "Subject Matter Jurisdiction" means the authority to decide certain types of civil cases granted to the Tribal Court by Tribal Legislation or the Code of Federal Regulations governing C.F.R. Courts.
8. "Personal Jurisdiction" indicates the persons who are subject to the authority of the Tribal Court.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-10-030 Subject Matter Jurisdiction

The Tribal Court(s) shall have subject matter jurisdiction over all civil environmental' matters, regardless of the amount in controversy.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-10-040 Personal Jurisdiction

1. The Tribal Court(s) shall have personal jurisdiction over any person who enters the territory of the Tribe; and
2. The Tribal Court(s) shall have personal jurisdiction over any person for claims relating to any of the following acts:
 - (a) Transacting any business within the territory;
 - (b) Committing any tortious injury, by act or omission, inside the territory, or outside the territory if injury arises within the territory from that act;
 - (c) Violating, by act or omission, any Tribal environmental standard or ordinance or any other applicable ordinance inside the territory, or outside the territory if the act or omission outside the territory results in a violation or damage within the territory;
 - (d) Possessing, using or transacting any real property within the territory;
 - (e) Contracting to insure any person or property within the territory, or provide any services to persons who are located within the territory; and
 - (f) Any other person whose activities impact the health, safety or welfare of the Tribal community or its members.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-20 ENVIRONMENTAL PROTECTION LAW

17-20-010 Findings and Purpose

1. The Council finds that new, complex and difficult problems have arisen which threaten the natural resources and environment of the Tribe and the health, safety, and general welfare of the people.
2. It is the purpose of this Law to allow the Tribe to act to preserve the unimpaired quality and condition of the Tribal environment and to protect those resources from the threat of probable harm, as well as unjustified and unlawful burdens and degradation.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-20-020 Actions for Declaratory and Injunctive Relief; Parties

The Tribe may maintain an action in the Tribal Court where the alleged violation occurred or is likely to occur for declaratory and equitable relief against any person for the protection of the air, water, and other natural resources within Tribal territory, and the public trust in these resources from pollution, impairment, or destruction if an alleged action may harm the air, water or other natural resources, the court shall presume that an adequate remedy at law is not available.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-20-030 Prima Facie Showing of Pollution; Rebuttal; Affirmative Defenses; Burden of Proof; Weight of Evidence; Masters or Referees; Apportionment of Costs

1. If the defendant polluted, impaired, or destroyed the air, water, or other natural resources or the public trust in these resources, the defendant shall be strictly liable for his conduct.
2. In determining whether the impact of an actual or proposed activity on the environment rises to the level of actual or likely impairment, pollution or destruction under subsection 1, relevant factors shall include:
 - (a) A comparison of the environmental situation before the actual or proposed action and the probable condition of the environment after;
 - (b) Whether the natural resource involved is scarce, rare, unique, endangered, historically significant, or easily replaceable;
 - (c) Whether the action has had or will have any significant consequential effect on other natural resources; and
 - (d) Whether direct or consequential impact on animals or vegetation will affect a critical number considering the nature and location of wildlife affected.

3. The Court shall not consider aesthetic considerations by themselves to constitute a significant environmental impact. In no event shall there be a comprehensive balancing of competing interests, or a weighing of the environmental risk with the potential good to be accomplished by an action.
4. The court may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a record and a report of his findings to the court in the action.
5. Costs and attorney's fees may be awarded to the prevailing party in an action under this Title.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-20-040 Granting Injunctive Relief; Imposition of Conditions

1. The court may grant temporary or permanent injunctive relief or may impose conditions on the defendant that are required to protect the air, water, and other natural resources or the public trust in these resources from pollution, impairment, or destruction.
2. The court may not deny injunctive relief because the plaintiff has not shown that irreparable harm will result from the act or practice which is the subject of the action.
3. The court may require a performance bond or other security by the respondent to ensure compliance with any court order or judgment.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-30 PUBLIC NUISANCE LAW

17-30-010 Nuisances Prohibited

No person shall create any nuisance in or affecting the Tribal Lands and no person shall by inaction permit a nuisance to occur or continue on any property under such person's control, nor shall any person permit a nuisance to occur involving any personal property under such person's control.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-30-020 Actionable Nuisances Defined

Any act or failure to perform any duty, which act or omission unreasonably annoys, injures, or endangers the safety, health, property, comfort, or repose of any person;

pollutes any waters; unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage in the customary manner a lake, basin, or any public highway or street; or which offends public decency is a nuisance.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-30-030 Public Nuisance Defined

A public nuisance is one which affects the rights of an entire community, neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. Public nuisances shall include but not be limited to the following:

1. Causing or suffering the carcass of any animal or any offal, filthy, or like substance to be collected, deposited, or remain in any place to the prejudice of others;
2. Erecting or continuing to maintain any structure which is in a dangerous condition or is an attractive enticement to children and which in its present condition is a substantial danger to children or which appears so unsightly as to offend the senses;
3. Causing any surface or groundwater to be diverted, obstructed, or impeded without legal authority; throwing or depositing any offal or other offensive matter into any waters and in such manner as to corrupt or render unwholesome or impure such waters;
4. Polluting any public well or cistern, stream, lake, canal or body of water by sewage or industrial wastes or other substances;
5. Extracting more water from any groundwater source underlying Tribal territory than can be extracted annually, year after year, without eventually depleting the groundwater source;
6. Obstructing or encroaching upon a public highway, way, or street;
7. Erecting or continuing to use any building or other place for exercise, employment, or manufacture which by emitting obnoxious gases, offensive smells, or otherwise, is offensive or dangerous to the health of individuals or of the public;
8. Erecting or continuing to use any building, or structure contrary to the lawful authority, permit, or license issued by the Tribe or any provision of the Tribal Law and Order Code specifically designed to control, limit, or regulate such building or structure;

9. For an owner or occupier of land who knows of the existence, of any well, septic tank, cesspool or other hole ten inches or more in width at the top and four feet or more in depth, and fails to cover, fence, or fill the same or otherwise provide proper and adequate safeguards;
10. Maintaining on one's own premises or upon the premises of another, any intoxicating liquor for sale or disposal to the public in violation of Tribal law;
11. Any solid or industrial waste, including but not limited to garbage, cans, bottles, rubbish, refuse, trash, construction waste or demolition waste, tree trimmings, manufacturing waste or industrial waste dumped, thrown, burned, spilled or abandoned, except such waste disposed of lawfully in a landfill or incinerator;
12. All explosives, inflammable liquids and other dangerous substances stored in any manner, in any amount other than that permitted by ordinance;
13. All loud or unusual noises and annoying vibrations which offend the peace and quiet of persons of ordinary sensibilities;
14. Any motor vehicle that is unlicensed, or is inoperable or abandoned, unless such vehicle is stored inside of a building;
15. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within or affecting Tribal territory in such quantities as to endanger the health of persons or to threaten or cause substantial injury to property, but excluding smoke emanating from residential fireplaces;
16. Any use of property, substances or things within or affecting Tribal territory emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which may annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within Tribal territory. Every person who has the care or management of any building, structure, or any other place mentioned in this section, may be taken to be the owner or agent of the owner of such building, structure, or other place and as such may be proceeded against under this ordinance.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-30-040 Private Nuisance Defined

A private nuisance is an act or failure to act which destroys or damages or deteriorates the property of an individual or a few individuals and interferes with their use and enjoyment of their property.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-30-050 Authorized Act Not A Nuisance

Nothing which is done or maintained under the express authority of a Tribal ordinance or lawful permit or license issued by the Tribe shall be a nuisance.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-30-060 Lapse of Time Cannot Legalize Public Nuisance

No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-30-070 Successive Owners Liable

Every successive owner of property who neglects to abate a continuing nuisance upon or in the use of property caused by a former owner is liable in the same manner as the one who first created the nuisance.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-30-080 Remedies

The remedy against a public nuisance shall be a civil action in Tribal Court, seeking an order of abatement or damages. An action to abate a nuisance need not include an action for damages, and an action for damages need not include an action to abate. For any public nuisance that threatens the health, safety or welfare of the community, the Tribe may also act pursuant to Section 17-30-140.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-30-090 Who May Sue

An action for a public nuisance must be brought by the Tribe in the name of the Tribe. An action for a private nuisance may be brought by the individual whose property is harmed by the nuisance.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-30-100 Order to Abate

If the action brought seeks to abate the nuisance and the plaintiff demonstrates by a preponderance of the evidence that the nuisance complained of exists, the Court

shall enter an order directing that the nuisance be abated. No order directing that a nuisance be abated shall be entered unless the Court finds that the person upon whose land the public nuisance exists has been given written notice personally served of the proceeding to abate or finds that it was not possible to provide such notice. If the Court determines that personal service was not possible, the Court shall order notice of the suit published in a newspaper of general circulation in the area of the nuisance prior to the entry of judgment. No action for an order to abate may be commenced unless the plaintiff demonstrates that it has made a written demand to the offender for the nuisance to cease.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-30-110 Enforcement of Orders to Abate

All orders entered by the Court directing that a public nuisance be abated shall be carried out by the Tribal police on Tribal territory. The Tribal police shall give 24 hours notice to the defendant and to any person who is occupying the land on which the nuisance exists. The defendant and the owner or occupier shall have a reasonable opportunity to voluntarily abate the nuisance. If the public nuisance is not voluntarily abated, the Tribal police shall take whatever action is reasonably necessary to carry out the orders of the Court.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-30-120 Compensation for Abatement

Whenever an action to abate a public nuisance is brought by the Tribe and the Court enters an order directing the abatement of the nuisance, the defendant shall be responsible for the payment of all costs incurred by the Tribe in carrying out the abatement orders; provided that, the Court may in its discretion waive this requirement upon a showing of hardship.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-30-130 Damages Recoverable Notwithstanding Abatement

The abatement of a nuisance does not prejudice the right of any person to recover damages for harm caused by its past existence.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-30-140 Emergency Action

In an action brought by the Tribe to abate a public nuisance, the Court shall, upon a proper showing that the public nuisance presents an immediate and substantial threat to the health, safety or peace of the community, enter an emergency ex parte

order directing the Tribal police to abate the public nuisance without further notice or delay.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-30-150 Tribal Immunity

No action for damages or other relief shall be maintained against the Tribe, the Tribal Council or members thereof, or members of Tribal staff for any action taken by those bodies or individuals to enforce this ordinance. Nothing herein is intended as a waiver of sovereign immunity.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40 HAZARDOUS AND NUCLEAR MATERIALS TRANSPORTATION LAW

17-40-010 Legislative Findings and Purposes

The Council finds:

1. That the Tribal territory provides a permanent homeland for the Tribe;
2. That the Tribe has the inherent and constitutional authority as a sovereign and as a matter of territorial management to protect and preserve the homeland of the Tribe;
3. That the Tribe has a duty to protect the health, safety, welfare and environment of all residents of Tribal communities;
4. That the protection and preservation of the Tribe's environment, lands, culture, religion, and resources promotes the health, safety and welfare of the people;
5. That the transportation of hazardous and nuclear materials creates a potential risk to the public health, safety, welfare and environment of all people within the Tribal territory;
6. That Tribal planning to cope with all phases of the transportation of hazardous and nuclear material problem is essential in order to adequately prepare for potential accidents involving hazardous materials, potential radiological incidents, to monitor and regulate the transportation of nuclear materials and hazardous materials through Tribal territory, and insure the safety of the Tribal communities. To that end, it is the purpose of this Ordinance to require safe and environmentally acceptable methods of transporting nuclear materials and hazardous materials within and across

Tribal territory, and regulate the transportation thereof. It is also intended that the law will enable funds to be generated to fund emergency response preparedness and the administration of this law.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40-020 Definitions

For purposes of this law, the following definitions shall apply:

1. “Council” means the elected governing body of the Tribe;
2. “Carrier” means any person transporting goods or property on the roads or highways of Tribal territory into, through, within and out of this Tribal territory, whether or not such transportation is for hire;
3. “Hazardous Materials” means any substance or combination of substances, including any hazardous waste, listed in the hazardous materials table or the list of hazardous substances and reportable quantities contained in 49 C.F.R. §172.101, excluding nuclear materials;
4. “Nuclear materials” means highway route controlled quantities of radioactive materials as defined in 49 C.F.R. §173.403.
 - (a) “Nuclear materials” includes radioactive materials being transported to the Waste Isolation Pilot Plant in New Mexico and radioactive materials being transported to or from any facility provided pursuant to Section 135 of the Nuclear Waste Policy Act of 1982, 42 U.S.C. §10101 et seq., or any repository licensed by the United States Nuclear Regulatory Commission that is used for temporary or permanent storage, disposal, or treatment of high-level radioactive waste, transuranic contaminated waste and spent nuclear fuel.
 - (b) The term “nuclear materials” does not include radioactive materials utilized in national security activities under the direct control of the United States Department of Defense, nor does it include radioactive materials under the direct control of the United States Department of Energy which are utilized in carrying out atomic energy defense activities, as defined in the federal Nuclear Waste Policy Act of 1982, 42 U.S.C. §10101 et seq., nor does it include ores or products from mining, milling, smelting, or similar processing of ores, or transportation thereof;
5. “Shipment” means any number of truck trailers, automobiles or vans moved by one or interconnected power sources;
6. “Person” means any individual, public or private corporation, trust, estate, firm, partnership, joint venture, club, company, municipal corporation,

association, society, political entity, institution, the United States, or agency thereof, the state or any department or agency thereof, or political subdivision of the state, any group of individuals acting as a unit, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties;

7. “Preferred Route” means any route designated by the Council pursuant to Section 17-40-070 of this law. Preferred Routes are the only routes which carriers of nuclear material are permitted to use;
8. “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, dumping, placing, or disposing of hazardous or nuclear materials into the environment.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40-030 Applicability

This law shall apply to all hazardous and nuclear materials transportation, as defined herein, into, through, within and out of Tribal territory and shall be in addition to all other sections of this Law and Order Code, or the rules or regulations pertaining thereto. It is unlawful for any person to transport hazardous or nuclear materials into, through, within or out of Tribal territory except as permitted by this law.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40-040 Code of Federal Regulations

All references in this law to the Code of Federal Regulations or to C.F.R. refer to those regulations which are in effect on August 1, 1995.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40-050 Permit System

1. Permit Required - Application
 - (a) No transportation of hazardous or nuclear materials shall take place into, through, within and out of Tribal territory until the Council, or its designee, issues a nontransferable permit, in accordance with provisions of this section, which is consistent with federal law, authorizing the applicant to operate or move upon the roads or highways of Tribal territory a motor vehicle or combination of motor vehicles which carry hazardous or nuclear materials.
 - (b) Each carrier desiring to transport hazardous or nuclear materials shall apply to the Council, or its designee, at least sixty (60) days prior to

the intended date of movement of hazardous or nuclear materials into, through, within and out of Tribal territory. In addition to such information as the Council requires, the application for a hazardous or nuclear materials transportation permit shall/may include:

- i. name and address of the carrier;
 - ii. telephone numbers of the carrier that will be answered at any time for emergencies and a statement that the carrier has a 24 hour telephone number for all shippers;
 - iii. a description of the hazardous or nuclear materials to be transported, including the kind, volumes, quantities, radioactivity and forms;
 - iv. a written statement from the shipper of hazardous or nuclear materials certifying that the material described in the application will be in proper condition for the transportation according to the applicable Federal regulations;
 - v. proof of insurance, including the name of its insurance agent, policy number, minimum levels of coverage, and date of policy expiration;
 - vi. a description of any violations by the applicant of any local, state, federal or Tribal regulations within the past year related to hazardous or nuclear materials transportation. Copies of the most recent Federal, state, or Tribal motor carrier safety and/or Hazardous Material audit and inspection reports are sufficient to satisfy this requirement;
 - vii. agreement by the carrier to indemnify the Tribe, its subdivisions and agents for any claims arising from the release of hazardous or nuclear materials during that transportation and pay for the cost of response to an accident involving the hazardous or nuclear material;
 - viii. schedules, origin, route and-destination of the shipment and, if a series of shipments is planned, the number of proposed shipments and the period of time over which such shipments are planned;
 - ix. a copy of the written route plan(s) required by 49 C.F.R. §397. (Applicable only to nuclear materials transportation);
 - x. the name, address and telephone number of the carrier, the description, identification and registration of the vehicle and twenty-four-hour emergency response telephone numbers.
- (c) Applications for a permit shall be acted upon within thirty days after the submission to the Council. The Council shall approve, deny or take such other action with respect to such application as the Council considers appropriate. Any applicant aggrieved by a decision of the Council may petition the Council for a second hearing by filing written notice of appeal with the Council. The Council shall hear the applicant at its first regular meeting following the expiration of ten days after the Council receives the notice of appeal.

- (d) A temporary hazardous materials transportation permit may be issued by the Council, or its designee, in lieu of an annual permit on an emergency basis, including application by telephone (insert telephone # here), when compliance with the sixty day requirement is not possible. A carrier acquiring a permit under this subsection shall provide the information required in subsection (b) of this section. A temporary permit is valid for only a single vehicle and shipment of hazardous material. A temporary permit expires 72 hours after its issuance. (Applicable to hazardous material only.)
2. Permit and Shipment Fees: Each permit issued pursuant to this section shall be valid until the July 1 following its issuance and shall be issued after approval of the carrier's permit application and upon payment of a permit fee, in an amount established by the Council. In addition to the permit fee, each carrier shall pay a shipment fee, in an amount established by the Council, for each shipment, unless an Agreement of Cooperation is executed pursuant to Section 17-40-060 of this law. The shipment fee shall be paid either by mail, in which case it must be postmarked at least seven days before the shipment is to be made through or across Tribal territory or by messenger, in which case the fee must be paid before the shipment enters Tribal territory. The Council, or its designee will establish fees for all applicants under this section in an amount reasonably calculated to provide for the costs to the Tribe of performing all duties of the Tribe related to the transportation of hazardous and nuclear materials.
3. Grounds for Permit Denial, Suspension, or Revocation
- (a) The Council shall issue a permit only if the application demonstrates that the proposed transportation will comply with all applicable laws, ordinances, rules and regulations of the Tribe and if the proposed route complies with federal law.
- (b) The Council may deny, refuse to renew, suspend or revoke a hazardous or nuclear materials transportation permit if adequate training, equipment, and planning does not exist in the Tribal Government for an emergency response in the case of an accident with the hazardous or nuclear materials.
- (c) In addition to any other civil or criminal penalty, the Council may suspend the hazardous or nuclear materials transportation permit of any carrier for a period not to exceed six months or revoke such permit for failure to comply with the permit terms, misrepresentation of information in the permit application, failure to pay a civil penalty assessed pursuant to this section, or failure to comply with any regulations promulgated pursuant to this law. The permit may be suspended or revoked only for good cause shown after due notice and opportunity for a hearing before the Council, if requested by the carrier. Reinstatement of a permit revoked or suspended under this rule will require submission of a new application and a demonstration

- that remedial actions have been taken to prevent recurrence of the violations.
- (d) The Council may temporarily suspend the operation of some or any vehicle employed in carrying hazardous or nuclear materials without notice whenever road, weather, traffic or other hazardous circumstances warrant that action.
4. Carrying of Permit and Shipping Papers
- (a) Any person transporting hazardous or nuclear materials into, through, within, and out of Tribal territory shall carry a copy of the shipping papers required in 49 C.F.R. §172, subpart C, and a copy of the hazardous or nuclear materials transportation permit issued by the Council in the vehicle. Such permit and papers shall be open to inspection by Tribal Law Enforcement.
- (b) In the event of an accident involving hazardous or nuclear materials, the operator of the vehicle shall provide access to the shipping papers for the first law enforcement officers or emergency responders arriving on the scene and immediately bring to their attention the fact that the vehicle is carrying hazardous and/or nuclear materials.
5. Penalties - Permit System
- (a) The Council, its designee, or Tribal Law Enforcement may assess the following civil penalties for violations of the hazardous or nuclear materials transportation permit system established pursuant to this section.
- i. Every carrier who transports hazardous or nuclear materials without first obtaining a hazardous or nuclear materials transportation permit shall be assessed a civil penalty of two thousand dollars (\$2,000.00).
- ii. Every carrier who fails to have a hazardous or nuclear materials transportation permit in the cab of the motor vehicle while transporting hazardous and/or nuclear materials into, through, within and out of Tribal territory shall be assessed a civil penalty of two hundred dollars (\$200).
- (b) Every carrier who misrepresents information in the carrier's application for a permit, violates the terms of the permit, or commits a second violation of paragraph i. or ii. of subsection 5(a) of this section within one calendar year shall be assessed a civil penalty of not less than five hundred dollars (\$500) nor more than three thousand dollars (\$3,000).
- (c) The penalties in subsection 5(a) or 5(b) of this section shall be assessed upon an action brought by the Council, its designee, or the Tribal Law Enforcement in accordance with the procedure set forth in Section 17-40-120.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40-060 Agreements of Cooperation

Any person proposing to conduct a series of permitted activities or repetitive permitted activity pursuant to this law may request the Council or its designee to enter into negotiations for the purpose of creating agreements of cooperation in which the Council or its designee and such person shall consider such series of activities or continual activity stet agree to a comprehensive plan that shall regulate such activities or activity and forego the need of continuing referral to this Law for shipment fees. Permits fees shall not be affected by any agreements of cooperation. Such agreement of cooperation shall be binding upon the parties.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40-070 Route Designations for Non-Radioactive Hazardous Materials

1. The Council may designate which Tribal territory roads and highways shall be used and which shall not be used by motor vehicles transporting hazardous materials into, through, within, and out of Tribal territory.
2. The carrier shall not deviate from the routes designated pursuant to subsection 1 of this section except in cases of emergency conditions which would make continued use of the preferred route unsafe, or when the preferred route is closed due to road conditions. The carrier shall notify the Tribe immediately if it must use a different route due to emergency conditions.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40-080 Preferred Route Designation for Nuclear Materials

1. The Council may designate which roads and highways shall be used and which shall not be used by motor vehicles transporting nuclear materials into, through, within, and out of Tribal territory.
2. The carrier shall not deviate from the preferred routes designated pursuant to subsection 1 of this section except in cases of emergency conditions which would make continued use of the preferred route unsafe, or when the preferred route is closed due to road conditions.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40-090 Pre-notification of Nuclear Materials Shipments

1. Every person who receives a nuclear materials transportation permit pursuant to Section 17-40-050 shall give advance notification of any shipment of

nuclear materials into, through, within or out of Tribal territory to the Council or its designee. Such notification, if delivered by mail, shall be postmarked at least seven (7) days before transport of a nuclear materials shipment within or through Tribal territory. If the notification is delivered by messenger, it must reach the Council or its designee at least four days before a nuclear materials shipment.

2. Schedule information provided to the Tribe and emergency response authorities shall be protected against unauthorized disclosure until at least ten days after a shipment has entered Tribal territory.
3. Upon request, the information in the advance notification shall be made available to the emergency response authorities which have been designated by the Council.
4. Any person who violates a provision of this section shall be subject to a civil penalty of not less than five hundred dollars (\$500) and not more than ten thousand (\$10,000). The penalty shall be assessed by the Council, its designee or Tribal Law Enforcement in accordance with the procedure set forth in Section 17-40-120.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40-100 Inspections

All carriers transporting hazardous or nuclear materials into, through, within and out of the roads or highways of Tribal territory shall be subject to inspection by Tribal Law Enforcement personnel on Tribal territory for compliance with this Law and other applicable rules and regulations.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40-110 Reporting and Emergency Response

1. The carrier of any hazardous or nuclear material shall immediately notify Tribal Law Enforcement of:
 - (a) Any vehicle accidents regardless of whether hazardous or nuclear material has been damaged or dispersed;
 - (b) Loss of any hazardous or nuclear material; and
 - (c) Tampering with or obstruction of any shipments.
2. Tribal law enforcement shall then immediately notify Council of the situation.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40-120 Violations - Civil Penalties

1. Any person who violates any provision of this Law or rule or regulation promulgated pursuant to this Law, except for the violations enumerated in subsection 4 of this section, shall be subject to a civil penalty of not more than ten thousand dollars (\$10,000) per day for each day during which violations occur. The penalty shall be assessed by the Tribe upon receipt of a complaint by any investigative personnel, Tribal Law Enforcement personnel and after written notice and an opportunity for hearing in Tribal Court. The payment of civil penalty shall not relieve any person from liability pursuant to any other applicable environmental act or personal damages liability.
2. Any person who commits any of the acts enumerated in subsection 4 of this section shall be subject to the civil penalty listed in said subsection 4. Tribal law enforcement personnel shall have the authority to issue civil assessments for the enumerated violations. At any time that a person is cited for a violation enumerated in subsection 4 of this section, the person in charge of or operating the carrier involved shall be given a notice in the form of a civil penalty assessment notice. Such notice shall be tendered by the Tribal Law Enforcement officer and shall contain the name and address of such person, the license number of the carrier involved, if any, the number of the person's driver's license, the nature of the violation, the amount of the penalty prescribed for such violation, the date of the notice, a place for the person to execute a signed acknowledgment of his receipt of the civil penalty assessment notice, a place for the person to execute a signed acknowledgment of liability for the cited violation, and such other information as may be required by law to constitute notice as a complaint to appear in Tribal Court should the prescribed penalty not be paid within ten days.
3. Every cited person shall execute the signed acknowledgment of his receipt of the civil penalty assessment notice. The acknowledgment of liability shall be executed at the time the cited person pays the prescribed penalty. The person cited shall pay the civil penalty specified in subsection 4 of this section for the violation involved at the Tribal Court, either in person or by postmarking such payment within ten days of the citation. If the person cited does not pay the prescribed penalty within ten days of the notice, the civil penalty assessment notice shall constitute a complaint to appear in Tribal Court, and the person cited shall, within the time specified in the civil penalty assessment notice, file an answer to this complaint with the Tribal Court. The Council or its designee shall represent the agency which issued the civil penalty assessment notice.
4. The following penalties shall apply only to the transportation of hazardous or nuclear materials by carrier and shall be assessed against drivers, shippers, carriers, operators, brokers, and other persons, as appropriate:

- (a) Any person who operates a carrier without a log book, in his possession, as required by 49 C.F.R. §395.8, shall be assessed a civil penalty of two hundred dollars (\$200).
- (b) Any person who operates a carrier without maintaining a driver's log book in current condition, in accordance with 49 C.F.R. §395.81 shall be assessed a civil penalty of two hundred dollars (\$200).
- (c) Any person who enters false information in a driver's log book, in violation of 49 C.F.R. §395.8 (e), shall be assessed a civil penalty of five hundred dollars (\$500).
- (d) Any person who exceeds maximum driving or on duty time, as established by 49 C.F.R. §395.3, shall be assessed a civil penalty of five hundred dollars (\$500).
- (e) Any person who fails to produce his driver's log book, on demand by any law enforcement official in violation of 49 C.F.R. §395.8, shall be assessed a civil penalty of five hundred dollars (\$500).
- (f) Any person who fails to have a valid medical certificate in his possession, in accordance with 49 C.F.R. §391.41, shall be assessed a civil penalty of two hundred dollars (\$200).
- (g) Any person who operates a motor vehicle without meeting driver qualifications, as established in 49 C.F.R. §177.825(d), shall be assessed a civil penalty of one thousand dollars (\$1,000).
- (h) Any person who carries an unauthorized passenger, as defined in 49 C.F.R. §392.60, shall be assessed a civil penalty of two hundred dollars (\$200).
- (i) Any person who operates a motor vehicle while that person is declared to be out of service, as defined in 49 C.F.R. §395.13, shall be assessed a civil penalty of one thousand dollars (\$1,000).
- (j) Any person who operates an unsafe vehicle, as defined in 49 C.F.R. §396, shall be assessed a civil penalty of two hundred dollars (\$200).
- (k) Any person who operates a motor vehicle without correcting defects as noted on a safety inspection report in violation of 49 C.F.R. §396.9, shall be assessed a civil penalty of one thousand dollars (\$1,000).
- (l) Any person who operates a motor vehicle while that vehicle is declared to be out of service, as defined in 49 C.F.R. §396.9 (c) (2), shall be assessed a civil penalty of two thousand dollars (\$2,000).
- (m) Any person who transports hazardous or nuclear materials without proper visibility and placement of placards in violation of 49 C.F.R. §172.504, shall be assessed a civil penalty-of four hundred dollars (\$400).
- (n) Any person who transports hazardous or nuclear materials without proper placards, as provided in 49 C.F.R. §172.504, shall be assessed a civil penalty of one thousand dollars (\$1,000).
- (o) Any person who displays hazardous or nuclear materials placards on vehicles not transporting hazardous or nuclear materials in violation of 49 C.F.R. §172.502, shall be assessed a civil penalty of two hundred dollars (\$200).

- (p) Any person who fails to have hazardous materials shipping papers in conformance with 49 C.F.R. §177.817, shall be assessed a civil penalty of one thousand dollars (\$1,000).
- (q) Any person who parks a motor vehicle transporting hazardous materials in violation of 49 C.F.R. §397.7, shall be assessed a civil penalty of one thousand dollars (\$1,000).
- (r) Any person who improperly fills out the shipping papers required by 49 C.F.R. §172, subpart C, shall be assessed a civil penalty of one thousand dollars (\$1,000).
- (s) Any person who fails to report a hazardous materials incident or an accident involving radioactive materials, or fails to take necessary response actions, as required by 49 C.F.R. §§171.15-171.17 and 49 C.F.R. §177.861, shall be assessed a civil penalty of one thousand dollars (\$1,000).
- (t) Any person who supplies inaccurate information in, or who fails to comply with, the route plan required by 49 C.F.R. §177.825 (c), shall be assessed a civil penalty of two thousand dollars (\$2,000).
- (u) Any person who transports nuclear materials in violation of the radiation level limitations established in 49 C.F.R. §173.441, shall be assessed a civil penalty of two thousand dollars (\$2,000).
- (v) Any person who transports nuclear materials in excess of the maximum permissible transport index, as provided in 49 C.F.R. §173, shall be assessed a civil penalty of two thousand dollars (\$2,000).

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40-130 Repeat Violation - Civil Penalties

1. If any person receives two assessments within one year, for a violation of §17-40-120, the penalty for the second violation shall be two times the amount of the penalty listed for the violation in §17-40-120.
2. If any person receives three or more penalty assessments within one year for a violation of §17-40-120, the penalty for each of the third and subsequent violations shall be three times the amount of the penalty listed for the violation in §17-40-120.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40-140 Injunction Proceedings

Notwithstanding the existence or use of any other remedy, whenever the person has engaged in, or is about to engage in, any acts or practices which constitute a violation of any provision of this Act, or any rule, regulation, or order issued thereunder, the Tribe may seek in the Tribal Court or federal court an order enjoining such acts or practice, or for an order directing compliance. Upon a

showing by the Council or its designee that such person has engaged in or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order or other appropriate order may be granted by the court.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40-150 Strict Liability for Hazardous or Nuclear Releases

1. Any person who causes the release of any hazardous or nuclear materials being transported shall be strictly liable for all injuries and damages resulting therefrom. The conduct of the claimant shall not be a defense to liability, except that this section does not waive any defense based on the claimant's failure to mitigate damages or related to any injury or damage to the claimant or the claimant's property which is intentionally sustained by the claimant or which results in the release of any hazardous or nuclear material being transported intentionally and wrongfully caused by the claimant.
2. In addition to any other penalties mentioned in this Law, any person who owns, designs or maintains structures, vehicles or equipment used for the handling, transportation, or shipment of hazardous or nuclear material shall reimburse the Tribe for all expenses reasonably incurred by the Tribe in protecting the public health, safety and environment from a hazardous materials or stet incident or the imminent danger of a hazardous materials or stet incident caused by the person's acts or omissions. The expenses include but need not be limited to costs incurred for precautionary evacuations, emergency response measures and decontamination or other clean-up measures. As used in this subsection "nuclear incident" has the meaning given that term in 42 U.S.C. 2014 (q). Nothing in this subsection (2) shall affect any provision of subsection (1) or (3) of this section, or any other section of this ordinance/chapter.
3. Any person transporting hazardous or nuclear materials in Tribal territory shall indemnify the Tribe, its subdivisions and agents for any claims arising from the release of hazardous or radioactive material during that transportation.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40-160 Statute of Limitations

No person who has been injured or damaged as a result of a hazardous materials or nuclear incident shall be precluded from bringing a suit against the person or persons responsible for causing any such incident if such suit is instituted within three years after the date on which the injured person first knew, or reasonably could have known, of his injury or damage and cause thereof; except that such suit must be brought within forty years after the date of the hazardous materials or

nuclear incident.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-40-170 Severability

The provisions of this law are hereby declared to be severable, and if any provision of this Act or the application of such provision to any person or circumstances is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this Act.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-45 CLOSURE ORDERS

17-45-10 Purpose

This section provides for the closure of areas on Tribal lands which are deemed to be dangerous to the public or which contain sensitive resources or which otherwise require protection from incompatible activities.

[Enacted 04/11/05, Resolution No. 43-WTC-2005; Amended 8/12/05, Resolution No. 66-WTC-2005.]

17-45-020 Allowable Reasons for Closures

1. Dangerous Conditions: Areas may be closed to protect people from dangerous conditions existing in such areas. Closures for this purpose may include, but are not limited to, areas where there are active fires, floods, mudslides, or chemical releases, or where there is a significant threat of such events occurring.
2. Restoration Work: Areas may be closed to allow environmental or natural resources restoration work to proceed unhindered. This includes the closure of areas to allow for natural restoration to take place. Restoration projects may be those being carried out by the Washoe Environmental Protection Department, the Planning Department, or other appropriate Washoe Tribal entity; and may be those being carried out by the Tribe alone or in cooperation with the Federal Emergency Management Authority, the U.S. Bureau of Indian Affairs, the U.S. Environmental Protection Agency, the U.S. Bureau of Land Management, the U.S. Forest Service, or any other appropriate federal, state, or local government entity. Closures for restoration purposes may include, but are not limited to, areas where there are revegetation, erosion control, stream bank stabilization, or environmental cleanup projects underway or planned.

3. Cultural Resources: Areas may be closed to protect culturally significant natural resources, traditional cultural properties, or areas where cultural artifacts, features, gravesites, or other cultural resources are located.
4. Sensitive Ecological Resources: Areas may be closed to protect sensitive ecological resources located within the areas. Closures for this purpose can include, but are not limited to, areas containing sensitive habitats, ecosystems, plant species, or animal species.

[Enacted 04/11/05, Resolution No. 43-WTC-2005; Amended 8/12/05, Resolution No. 66-WTC-2005.]

17-45-030 Requirements for Obtaining a Closure Order

1. Emergency Conditions Exception
The requirements in sections 17-45-030(2) and (3) need not be met for an area to be closed during a state of emergency pursuant to Section 17-50.
2. Community Public Hearing
 - (a) If the area which is proposed to be closed is located within the boundaries of one of the Washoe communities (i.e., Carson, Dresslerville, Stewart, Woodfords), a public hearing must be held in the community by the Washoe Tribal department or community council that is proposing the closure (the “proponent”).
 - (b) At least 2 weeks prior written notice of the public hearing shall be provided to the community council members and shall be posted at an appropriate community building.
 - (c) The public hearing must fulfill the following requirements:
 - (i) The proponent of the closure must give a presentation describing the area proposed to be closed, describing the nature of the proposed closure, and explaining why the area should be closed.
 - (ii) The public must be given the opportunity to make comments and ask questions.
 - (iii) The proponent of the closure will respond to comments and answer questions to the best of their abilities.
 - (d) The proponent shall be responsible for creating a record of the public hearing to present to the Tribal Council. The record must consist of at least the following:
 - (i) A printed copy of the presentation given at the public hearing, including a written summary of the oral presentation, as well as any slides, photos, or other media presented. If video media was presented, a copy of the video must be included in the record.
 - (ii) A summary of the comments and questions raised at the public

- hearing and of the proponent's responses.
- (e) Copies of the printed record must be provided to Tribal Council members for the Tribal Council meeting at which the closure order is sought pursuant to section 17-45-030(3).
3. Washoe Tribal Council Resolution
A closure order shall be made only by a Tribal Council resolution containing the following elements:
- (a) The closure order must describe the reason for the closure, which must be fit within one of the allowable reasons in section 17-45-020.
- (b) The area to be closed must be clearly identified.
- (c) The closure must be identified as being either for an indefinite period of time, in which case the closure can only be rescinded by further action of the Tribal Council, or for a specified period of time. The amount of time an area can be closed must be based on the needs of the closure. For instance, an area may need to be closed for a few years to allow for revegetation to occur.
- (d) The types of entries or activities to which the area is closed must be identified. For example, an area may be closed from all entry into an area, or an area may be closed only to Off-Highway Vehicles, etc.

[Enacted 04/11/05, Resolution No. 43-WTC-2005; Amended 8/12/05, Resolution No. 66-WTC-2005.]

17-45-040 Notice Requirements

1. Notice of a closure order must be provided within 30 calendar days of the Tribal Council resolution ordering the closure.
2. Notice must be provided by the following means:
 - (a) Durable signs must be posted securely in a reasonably visible manner at likely points of entry to the closed area for the duration of the closure order; and
 - (b) Notices must be posted in a reasonably visible manner at Tribal and community buildings for a period of 30 calendar days.
3. At least one sign located at each likely point of entry and all notices must specify the following:
 - (a) Date and Tribal Council resolution number of the closure order;
 - (b) Date the sign or notice was posted;
 - (c) A map, diagram, or reasonable description of the area to be closed;
 - (d) Types of entries or activities to which the area is closed;
 - (e) Time period of the closure.

[Enacted 04/11/05, Resolution No. 43-WTC-2005; Amended 8/12/05, Resolution No. 66-WTC-2005.]

17-45-050 Penalties for Violating a Closure Order

The violation of a closure order shall result in a civil forfeiture not exceeding \$1,000 per occurrence. In determining the amount of the civil forfeiture, the Tribal Court shall be guided by the nature and severity of the violation. A violation of a closure order shall not constitute a crime and shall not subject a person to criminal punishment.

[Enacted 04/11/05, Resolution No. 43-WTC-2005; Amended 8/12/05, Resolution No. 66-WTC-2005.]

17-45-060 Civil Citations

1. Proceedings against a defendant shall be initiated by a civil citation being issued to the defendant by a Tribal Peace Officer or other authorized Tribal official. Issuing of a citation constitutes a civil summons to appear in court. A copy of the citation shall be filed with the court clerk and a second copy shall be retained by the citing officer. When filed with the court clerk, the citation shall serve as a civil complaint.
2. The citation shall be issued to the defendant personally.
3. The citation shall contain at least the following:
 - (a) The name and driver's license number of the defendant, if available.
 - (b) The license number of the vehicle involved, if applicable.
 - (c) The date and time of the alleged offense.
 - (d) The Tribal Council resolution number of the closure order alleged to be violated.
 - (e) A description of the alleged offense.
 - (f) A statement that violation of the closure order does not constitute a crime, and shall not subject the defendant to criminal punishment.
 - (g) A statement that a civil forfeiture up to \$1,000 may be imposed, as well as a statement that the defendant may be liable for the cost of remedying any damage caused by the violation.
 - (h) An agreement that the officer will release the defendant if the defendant signs the citation promising to appear in court, unless it is required that the defendant be taken into custody pursuant to another provision of the Washoe Tribe Law and Order Code.
 - (i) A notice requiring the defendant to appear in Tribal Court on a stated date, time, and location.
4. Civil citations may not be issued to violators of a closure order before 14 calendar days have passed since posting of signs and notices under section 17-45-040(2). Prior to that time, violators will be required to leave the

closed area and shall be given a warning that future violations will result in a civil citation being issued, even if the 14 day grace period in this paragraph has not yet expired.

[Enacted 04/11/05, Resolution No. 43-WTC-2005; Amended 8/12/05, Resolution No. 66-WTC-2005.]

17-45-065 Confiscation, Impoundment, and Forfeiture of Vehicles and Equipment

Vehicles and equipment used to commit acts which violate any closure order are subject to confiscation, impoundment, and forfeiture pending the violator's appearance at Tribal Court to answer a complaint or citation, and may be used to satisfy a civil forfeiture assessed by the Tribal Court pursuant to section 17-45-050. Forfeiture of vehicles or equipment may not be used to satisfy damages under section 17-45-070.

[Enacted 04/11/05, Resolution No. 43-WTC-2005; Amended 8/12/05, Resolution No. 66-WTC-2005.]

17-45-070 Civil Actions for Damages

1. In addition to being subject to a civil forfeiture under section 17-45-050, violators of a closure order are strictly liable for the costs of remedying any damage caused by the violation.
 - (a) Costs of remedying damage may include the costs of repair, replacement, and Tribal employee time required to remedy the damage.
 - (b) The amount due will be determined by the Tribal department, program, or other entity which incurred the costs. Demand for payment shall be sent to the violator by certified letter, return receipt requested, within 90 days of completion of remedial work. The letter shall demand that the violator pay the itemized costs within 45 calendar days or the matter will be referred to the Tribe's legal counsel for appropriate action.
 - (c) Within 14 days of the demand for payment, the violator may submit a written objection to liability or the amount of the costs to the Tribal department, program, or other entity which issued the demand. A written decision on the objection will be issued and mailed to the violator by the Tribal department, program, or other entity that issued the demand, within 14 days of receipt of the objection.
 - (d) In the event that damage is the result of violation by multiple individuals, the violators shall be jointly and severally liable for the total amount.
 - (e) All money recovered for such costs shall be credited to the Tribal department, program, or other entity which incurred the costs.

2. The Tribal Court shall have jurisdiction over civil actions brought by the Tribe to enforce demands for payment issued pursuant to section 17-45-070. Violators shall be strictly liable for such damages.

[Enacted 04/11/05, Resolution No. 43-WTC-2005; Amended 8/12/05, Resolution No. 66-WTC-2005.]

17-50 EMERGENCY POWERS

17-50-010 Policy and Purpose

Due to the possibility of the occurrence of disasters of unprecedented size and destructiveness resulting from fire, flood, earthquake or other natural causes, or from human causes such as accidents or pollution which expose Tribal territory residents and environment to toxins, hazards and other harms, and generally to provide for the common defense and to protect the public peace, health, and safety, and to preserve the lives and property of Tribal members and Tribal territory residents, it is hereby found and declared to be necessary to confer upon the Chairman the emergency powers provided in this Code.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-50-020 Powers of Chairman and Council in Emergency

1. The provisions of this section are operative only during the existence of a state of emergency. The existence of such an emergency may be proclaimed by the Chairman or by resolution of the Council, if the Chairman in his proclamation, or the Council in its resolution, finds that a natural disaster of major proportions has actually occurred within Tribal territory or that there may be an imminent endangerment to the public health, safety, welfare or the environment. The Chairman must notify the Council of the proclamation of a state of emergency, and all emergency orders issued under this Code, within 24 (twenty four hours) of said proclamation or emergency order and procure the approval of a majority of the Council members, or said proclamation or emergency order shall be void. Any emergency, whether proclaimed by the Chairman or the Council, terminates upon the proclamation of the termination by the Chairman, or the passage by the Council of a resolution terminating the emergency.
2. During the period when the state of emergency exists or continues, the Chairman may exercise such functions, powers, and duties as necessary to protect public health, safety, welfare, and the environment of Tribal members and territory residents. If the Chairman is unavailable to make timely exercise of his authority under this section, the Vice-Chairman may exercise such authority. Emergency functions, powers and duties may include, but are not limited to:

- (a) To enforcing all Tribal laws and regulations, including those relating to emergency management or preparedness, and to assume direct operational control of any and all forces for emergency response and management.
- (b) To procure, by purchase or other means, construct, lease, transport, store, maintain, renovate, or distribute materials and facilities for emergency management.
- (c) To provide for and compel the evacuation of all or part of the population from any stricken or threatened area or areas and to take such steps as necessary for the care of those persons.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-50-030 Emergency Orders

The Chairman or Vice-chairman authorized under §17-50-020 may also issue such emergency orders as may be necessary to protect the public health, safety, welfare and environment. Any person who willfully violates, or fails or refuses to comply with, any emergency order issued under the authority of this section may, in an action brought in the name of the Tribe by the Tribe in Tribal Court, or other appropriate court, to enforce such order, be fined (not more than) \$5,000 (five thousand) for each day in which such violation occurs or such failure to comply continues.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-60 SERVICE OF PROCESS

17-60-010 Service of Process Generally

1. Applicability: General procedures outlined in this rule apply to all process involving environmental actions unless specifically provided for elsewhere in other statutes.
2. Issuance of Summons: Upon the filing of a complaint, the clerk of the court shall issue a summons under seal of the court, which the clerk shall prepare. Additional or amended summons against the defendant, and any other process, shall be issued by the clerk of the court, unless otherwise provided for in specific statutes.
3. Contents of Summons: The summons shall be directed to the defendant and shall state:
 - (a) The name of the Court;
 - (b) The name of the Tribe;
 - (c) The location in Tribal territory where the action is being commenced;

- (d) The names or designations of the parties, the name of the attorneys or advocates, if any exist, and the parties addresses.
 - (e) The place, the date and time and how the defendant must respond; and
 - (f) That failure to respond will result in a default judgment against the defendant for the relief demanded in the complaint.
4. A copy of the complaint, or any applicable Court Order, shall be served with the summons. In cases of service by publication, the summons shall also briefly state the object of the action and the court order by publication shall be included in the publication notice.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-60-020 Who May Serve Process

Service may be made by any competent person not a party to the action. Plaintiff may request the Tribal Court to appoint the Tribal police to serve process.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-60-030 Service of Process Within the Territory

Any paper that is required to be served may be served within the territory, by personal service, return mail, or publication, as allowed by the following procedures, unless otherwise specified:

1. Personal Service: Shall be made by delivering the required papers to the individual or leaving them at the person's home or principal place of business with a person of suitable age and discretion. If delivery of papers is refused, the person shall be considered properly served if the person is informed of the purpose of service and offered the papers. The server shall complete a certification of service, which shall be delivered to the Court Clerk, indicating that the person was either served and took, the papers, or refused papers after being informed of the process. In addition, special rules apply for the following situations:
 - (a) Personal Service Upon Minors: If the person to be served is a minor, service must be upon the minor and his/her parent, guardian, custodian, or any other person with whom the minor is living and has care or control of the minor;
 - (b) Personal Service Upon an Incompetent: If the person to be served is residing in the Territory and has been judicially declared to be of unsound mind, or incapable of conducting his/her own affairs, and for whom a guardian has been appointed, service shall be to the person and to the guardian;
 - (c) Personal Service Upon Businesses and/or Organizations Within the Territory: If the suit is against a corporation, partnership, association,

or other group organization, process may be served upon any officer or leader of said groups, or upon a secretary, receptionist, cashier, or other agent of the organization at the principle place of business. If no such agent or place of business exists, service may be made to an agent appointed to receive process by the organization or business within the Tribal government. If personal service cannot reasonably be obtained upon the business or organization, proper service may be made by mailing, by registered or certified mail, the summons and complaint to the last known address of either the organization or any of its principal officers or agents. The return receipt shall be proof that the service is accomplished.

2. Service by Mail: Service of process may be accomplished by mailing a copy of the complaint and summons by registered or certified mail, where personal service may not be reasonably accomplished. The return receipt and a sworn, notarized statement (affidavit) stating why mailing was necessary shall be proof of proper service.
3. Service by Publication: Service by publication shall be ordered upon a showing to Tribal Court that service by delivery (in hand or mail) could not be accomplished. The Tribal Court shall determine the means of publishing notice based upon the evidence at the hearing requesting notice by publication. Such notice shall be aimed at providing all parties the greatest notice reasonably possible, under the circumstances, of the pending action.

[Enacted 11/15/96, Resolution No. 96-WTC-70.]

17-60-040 Service Outside the Territory

Service of process may be made outside the territory upon residents of the Territory, or non-residents who have submitted to or become subject by law to the jurisdiction of the Territory. Proper service may be affected as follows:

1. Personal Service or Service by Mail: Outside the territory the required papers may equally be properly served upon parties by personal delivery or certified or registered mail. A return receipt is proof of proper service by mail, and a certificate of service shall be filed by the server if the papers were personally delivered to the individual against whom the action is directed. Such service may be made by persons as outlined in § 17-60-020 of this code.
2. Service by Publication: Service by publication shall only be used as a last resort to give the party notice of the pending action, and will be allowed by Tribal Court Order upon motion by the issuing party that service by delivery or mail was impossible or unreasonably burdensome (i.e., due to prohibitive travel costs, unknown address, etc.). Any notice made by publication shall include the summons and Court Order authorizing service by publication.

3. Any person who is outside the territory may be served by:
 - (a) Publication of notice of the pending action as determined by the Tribal Court at a hearing granting service by publication; and,
 - (b) The court clerk mailing the publication to the last-known address of the person to be served.