

NAVAJO NATION
CLEAN WATER ACT

TITLE 4, NAVAJO NATION CODE
ENVIRONMENTAL PROTECTION
CHAPTER _____, NAVAJO NATION CLEAN WATER ACT

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Title 4, Navajo Nation Code
Environmental Protection
Chapter _____, Navajo Nation Clean Water Act

SUBCHAPTER 1. GENERAL PROVISIONS

101. Title

This Act may be cited as the Navajo Nation Clean Water Act (“NNCWA”).

102. Definitions

(a) For the purposes of this Act --

- (1) “Administrator” means the Administrator of the U.S. Environmental Protection Agency.
- (2) “Best management practice” or “BMP” means methods, measures or practices selected by an agency to meet its nonpoint source control needs or, in the case of the National Pollutant Discharge Elimination System, schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of waters of the Navajo Nation. BMPs include, but are not limited to, structural and nonstructural controls, treatment requirements, operation and maintenance procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage, and can be applied before, during, or after pollution-producing activities to reduce or eliminate the introduction of pollutants into waters of the Navajo Nation.
- (3) “Biological monitoring” means the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants (A) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (B) at appropriate frequencies and locations.
- (4) “Chapter,” when used with reference to a governmental unit, means those community organizations duly certified and recognized as such by the Navajo Nation Council in CAP-34-98.

- (5) “Clean Water Act” means the Federal Water Pollution Control Act of 1972, as amended, 33 U.S.C. § 1251 *et seq.*
- (6) “Contaminant” means any physical, chemical, biological, or radiological substance or matter introduced by man or man’s actions in water.
- (7) “Director” means the Executive Director of the Navajo Nation Environmental Protection Agency.
- (8) “Discharge,” when used without qualification, means a discharge of pollutant(s).
- (9) “Discharge of pollutant(s)” means any addition of any pollutant to navigable waters from any point source.
- (10) “Disposal system” means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells, septic tanks, and other systems.
- (11) “Domestic septage” means either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receive only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.
- (12) “Domestic sewage” means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.
- (13) “Effluent limitation” means any restriction, requirement, or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources, including schedules of compliance.
- (14) “Fundamentally different factors variance” means a variance from otherwise applicable technology-based effluent limitations under subsections 301(b)(1)(A), 301(b)(2)(A) and (E), and 301(n) of the Clean Water Act.
- (15) “Industrial user” means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category “Division D--Manufacturing,” and

such other classes of significant waste products as, by regulation, the Administrator deems appropriate.

- (16) “Load allocation” or “LA” means the portion of a receiving water’s loading capability that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources.
- (17) “Medical waste” means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and such additional medical items as the Administrator shall prescribe by regulation.
- (18) “National Pollutant Discharge Elimination System” or “NPDES” means the regulatory program operated under sections 307, 318, 402 and 405 of the Clean Water Act (including pretreatment and sludge management) and under subchapters 3, 4 and 5 of this Act.
- (19) “National pretreatment standard” means any regulation promulgated by the Administrator in accordance with section 307(b) and (c) of the Clean Water Act which applies to industrial users, including prohibited discharges.
- (20) “Navajo Nation” or “Nation” means --
 - (A) When referring to the body politic, except as the context may otherwise require, the same meaning as set forth in 1 N.N.C. § 501.
 - (B) When referring to territorial jurisdiction, all lands and waters within the territorial boundaries of the Navajo Nation, including:
 - (i) all lands and waters within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency or within the boundaries of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments, all without regard to the nature of title thereto;
 - (ii) all lands and waters held in trust by the United States for, or restricted by the United States, or otherwise set apart under the superintendence of the United States for, the use of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indians as such; and

- (iii) all other lands and waters over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.
- (21) “Navigable waters” means waters of the Navajo Nation.
- (22) “New source” means any source (a building, structure, facility, or installation from which there is or may be a discharge of pollutants), the construction of which is commenced after publication by the Administrator of proposed regulations prescribing a standard of performance under section 306 of the Clean Water Act which will be applicable to such sources, if such a standard is thereafter promulgated in accordance with section 306 of the Clean Water Act.
- (23) “New source performance standard” means a standard promulgated by the Administrator applicable to a category of new sources.
- (24) “Non-point source” means any source of water pollution that is not a point source, as defined herein.
- (25) “Person” means the Navajo Nation or any agency, entity or institution thereof, any chapter, township, political subdivision, public or private corporation, individual, partnership, association, federal agency, state, Indian Tribe, any interstate or intertribal body, municipality, commission or political subdivision of a state, or other entity, and includes any officer or governing or managing body of any chapter, township, political subdivision, or public or private corporation.
- (26) “Point source” means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, landfill leachate collection system, container, rolling stock (except to the extent excluded from the NPDES program by section 601 of the National and Community Service Act of 1990, P.L. 101-610, 104 Stat. 3185), concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges or return flows from irrigated agriculture.
- (27) “Pollution” means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of the environment.
- (28) “Pretreatment program” means the program operated by the Navajo Nation Environmental Protection Agency and any publicly owned

treatment works (whose program has been approved either by the Director or the Administrator) to implement national pretreatment standards to control pollutants which pass through or interfere with treatment processes in publicly owned treatment works or which may contaminate sewage sludge.

- (29) “Publicly owned treatment works” or “POTW” means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the Navajo Nation, its political subdivisions or entities, or other state, municipality, or tribe; this term does not include such a facility owned or operated by the United States or a federal agency.
- (30) “Schedule of compliance” or “compliance schedule” means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with an effluent limitation or other limitation, prohibition or standard.
- (31) “Section 404 permit” means a permit issued by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or a permit issued by a tribe or state that is authorized by the U.S. Environmental Protection Agency to issue section 404 permits.
- (32) “Sewerage system” means pipelines or conduits, pumping stations, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to a point of ultimate disposal.
- (33) “Sewage sludge” means solid, semi-solid, or liquid residues generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum or solid removed in primary, secondary, or advanced wastewater treatment processes, and a material derived from sewage sludge. Sewage sludge does not include ash generated during firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.
- (34) “Storm water” means storm water runoff, snow melt runoff, and surface runoff and drainage.
- (35) “Total maximum daily load” or “TMDL” means the sum of the individual wasteload allocations for point sources and load allocations for nonpoint sources and natural background.
- (36) “Toxic pollutant” means those pollutants, or combinations of pollutants,

including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such organisms or their offspring.

- (37) “Treatment works” means any device, system, plant, disposal field, lagoon, dam, pumping station, incinerator, or other works subject to this Act used for the purpose of recycling, reclaiming, treating, stabilizing, or holding wastes.
- (38) “Treatment works treating domestic sewage” means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For the purposes of this definition, “domestic sewage” includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. The Director may designate any person subject to the standards for sewage sludge use and disposal established by the Administrator as a “treatment works treating domestic sewage.”
- (39) “Underground injection” means the subsurface emplacement of fluids by well injection.
- (40) “United State Environmental Protection Agency” or “U.S. EPA” means the United States Environmental Protection Agency, its Administrator, Regional Administrator, or delegate.
- (41) “Waste” or “pollutant,” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) “sewage from vessels” within the meaning of section 312 of the Clean Water Act; or (B) water, gas, or other material which 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 authority of the Navajo Nation, and the Navajo Nation determines that

such injection or disposal will not result in the degradation of ground or surface water resources.

- (42) “Wasteload allocation” or “WLA” means the portion of a receiving water’s loading capacity that is allocated to one of its existing or future point sources of pollution.
- (43) “Waters of the Navajo Nation” means all surface waters, including but not limited to portions of rivers, streams (including perennial, intermittent and ephemeral streams and their tributaries), lakes, ponds, dry washes, marshes, waterways, wetlands, mudflats, sandflats, sloughs, prairie potholes, wet meadows, playa lakes, impoundments, riparian areas, springs, and all other bodies or accumulations of water, surface, natural or artificial, public or private, including those dry during part of the year, that are within or border the Navajo Nation. This definition shall be interpreted as broadly as possible to include all waters that are currently used, were used in the past, or may be susceptible to use in interstate, intertribal or foreign commerce. Consistent with federal requirements, the Director may exclude from waters of the Navajo Nation certain waste treatment systems.
- (44) “Wetlands” means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

103. Policy and Authority

(a) Legislative purposes and intent

- (1) The Navajo Nation Council finds and declares that discharges of pollutants into the waters of the Navajo Nation from point and nonpoint sources, introduction of pollutants by industrial users into publicly owned treatment works and improper management of sewage sludge are potential hazards to the health, welfare and environment of the Navajo Nation and its residents and need to be addressed.
- (2) It is the policy of the Navajo Nation Council to protect the health, safety, welfare and environment of the Navajo Nation and its residents; to prevent, reduce and eliminate pollution of the waters of the Navajo Nation; and to plan the development and use (including restoration, preservation, and enhancement) of land and water resources within the Nation, by:

- (A) providing for the establishment of water quality standards to protect fish and wildlife and the domestic, cultural, agricultural and recreational uses of the waters of the Navajo Nation;
 - (B) preventing the discharge of pollutants into navigable waters in amounts that would cause violations of water quality standards;
 - (C) providing for the issuance of permits and implementation of certification programs under this Act to control present and future point source discharges, introduction of pollutants by industrial users to publicly owned treatment works, and sludge management activities, using, to the extent practicable, a watershed basis;
 - (D) providing for the development of nonpoint source, clean lakes, and watershed protection programs, and for the implementation of these programs using, to the extent practicable, a watershed basis; and
 - (E) supporting research relating to water quality standards and planning, clean lakes, nonpoint sources, and watershed protection, and providing for tribal technical services and financial aid (to the extent funds are available and appropriated) to the Navajo Nation government and chapters in connection with these programs and their implementation.
- (3) The Navajo Nation Council also finds and declares that degradation of the waters of the Navajo Nation shall be minimized, and that economic growth should occur in a manner consistent with the preservation of existing clean Navajo Nation water resources.
- (4) It is further the policy of the Navajo Nation Council that the President, acting through such tribal organizations as he determines appropriate, shall take such action as may be necessary to encourage all surrounding governmental entities to take meaningful action regarding water quality standards and planning, permitting of discharges into surface waters, pretreatment of pollutants introduced into treatment works, clean lakes, non-point sources, and watershed protection for the achievement of goals regarding these programs and the improvement of water quality to at least the same extent as the Navajo Nation does under its laws.
- (5) The Navajo Nation Council is placing primary responsibility for the implementation and enforcement of this Act with the Navajo Nation EPA.

(b) Modular approach to water quality programs

The Navajo Nation is committed to providing for water quality standards and planning and implementing NPDES and other water quality management programs under this Act, to protect the health, safety, welfare and environment of the Navajo Nation. It is, however, discretionary with the Navajo Nation as to whether and which programs to implement, and in what order. The Director shall determine which programs are essential to the protection of the environment, health and welfare of the Navajo Nation, and of those programs shall determine which should be developed first. The Director may also determine that only parts of such programs are essential, and may develop these severable portions. The Director shall not be required to implement any of the programs described in this Act by any particular time. However, once the Director determines that a particular program or portion of a program should be developed, and sufficient funding exists, the Director must comply with all of the relevant statutory and regulatory requirements for that program or portion of a program.

104. General Authorities of the Director

(a) Powers and Duties

- (1) Except as otherwise expressly provided in this Act, the Director shall be responsible for administering this Act.
- (2) In order to fulfill his or her obligations under this Act, the Director may:
 - (A) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution as necessary for the discharge of duties assigned under this Act;
 - (B) hold hearings related to any aspect of or matters within the authorities of this section and, in connection therewith, compel the attendance of witnesses and the production of records;
 - (C) develop programs for the prevention, control, and abatement of new or existing pollution of waters of the Navajo Nation;
 - (D) encourage voluntary cooperation by advising and consulting with persons or affected groups, tribes or states to achieve the purposes of this Act, including voluntary testing of actual or suspected sources of surface water pollution;
 - (E) enforce regulations that have been promulgated by the Director, after review and approval by the Resources Committee of the Navajo Nation Council, consistent with the provisions of this Act, including but not limited to regulations concerning water quality standards and planning; discharges of pollutants into navigable

waters; introduction of pollutants by industrial users; disposal of sewage sludge; construction of new control facilities or any parts of them or the modification of existing control facilities or any parts of them or the adoption of other remedial measures to prevent, control or abate water pollution; clean lakes; nonpoint sources; and watershed protection;

- (F) consistent with Title 2, Navajo Nation Code, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out the purposes of this Act;
- (G) secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, to carry out the purposes of this Act;
- (H) compile and publish from time to time reports, data and statistics with respect to matters studied or investigated by the Director or at his or her direction;
- (I) require, as specified in section 901 of this Act, any point source or non-point source discharger, industrial user or treatment works treating domestic sewage to monitor, sample or perform other studies to quantify effects of pollutants and sewage sludge to the environment;
- (J) represent, consistent with the requirements of Title 2 of the Navajo Nation Code and after appropriate consultation with other Divisions, the Navajo Nation in all matters pertaining to water pollution and its control, abatement, and prevention; and
- (K) perform such other activities appropriate for the Director to carry out his/her functions under this Act.

(b) Regulations

The Director is authorized to promulgate such regulations as are necessary to carry out his or her functions under this Act, pursuant to the provisions of section 1001 of this Act, including, but not limited to, setting water quality standards, effluent limitations, standards of performance for point source discharges, industrial users and sludge management activities, and best management practices for non-point source discharges. In promulgating regulations, the Director shall give consideration to, but shall not be limited to, the relevant factors prescribed by the Clean Water Act and the regulations thereunder, except that the regulations prescribed by the Director shall be at least as stringent as those promulgated under the Clean Water Act, if there is

an applicable minimum standard established therein. In promulgating regulations, the Director shall also give consideration to, but shall not be limited to, the relevant factors prescribed by Navajo Nation law. All regulations promulgated under this Act shall be subject to review and approval by the Resources Committee of the Navajo Nation Council.

(c) Delegation of Powers and Duties

The Director may delegate to any officer or employee of the Navajo Nation Environmental Protection Agency such of his or her powers and duties under this Act, except the making of regulations, as he or she may deem necessary or expedient.

105. Plans, Specifications and Information

The Director, under such conditions as he or she may prescribe, may require the submission of such plans, specifications, and other information as he or she deems necessary to carry out the rules and regulations adopted pursuant to the provisions of this Act.

106. Severability and Preservation of Rights

(a) Severability

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

(b) Water Quantity Rights

The right of the Navajo Nation to certain quantities of water and the authority of the Navajo Nation to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act. The Navajo Nation Environmental Protection Agency and local chapter governments are encouraged to cooperate with federal and state agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

(c) Preservation of Rights and Construction

It is the purpose of this Act to provide additional and cumulative remedies to prevent, abate, and control pollution of waters of the Navajo Nation. The provisions of this Act shall be liberally construed to fulfill the intent and purpose of this Act and so as not to conflict with the applicable laws of the Navajo Nation and the United States. Nothing contained in this Act shall be construed to abridge or alter rights of action or remedies in equity under treaties, the common law or statutory law, nor shall any provisions of this part or any act done by virtue thereof be construed as preventing the Navajo Nation or individuals from the exercise of their rights under treaties, the common law or statutory law to suppress nuisances or to abate pollution.

107. Applicability

- (a) Except as otherwise provided in this section, the provisions of this Act shall apply to all persons and all property within the Navajo Nation.
- (b) Subject to the provisions of subsections (c) and (d) of this section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall not apply to any person or property where, but only to the limited extent that, such application would be in violation of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property.
- (c) Notwithstanding the provisions of subsection (b) of this section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall apply to any person and to all property within the Navajo Nation owned or operated by such person who has submitted an application for and received a permit pursuant to this Act or is otherwise subject to the provisions of this Act.
- (d) If not otherwise applicable in accordance with subsection (c) of this section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall apply to any person and to such property owned or operated by such person to such extent and under such terms and conditions as may be provided in any voluntary compliance agreement entered into pursuant to section 108 of this Act.
- (e) Nothing in this section shall be construed as a determination or admission by the Navajo Nation that any claim of covenant not to regulate or otherwise exercise jurisdiction is valid.

108. Voluntary Compliance Agreement

- (a) Any person to whom the provisions of this Act are not otherwise applicable, may apply to the Director to enter into a voluntary compliance agreement with the Navajo Nation with respect to any property to which the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, are not otherwise applicable.
- (b) A proposal to enter into a voluntary compliance agreement shall be in writing, shall indicate the person and property proposed to be subject to the agreement, shall indicate the proposed term of the agreement, and shall indicate which part or parts of this Act and/or regulations promulgated hereunder, in whole or in part, with which voluntary compliance is proposed.
- (c) A voluntary compliance agreement shall be in writing, shall be for a term of not less than one year, and may be subject to renewal for successive terms of not less

than one year. A voluntary compliance agreement may not vary the requirements of this Act or of any regulations promulgated pursuant to this Act, except that the consent required to be given in accordance with section 501(b) of this Act shall be strictly limited to the application of this Act and regulations promulgated pursuant to this Act and shall be strictly limited to the term of the agreement, including any renewals thereof.

- (d) A voluntary compliance agreement shall not be effective unless and until approved by the Director.
- (e) Except as otherwise expressly provided in the agreement, by entering into a voluntary compliance agreement, no person shall be deprived of the benefit of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property owned or operated by such person.
- (f) A person may enter into a voluntary compliance agreement in accordance with this section, notwithstanding that the validity of such person's claim to be exempt from the provisions of this Act has not been judicially determined, whenever the Director determines that entering into such an agreement is in the best interests of the Navajo Nation. Entering into an agreement pursuant to this subsection shall not constitute a determination or admission by the Navajo Nation that such claim of exemption is valid.

SUBCHAPTER 2. NAVAJO WATER QUALITY STANDARDS AND PLANNING

Part A. Water Quality Standards

201. Water Quality Standards

(a) Promulgation of standards

The Director shall promulgate water quality standards that protect the public health or welfare, enhance the quality of water and generally serve the purposes of this Act. The standards shall provide for the protection and propagation of fish, wildlife and livestock and protect agricultural, domestic and recreational uses of water, as well as protecting the cultural value and use of water. The standards shall consist of the designated uses for the waters of the Navajo Nation and the water quality criteria for such waters based upon such uses, and shall be applicable to all waters of the Navajo Nation. The standards shall also include the methods and analyses to be used to determine compliance with such standards. The Director may also promulgate regulations regarding compliance schedules, mixing zones, low flows, variances and such other matters as may be appropriate, including regulations implementing the anti-degradation policy set forth in section 103(a)(2) of this Act.

(b) Uses

The water quality standards shall establish designated uses for waters of the Navajo Nation, or segments thereof, taking into consideration their use and value for public water supplies, protection and propagation of fish and wildlife, recreational purposes, and agricultural (including livestock watering), industrial, and other purposes, and also taking into consideration their use and value for navigation and the cultural value and use of the water. The Director may remove a designated use that is not an existing use consistent with the requirements of section 303(c) of the Clean Water Act and the Administrator's implementing regulations.

(c) Criteria

The criteria established by the Director shall protect the designated uses, be based on sound scientific rationale (which may include criteria documents of the Administrator), and include sufficient parameters or constituents to protect the designated use. For waters with multiple uses, the criteria shall protect the most sensitive use. The Director may establish criteria specifically applicable to wildlife or sediment. The criteria shall include:

- (1) Narrative criteria to protect all waters of the Navajo Nation from: the discharge of toxics in toxic amounts; objectionable odors, tastes, color or turbidity in or on the water; detrimental effects on edible plant or animal life that reside in or on the water; bottom deposits; floating debris; and any other protections determined by the Director to be warranted under the goals of this Act.
- (2) Numerical criteria for pollutants or pollutant parameters, including toxic pollutants and a thermal component (consistent with the requirements of the Clean Water Act), the discharge or presence of which in the waters of the Navajo Nation the Director has determined could reasonably be expected to interfere with designated uses adopted by the Director. The numerical criteria shall support such designated uses. In setting numeric criteria the Director may consider the effect of local conditions on water quality, and may modify stream standards to reflect actual stream conditions when justified by sufficient data and need. Where such numerical criteria are not available, and the Director determines it is appropriate to protect designated uses, the Director shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8) of the Clean Water Act. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.
- (3) Any other criteria the Director determines are necessary to protect the

designated uses of the waters of the Navajo Nation.

(d) Methods Used

The Director, in specifying the methods and analyses to be used to determine compliance with the water quality standards, may include biological monitoring and toxicity testing.

(e) Compliance Schedules

The Director may establish by regulation, or on a case-by-case basis, a reasonable period of time, but no longer than five years, for a person subject to an NPDES permit to comply with a new or more restrictive water quality-based effluent limitation based upon a water quality standard. The Director may establish by regulation, or on a case-by-case basis, a reasonable period of time, but no longer than five years, for any person subject to a mechanism, including a best management practice applicable to a non-point source, to comply with a new or more restrictive requirement which implements a water quality standard.

202. Review of Water Quality Standards

The Director shall from time to time (but at least once each three year period beginning with the date of enactment of this Act) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. The results of such review shall be provided to the Administrator. Whenever the Director revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator.

203. Water Quality Standards Implementation

The Director shall implement the water quality standards provisions of this Act through issuance of permits under subchapter 5 of this Act, mechanisms provided under subchapter 6 of this Act for non-point source discharges, mechanisms provided under subchapter 7 of this Act for the clean lakes program, certification of federal licenses and permits (including permits issued by the U.S. Army Corps of Engineers pursuant to section 404 of the Clean Water Act) as provided in section 209 of this Act, and participation as an adjoining tribe for discharges that may affect the waters of the Navajo Nation (under section 401(a)(2) of the Clean Water Act).

Part B. Water Quality Planning and Management

204. Coordinated Water Quality Planning and Management

The Director may conduct water quality planning and management activities within the Navajo Nation in a coordinated fashion. Any such coordination shall be conducted consistent with this Act and the regulations promulgated hereunder and with applicable minimum federal requirements and may include, but is not limited to, identification of waters under section 205 of

this Act, development of total maximum daily loads and wasteload allocations/load allocations under section 206 of this Act, and development of water quality monitoring, management plans and reports under section 207 of this Act.

205. Identification of Waters

(a) Effluent limitations

The Director shall identify those waters of the Navajo Nation for which the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of the Clean Water Act are not stringent enough to implement a water quality standard applicable to such waters. The Director shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

(b) Thermal discharges

The Director shall identify those waters of the Navajo Nation for which controls on thermal discharges under section 301 of the Clean Water Act are not stringent enough to assure protection and propagation of a balanced indigenous population of fish and wildlife.

(c) Approval by Administrator

The Director shall submit to the Administrator from time to time for approval the identifications made under this section. If the Administrator approves any such identification, the Director shall incorporate it into the current plan under section 208 of this Act. If the Administrator disapproves such identification and himself identifies certain waters of the Navajo Nation for which the effluent limitations and controls on thermal discharges are not stringent enough to implement the water quality standards applicable to such waters, the Director shall incorporate this identification into the Director's current plan under section 208 of this Act. These actions shall be taken in parallel with actions under subsection 206(c) of this Act.

206. Total Maximum Daily Loads and Wasteload Allocations/Load Allocations

(a) Total maximum daily load

The Director shall establish for the waters identified under subsection 205(a) of this Act, and in accordance with the priority ranking, the total maximum daily load for those pollutants which the Administrator identifies under section 304(a)(2) of the Clean Water Act as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

(b) Total maximum daily thermal load

The Director shall estimate for the waters identified in subsection 205(b) of this Act the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

(c) Approval by Administrator

The Director shall submit to the Administrator from time to time for approval the loads established under this section. If the Administrator approves such loads, the Director shall incorporate them into the current plan under section 208 of this Act. If the Administrator disapproves such loads and himself establishes loads to implement the water quality standards applicable to such waters, upon such establishment the Director shall incorporate such loads into the Director's current plan under section 208 of this Act. These actions shall be taken in parallel with actions under section 205(c) of this Act.

(d) Additional identification

For the specific purpose of developing information, the Director shall identify all waters of the Navajo Nation which were not identified under subsections 205(a) and (b) of this Act and estimate for such waters the total maximum daily load with seasonal variations and margins of safety for those pollutants which the Administrator identifies under section 304(a)(2) of the Clean Water Act as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish and wildlife.

207. Water Quality Monitoring, Management Plans and Reports

(a) Monitoring

The Director shall establish and provide for the operation of appropriate devices, methods, systems, and procedures necessary to monitor, and to compile and analyze data on (including classification according to eutropic condition), the quality of the waters of the Navajo Nation, including biological monitoring, and provide for periodic updating of such data and the submission of such data to the Administrator. The Director may provide for such monitoring through water quality management plans and through regulations promulgated under section 1001 of this Act.

(b) Management Plans

The Director may develop water quality management plans consistent with the requirements of sections 205(j), 208 and 303 of the Clean Water Act and submit these plans to the Administrator; the Director may also periodically update these plans.

(c) Reports

The Director may prepare water quality reports consistent with the requirements of section 305(b) of the Clean Water Act and submit these reports to the Administrator; the Director may also periodically update these reports.

208. Containing Planning Process

(a) Plan

The Director shall submit to the Administrator for approval (to the extent that it has not otherwise already been completed and approved) a proposed continuing planning process which is consistent with this Act and the Clean Water Act. The Director shall from time to time review the Navajo Nation's approved planning process for the purpose of insuring that such planning process is at all times consistent with this Act and the Clean Water Act.

(b) Elements of Plan

The continuing planning process shall include, but not be limited to, the following:

- (1) effluent limitations and schedules of compliance at least as stringent as those required by sections 302 and 303 of this Act, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this Act and the Clean Water Act;

- (2) all elements of any applicable areawide waste management plans or applicable basin plans, established under sections 208 and 209 of the Clean Water Act, for which the submitting governmental entity had jurisdiction;
- (3) total maximum daily load for pollutants in accordance with section 206 of this Act;
- (4) procedures for revision;
- (5) adequate authority for intergovernmental cooperation;
- (6) adequate implementation, including schedules of compliance, for revised or new water quality standards, under part A of this subchapter;
- (7) controls over the disposition of all residual waste from any water treatment processing;
- (8) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of section 302 of this Act.

Part C. Certification of Compliance

209. Certification of Compliance with Federal Water Pollution Control Requirements

(a) Certification of compliance

The Director may grant or deny certification that an applicant for a Navajo Nation or federal license or permit necessary to conduct any activity, including but not limited to the construction or operation of facilities, which may result in a discharge into waters of the Navajo Nation has satisfactorily shown that he or she will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act. If there is no applicable effluent limitation or other limitation under sections 301(b) and 302, and there is no applicable standard under Sections 306 and 307, for the activity in question, the Director shall so certify. The applicant shall submit any certification issued under this section to the Administrator, pursuant to section 401 of the Clean Water Act.

(b) Rules for grant or denial of certification

The Director shall promulgate rules, consistent with the provisions of section 1001 of this Act, establishing the procedures that the Director will follow in granting or denying certifications under this section. Such rules shall require public notice of an application for certification within an area no smaller than the chapter where the activity is located, opportunity

for public participation in the decision-making process on an application for certification, and opportunity and procedures for contested hearings on applications for certification. Such rules also shall require an applicant to provide the Director with notice of proposed changes in the construction or operation of the facility or other activity in question and with plans for the operation of the facility or conduct of the activity in question. Such rules may also include fees to be charged by the Director for the review of applications and issuance of certifications.

(c) Limitations and monitoring requirements

In any certification issued under, this section, the Director shall set forth effluent limitations, other limitations and monitoring requirements necessary to assure that the applicant will comply with applicable effluent and other limitations under sections 301 or 302 of the Clean Water Act, standards of performance under section 306 of the Clean Water Act, prohibitions, effluent standards or pretreatment standards under section 307 of the Clean Water Act, and any other appropriate requirement of Navajo Nation law. These limitations and requirements shall become conditions on any permit subject to the provisions of section 401 of the Clean Water Act.

SUBCHAPTER 3. SURFACE WATER DISCHARGES AND PRETREATMENT REQUIREMENTS

Part A. Surface Water Discharges

301. Permit Required to Discharge into Surface Waters

(a) Prohibitions

- (1) Except as provided in this Act or regulations promulgated hereunder, it is unlawful for any person to discharge a pollutant from a point source into waters of the Navajo Nation. Any such action is a public nuisance, as well as being subject to enforcement under subchapter 9 of this Act.
- (2) No person may discharge any waste, pollutant or combination of pollutants from a point source into the waters of the Navajo Nation without a permit issued consistent with rules promulgated pursuant to this subchapter and subchapter 5.
- (3) It is unlawful for any person, without first securing a permit from the Director, to:
 - (A) make any discharge not authorized under an existing valid permit;
or

- (B) construct, install, modify, or operate any treatment works or part of any treatment works or any extension or addition to any treatment works, the operation of which is reasonably determined to result in a discharge due to runoff, flow or usage.

(b) Exemptions

The following discharges do not require NPDES permits:

- (1) Discharges into waters of the Navajo Nation of dredged or fill materials that are regulated under section 404 of the Clean Water Act.
- (2) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 C.F.R. part 300 or 33 C.F.R. § 153.10(e).

(c) Grounds for issuance of permit

The Director may, after notice and opportunity for public hearing, issue a permit for the discharge of any waste, pollutant or combination of pollutants into navigable waters, for a period not to exceed five years, upon condition that such discharge meets or will meet, subject to authorized schedules of compliance, all applicable Navajo Nation, adjoining Tribe or state, and federal water quality standards and effluent standards and all other requirements of this Act.

(d) Grounds for denial of permit

The Director shall deny a permit where:

- (1) the permit would authorize the discharge of any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste into navigable waters;
- (2) the permit would, in the judgment of the Secretary of the Army acting through the Chief of Engineers, result in the substantial impairment of anchorage and navigation of any navigable waters;
- (3) the permit is objected to in writing by the Administrator pursuant to any right to object provided to the Administrator by section 402(d) of the Clean Water Act;
- (4) the permit would authorize a discharge from a point source which is in conflict with a plan approved by the Administrator under subsection 208(b) of the Clean Water Act, and for which the submitting government entity had jurisdiction;

- (5) the issuance of the permit would otherwise be inconsistent with the applicable requirements of other Navajo Nation laws or regulations promulgated thereunder; or
- (6) the issuance of the permit would otherwise be inconsistent with applicable requirements of the Clean Water Act or regulations promulgated thereunder.

(e) General permit

The Director may issue a general permit within a geographical area to cover (1) storm water point sources, (2) a category of point sources, or (3) a category of treatment works treating domestic sewage. A facility covered by a general permit shall be subject to all provisions of this Act and regulations promulgated hereunder, except as otherwise provided by the Director by regulation in the case of certain application requirements.

(f) Compliance

Compliance with a permit issued pursuant to this Act shall be deemed compliance, for the purposes of subchapter 9 of this Act, with sections 301, 302, 306 and 307 of the Clean Water Act, except for any standard imposed under section 307 for a toxic pollutant injurious to human health.

302. Effluent Limitations Enforced in Issuance of Permits

(a) Permit conditions

The Director shall require as permit terms, limitations and conditions the achievement of:

- (1) effluent limitations based upon the application of such levels of treatment, technology and processes as are required under the Clean Water Act for which the Administrator has promulgated regulations under sections 301, 304, 306 and/or 318 of the Clean Water Act for industrial or municipal dischargers and aquaculture projects;
- (2) effluent limitations, best management practices, requirements for cooling water intake structures, alternative limitations for coal remaining under section 301(p) of the Clean Water Act, and/or a determination of maximum extent practicable, based upon the application of best professional judgment, in the absence of formally promulgated standards and limitations by the Administrator under the Clean Water Act, based upon the appropriate criteria contained in sections 301, 304(e), 316(b) and/or 402(a)(1)(B) the Clean Water Act;

- (3) toxic pollutant effluent standards or prohibitions promulgated by the Administrator under section 307(a) of the Clean Water Act and contained within 40 C.F.R. part 129, within the time frame for compliance provided by the Administrator, as well as the authority to modify existing permits to require compliance with such toxic pollutant effluent standards;
- (4) effluent limitations, standards, or prohibitions on discharges from publicly owned treatment works and/or requirements of a pretreatment program based upon the requirements of section 307 of the Clean Water Act and the Administrator's implementing regulations;
- (5) for those treatment works treating domestic sewage and required to obtain a permit under section 301, appropriate conditions which are required in order to comply with regulations for sludge use and disposal promulgated by the Administrator under section 405 of the Clean Water Act;
- (6) any more stringent effluent limitations necessary to meet water quality standards established pursuant to any Navajo Nation, adjoining state or Tribe, or federal law or regulation, including water quality-related effluent limitations established by the Administrator under section 302 of the Clean Water Act; and/or
- (7) any more stringent effluent limitations necessary to comply with the continuing planning process approved by the Administrator under section 303(e) of the Clean Water Act.

(b) Time for compliance

Effluent limitations prescribed under this section shall be achieved in the shortest reasonable period consistent with Navajo Nation law and the Clean Water Act, and with any regulations or guidelines promulgated or issued thereunder.

(c) Variances

- (1) The Director may grant or deny requests for variances under section 316(a) of the Clean Water Act for thermal pollution. The Director may implement any alternative limitations, terms or conditions established in a final decision on such a variance request.
- (2) The Director may deny, forward to the Administrator with a written concurrence, or submit to the Administrator without a recommendation, completed requests for variances under subsections 301(c), 301(g), 301(n) (including fundamentally different factors variance requests from best practicable control technology currently available effluent limitations

guidelines), or 302(b)(2) under the Clean Water Act. To the extent that the Director has forwarded a request to the Administrator with a written concurrence or without a recommendation, the Director may implement any alternative limitations, terms or conditions established by the Administrator in a final decision on such a variance request.

303. Schedules of Compliance

The Director may set and revise schedules of compliance and include such schedules within the terms and conditions of permits for discharge of wastes or pollutants or for sludge use and disposal, consistent with Navajo Nation law, the Clean Water Act and implementing regulations. The Director may establish interim compliance schedules in permits which are enforceable without showing a violation of an effluent limitation or harm to water quality.

304. Extension of Time to Meet Quality and Effluent Standards

(a) Required findings

The Director may issue a reasonable extension to a point source discharger, industrial user, or treatment works treating domestic sewage, which extension shall not conflict with the Clean Water Act, in which to meet water quality standards or other applicable effluent limitations or standards of the Navajo Nation or an adjoining state or tribe (to the extent allowable under the state or tribal law or regulations), if the Director determines that:

- (1) the violation was the result of actions or conditions outside the control of the discharger;
- (2) the discharger, industrial user, or treatment works treating domestic sewage has acted in good faith;
- (3) the extension would not result in the imposition of any additional controls on any point or non-point source.; and
- (4) facilities necessary for compliance are under construction and will be completed at the earliest date possible.

(b) Excuse of noncompliance

Any extension of time granted under this section will not compromise any right for enforcement available under subchapter 9 which exists before the extension is granted.

305. Recording, Reporting, and Inspection Conditions

The Director may prescribe terms and conditions for permits or other controls on industrial users to assure compliance with applicable Navajo Nation, adjoining state or tribe, and federal effluent standards and water quality standards (as set forth in section 302 of this Act), including, but not limited to, requirements concerning recording, reporting, monitoring, entry, and inspection (as provided in section 901 of this Act).

306. Disposal of Pollutants into Wells

The disposal of pollutants into wells shall be prohibited, unless the disposal is authorized by the federal underground injection control (UIC) program or by the Navajo Nation UIC program approved by the Administrator. The Director shall regulate any such discharges that are subject to the NPDES program through NPDES permits that incorporate appropriate federal or Navajo Nation UIC requirements. This authority shall enable the Navajo Nation to protect the public health and welfare and to prevent the pollution of ground and surface waters by prohibiting well discharges or by issuing permits for such discharges with appropriate permit terms and conditions.

Part B. Pretreatment Requirements

307. Pretreatment Standards

The Director may promulgate rules specifying pretreatment standards to be applied to all industrial users of publicly owned treatment works for the introduction of pollutants into publicly owned treatment works, including pollutants which interfere with, pass through, or otherwise are incompatible with such treatment works. Such standards shall not conflict with any pretreatment standard established under subsection 307(b) of the Clean Water Act.

308. Conditions in Permits Issued for POTWs

(a) Compliance with Clean Water Act

The Director or the owner or operator of a publicly owned treatment works, if it has an approved pretreatment program, shall implement all provisions of section 307 of the Clean Water Act, including issuing pretreatment industrial user permits or controlling discharges from significant industrial users by other appropriate means, such as discharge fees.

(b) Other conditions

The Director shall include the following requirements as conditions in permits for the discharge of pollutants from publicly owned treatment works:

- (1) the identification, in terms of character and volume of pollutants, of any significant source introducing into such POTWs pollutants subject to pretreatment standards under subsection 307(b) of the Clean Water Act;
- (2) a program to assure compliance by each such source with pretreatment standards promulgated under subsection 307(b) of the Clean Water Act and section 307 of this Act;
- (3) adequate notice to the Navajo Nation EPA of --
 - (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 306 of the Clean Water Act if such source were discharging pollutants,
 - (B) new introductions of pollutants into such works from a source which would be subject to section 301 of the Clean Water Act if it were discharging such pollutants, or
 - (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit.

Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works;

- (4) compliance with any system of user charges required under Navajo law or the Clean Water Act or regulations promulgated thereunder; and
- (5) compliance with record-keeping, reporting, sampling, monitoring and inspection requirements under Section 308 of the Clean Water Act and section 901 of this Act.

309. Other Authority of Director Regarding POTWs

In addition to other provisions specifically authorized in this Act, the Director shall have, but not be limited to, the following authority regarding publicly owned treatment works:

- (a) issue decisions on requests by publicly owned treatment works for pretreatment program approval;
- (b) act on requests for removal credits under subsection 307(b) of the Clean Water Act;

- (c) act on categorical determination requests;
- (d) deny or make recommendations on requests for fundamentally different factors variances under subsection 301(n) of the Clean Water Act;
- (e) make decisions on compliance deadline extension requests based on innovative technology under subsection 307(e) of the Clean Water Act; and
- (f) join the publicly owned treatment works as a defendant in an enforcement action under this Act against an industrial user.

SUBCHAPTER 4. SEWAGE SLUDGE

401. Regulation of the Use and Disposal of Sewage Sludge

(a) Establishment of program

The Director shall, by rulemaking consistent with section 1001 of this Act, establish a program to regulate the use and disposal of sewage sludge.

(b) Content of Regulations

In establishing a sewage sludge program, the Director shall:

- (1) regulate all sludge use and disposal methods within the Navajo Nation;
- (2) regulate the transportation and storage of sewage sludge in the Navajo Nation;
- (3) ensure compliance with applicable sludge standards by all users or disposers of sewage sludge; and
- (4) regulate the issuance of permits under sections 301 and 402 of this Act for the disposal of sewage sludge, which regulations shall require the application to sewage sludge disposal of each criterion, factor, procedure and requirement applicable to a permit issued under section 301 of this Act.

402. Permits

(a) Permit requirement

In any case where the disposal of sewage sludge resulting from the operation of a treatment works (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering navigable waters, such disposal is prohibited except in accordance with a permit issued under section 301 of this Act or, if no such permit program has been established, by the Administrator under section 402 of the Clean Water Act.

(b) Consistency with sewage sludge regulations

Any permit issued under section 301 to a publicly owned treatment works or any other treatment works treating domestic sewage shall include requirements for the use and disposal of sludge that implement the regulations promulgated pursuant to section 401 of this Act.

(c) Applicability to all treatment works

In the case of a publicly owned treatment works or other treatment works treating domestic sewage that is not subject to section 301 of this Act, the Director may issue a permit to such treatment works solely to impose requirements for the use and disposal of sludge that implement the regulations established pursuant to section 401 of this Act. The Director shall establish procedures for issuing permits pursuant to this subsection.

403. Record-keeping, Reporting, and Inspections

Any treatment works treating domestic sewage is subject to applicable provisions of regulations issued by the Director regarding recordkeeping, reporting and inspections, including provisions of section 901 of this Act. The Director may prescribe terms and conditions for permits issued under this part to assure compliance with applicable Navajo Nation and federal effluent, solid waste, and water quality standards, including requirements concerning recordkeeping, reporting, monitoring, entry and inspection, to the extent provided under this Act. The Director may establish regulations specifically establishing terms, limitations and conditions, including notification requirements, applicable to septage haulers.

SUBCHAPTER 5. PERMITS AND OTHER AUTHORIZATIONS

Part A. Permits

501. Conditions of Permits

(a) Submission of information

The Director may prescribe conditions for (by issuing regulations and on a case-by-case basis) and require the submission of plans, specifications, and other information from a permittee, person applying for a permit, or person discharging without a permit, in connection with applications for or otherwise related to the issuance of permits, introduction of pollutants by an industrial user into a publicly owned treatment works, or activities of a treatment works treating domestic sewage.

(b) Consent to jurisdiction

All permit applications and permits, including general permits, as well as regulations or other mechanisms issued by the Director for direct implementation of requirements for industrial users and treatment works treating domestic sewage that are not otherwise required to apply for permits, shall contain the following statement to which the applicant must agree and subscribe for the application to be complete and as a condition precedent to the issuance of any permit or coverage by direct implementation mechanism:

“Applicant hereby consents to the jurisdiction of the Navajo Nation in connection with all activities conducted pursuant to, in connection with, or directly affecting compliance with, any permit issued pursuant to this application or to which the provisions of the Navajo Nation Clean Water Act otherwise apply. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents, including contractors and subcontractors, of the applicant.”

The applicant shall include the foregoing statement as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the Navajo Nation in connection with any permit issued under this Act, or to which the provisions of the Act otherwise apply. Each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for “applicant” as appropriate and substituting the phrase “this agreement” in place of the phrase “any permit issued pursuant to this application.” Failure by the applicant to include such statement, or of any party to agree and subscribe to such statement, shall subject the applicant to civil penalty in accordance with this Act.

502. Term of Permits

(a) Fixed term

Each permit shall have a fixed term not exceeding five years. Upon expiration of a permit, a new permit may be issued by the Director after notice and opportunity for public hearing and upon condition that the discharge or disposal (including of sludge) meets or will meet, subject to authorized schedules of compliance, all applicable requirements of this Act, including the conditions of any permit issued by the Director.

(b) Renewals

When the permittee has made a timely and sufficient application for a renewal in accordance with Navajo Nation Environmental Protection Agency rules, an existing permit for an activity of a continuing nature shall not expire until the application for renewal has been finally determined by the Director.

503. Notice of Actions

The Director shall issue and implement rules to ensure:

- (a) that the public, appropriate government agencies, and any other tribe or state the waters of which may be affected, receive notice of each application for a permit; be provided an opportunity for public hearing before ruling on each such application; and be provided an explanation in writing of the reasons why any recommendations submitted with regard to such application were not adopted;
- (b) that the public, appropriate government agencies, and any other tribe or state the waters of which may be affected, receive appropriate notice of activities of the pretreatment program and be provided an opportunity for public hearing before the Director rules on such activities, as provided by section 307 of the Clean Water Act and the Administrator's implementing regulations; and
- (c) that the Administrator receives notice and a copy of each application for a permit.

504. Issuance, Revocation, or Denial of Permits

The Director shall issue, suspend, revoke, modify, or deny permits consistent with provisions of this subchapter and with rules issued by the Director consistent with the provisions of section 1001 of this Act.

505. Issuance of Permits and Grounds for Revocation, Modification, or Suspension of Permits

(a) Grounds for revocation, modification or suspension

Any permit issued under this part may be revoked, modified, or suspended in whole or in part during its term or upon request of the permit holder or any interested person, for cause including, but not limited to the following:

- (1) violation of any condition of the permit;
- (2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or
- (3) change in condition that requires either a temporary or permanent reduction or elimination of the permitted discharge or disposal operation, where “condition” does not include statutory or regulatory effluent limitations or standards enacted or adopted during the permit term, other than for toxic pollutants.

(b) Notice and hearing

If the Director recommends issuance or denial of an application for a permit, or revokes, suspends, or modifies a permit, he or she shall give written notice of his or her action to the applicant or permittee, any interested person who has requested to be notified, as well as other entities as provided by this Act. The applicant, permittee or any interested person may request a hearing before the Director after issuance of the initial decision. Such hearing shall be held within 30 calendar days after receipt of written request, or as soon thereafter as reasonably practical. The Director may affirm, modify or reverse his or her initial decision based upon the evidence presented.

(c) Effective date

Issuance, modification, revocation, or suspension of a permit shall be effective 30 calendar days after issuance of the initial decision, unless a later date is specified. If the holder or any interested person requests a hearing before the Director, the order of modification, revocation or suspension shall be effective 30 calendar days after the final determination by the Director.

506. Conflict of Interest

- (a) The Director, or his or her delegate, shall not participate in a permit action which involves himself or herself, any discharger, industrial user or treatment works

treating domestic sewage with which he or she is connected as a director, officer or employee, or in which he or she has a direct personal financial interest. Direct financial interest is defined as receiving, or having received during the previous two years, a significant portion of income directly or indirectly from permit holders or applicants for permits.

- (b) To the extent not prohibited by paragraph (a) of this section, the Director, or his or her delegate, shall not participate in any proceeding as a consultant or in any other capacity on behalf of any discharger, industrial user or treatment works treating domestic sewage, except to the extent otherwise allowed under Navajo Nation law. In no case, shall the Director, or his or her delegate, participate in any proceeding as a consultant or in any other capacity on behalf of any discharger, industrial user or treatment works treating domestic sewage, that was instituted or ongoing during their tenure.

Part B. Other Authorizations

507. Approval of Construction Grant Projects and User Charges

(a) Requirements for approval

The Director shall not approve (for those projects the Director has authority to approve or disapprove) any projects for any treatment works from a grant under section 201(g)(1) of the Clean Water Act, unless he or she shall first have determined that the applicant --

- (1) has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction, as determined by the Director, will pay its proportionate share (except as otherwise provided in this paragraph) of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the applicant; and
- (2) has legal, institutional, managerial, and financial capability to ensure adequate construction, operation, and maintenance of treatment works throughout the applicant's jurisdiction, as determined by the Director.

The Director may determine that the applicant has a system of charges which results in the distribution of operation and maintenance costs for treatment works within the applicant's jurisdiction, to each user class, by determining the system of charges is in proportion to the contribution to the total cost of operation and maintenance of such works by each user class (taking into account total waste water loading of such works, the constituent elements of the waste and other appropriate factors), including different rates for small non-residential and

residential user classes. In defining small non-residential users, the Director shall consider the volume of wastes discharged into the treatment works by such users and the constituent elements of such wastes as well as such other factors as he or she deems appropriate. A system of user charges which imposes a lower charge for low-income residential users (as defined by the Director) shall be deemed to be a user charge system meeting the requirements of clause (1) of this paragraph if the Director determines that such system was adopted after public notice and hearing.

(b) Guidelines on Payment of Waste Treatment Costs

The Director may, after consultation with appropriate Navajo Nation, federal, interstate, municipal, and intermunicipal agencies, issue guidelines applicable to payment of waste treatment costs by industrial and nonindustrial recipients of waste treatment services which shall establish:

- (1) classes of users of such services, including categories of industrial users;
- (2) criteria against which to determine the adequacy of charges imposed on classes and categories of users reflecting all factors that influence the cost of waste treatment, including strength, volume, and delivery flow rate characteristics of waste; and
- (3) model systems and rates of user charges typical of various treatment works serving municipal-industrial communities.

(c) Alternative systems of charges

A system of charges that meets the requirements of section 507(a)(1) may be based on something other than metering the sewage or water supply flow of residential recipients of waste treatment services, consistent with Navajo Nation law. If the system of charges is based on something other than metering the Director shall require --

- (1) the applicant to establish a system by which the necessary funds will be available for the proper operation and maintenance of the treatment works; and
- (2) the applicant to establish a procedure under which the residential user will be notified as to that portion of his or her total payment which will be allocated to the costs of the waste treatment services.

508. Clean Water Act Fund

Monies derived from fees and penalties imposed under this Act shall be available solely to the Navajo Nation EPA for the administration, implementation and enforcement of this Act and the regulations promulgated hereunder. Such monies shall be deposited into a duly established Special Revenue Fund, called the Clean Water Act Fund, and shall be expended by the Director for the use of the Clean Water Act programs in accordance with the Special Revenue Fund plan of operation and pursuant to an approved budget. The Director shall report annually to the Navajo Nation Council on the sums deposited into the fund, including the sources and uses thereof. Any monies contained in said fund at the end of the fiscal year shall not revert to the general fund and shall remain available for appropriation as provided in this section.

SUBCHAPTER 6. NONPOINT SOURCE MANAGEMENT PROGRAM

601. Nonpoint Source Assessment Report

(a) Content of report

The Director shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval (to the extent that it has not otherwise already been completed and approved), a report which:

- (1) identifies those waters of the Navajo Nation which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this Act or the Clean Water Act;
- (2) identifies those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the waters of the Navajo Nation identified under subsection (a)(1) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;
- (3) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subsection (a)(2) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and
- (4) identifies and describes Navajo Nation and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each

such portion of the waters of the Navajo Nation, including but not limited to those programs which are receiving federal assistance under subsections 319(h) and (i) of the Clean Water Act.

(b) Basis for report

In preparing the report required by this section, the Director may use all available information.

602. Nonpoint Source Management Program

(a) Program submission

The Director shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program for controlling pollution added from nonpoint sources to the waters of the Navajo Nation and improving the quality of such waters, which program the Navajo Nation proposes to implement in the first four fiscal years beginning after the date of submission of the program. The Director may periodically revise the submission.

(b) Program Contents

The management program proposed for implementation under this section shall include the following --

- (1) An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated under section 601(a)(2) of this Act, taking into account the impact of the practice on ground water quality.
- (2) An identification of programs within the Navajo Nation and adjoining tribes and states (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) designed to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subsection (b)(1) of this section.
- (3) A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subsection (b)(2) of this section, and (ii) implementation of the best management practices identified in subsection (b)(1) of this section by the categories, subcategories, or particular nonpoint sources designated under section 601(a)(2) of this Act. Such schedule shall provide for utilization of the best management practices at the earliest

practicable date, but no later than the time period provided in section 201(e) of this Act.

- (4) Any other information required by section 319(b) of the Clean Water Act.

(c) Utilization of Local and Private Experts

In developing and implementing a management program under this section, the Director shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

(d) Development on Watershed Basis

The Director shall, to the maximum extent practicable, develop and implement a management program under this part on a watershed-by-watershed basis within the Navajo Nation.

SUBCHAPTER 7. CLEAN LAKES PROGRAM

701. Biennial Report

The Director may initiate a Clean Lakes program under this subchapter. If the Director decides to develop such a program, the Director shall prepare and submit to the Administrator for approval a report containing the following information:

- (a) an identification and classification according to eutrophic condition of all lakes within the Navajo Nation;
- (b) a description of procedures, processes and methods (including land use requirements) to control sources of pollution of such lakes;
- (c) a description of methods and procedures, in conjunction with appropriate federal agencies, to restore the water quality of such lakes;
- (d) methods and procedures to mitigate the harmful effects of high acidity, including innovative methods of neutralizing and restoring buffering capacity of lakes and methods of removing from lakes toxic metals and other toxic substances mobilized by high acidity;
- (e) a list and description of those lakes within the Navajo Nation which are known to be impaired, including those lakes which are known not to meet applicable water quality standards or which require implementation of control programs to maintain compliance with applicable standards and those lakes in which water quality has deteriorated as a result of high acidity that may reasonably be due to

acid deposition; and

- (f) an assessment of the status and trends of water quality in lakes in the Navajo Nation, including but not limited to the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

This report shall be updated and submitted to the Administrator every two years, for so long as the Director continues to operate a Clean Lakes program.

702. Demonstration Program

The Director may establish and conduct a lake water quality demonstration program, in order to promote the following goals and activities:

- (a) develop cost effective technologies for the control of pollutants to preserve or enhance lake water quality while optimizing multiple lake uses;
- (b) control nonpoint sources of pollution which are contributing to the degradation of water quality in lakes;
- (c) evaluate the feasibility of implementing regional consolidated pollution control strategies;
- (d) demonstrate environmentally preferred techniques for the removal and disposal of contaminated lake sediments;
- (e) develop improved methods for the removal of silt, stumps, aquatic growth, and other obstructions which impair the quality of lakes;
- (f) construct and evaluate silt traps and other devices or equipment to prevent or abate the deposit of sediment in lakes; and
- (g) demonstrate the costs and benefits of utilizing dredged material from lakes in the reclamation of despoiled land.

703. Contracts and Interagency Agreements

The Director is authorized to enter into agreements with other public agencies and to contract with public and private agencies, organizations and individuals to develop and demonstrate new or improved methods for the prevention, removal, reduction and elimination of pollution in lakes, including the undesirable effects of nutrients and vegetation.

SUBCHAPTER 8. WATERSHED PROTECTION PROGRAM

801. Development of Program

The Director may develop a program to protect surface and ground water from pollution on a watershed basis, taking into account impacts on water quality from a variety of sources and considering cumulative impacts as well as discrete instances of contamination. In developing this program, the Director shall consult with other Navajo Nation agencies and departments, and with state and federal agencies and other entities having authority over activities which may impact water quality within the Navajo Nation (such as agriculture, livestock grazing, mining and timber operations and business development). The Director may conduct studies regarding watershed protection within the Navajo Nation, may develop guidelines and procedures to protect such watersheds and may promulgate regulations to implement the purposes of this subchapter, in accordance with the provisions of section 1001.

SUBCHAPTER 9. ENFORCEMENT

901. Records, Inspections, Monitoring and Entry

(a) Record-keeping, reporting and monitoring

In order to carry out the purposes of this Act, including but not limited to developing or enforcing any water quality standard, water quality management plan, continuing planning process or best management practice under this Act, issuing certifications, granting approvals, and issuing permits or otherwise regulating point sources, treatment works and industrial users of POTWs under this Act, the Director may promulgate regulations requiring any person subject to the requirements of this Act to:

- (1) establish and maintain records;
- (2) prepare and submit reports;
- (3) install, calibrate, use and maintain monitoring equipment or methods, including, where appropriate, biological monitoring;
- (3) sample effluents (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Director shall prescribe); and
- (4) provide such other information as the Director may reasonably require.

(b) Entry and inspections

The Director or his/her authorized representative (including an authorized contractor acting as a representative of the Director), upon presentation of his/her credentials,

- (1) shall have a right of entry to, upon, or through any premises necessary to implement and enforce the provisions of this Act and the regulations promulgated hereunder, and
- (2) may at reasonable times have access to and copy any records, inspect any monitoring or sampling equipment or method under subsection (a) above, inspect any treatment processes or equipment, sample any effluents which are being discharged into the waters of the Navajo Nation or are required to be or are sampled under subsection (a), and perform such other inspection as is necessary to ensure compliance with this Act and the regulations promulgated hereunder.

Any records, reports or information obtained under this section shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment or new source performance standards.

(c) Availability of information to public

Any records, reports or other information obtained under this section shall be available to the public, except that upon a showing satisfactory to the Director by any person that records, reports or other information or any particular part thereof (other than effluent data) to which the Director has access under this section would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Director shall consider such record, report or other information or portion thereof confidential, except that such material may be disclosed to other officers, employees or authorized representatives of the Navajo Nation and of the United States concerned with carrying out this Act or when relevant to any proceeding under this Act. The Director shall deny claims of confidentiality for name and address of any permit applicant or permittee; permit applications; permits; and effluent data.

(d) Confidential information

Any authorized representative of the Director (including an authorized contractor acting as a representative of the Director) who discloses confidential information contrary to these provisions, except as otherwise provided by law, may be subject to dismissal, suspension, or other adverse personnel action. Any authorized representative of the Director (including an authorized contractor acting as a representative of the Director) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information that is required to be considered confidential under this subsection shall be fined not more than \$1,000. Nothing in this subsection shall prohibit the Director or an authorized representative of the Director (including any authorized contractor acting as a representative of the Director) from disclosing records, reports, or information to officers,

employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act. In any instance where the Navajo Nation lacks jurisdiction over the person charged, the Director may refer the action to the appropriate USEPA Regional Administrator and/or U.S. Department of Justice official.

902. General Enforcement Authority

(a) In general

Whenever, on the basis of any information available to the Director, the Director finds that any person (including the Navajo Nation and any instrumentality of the Navajo Nation, but only with regard to their role as a point or nonpoint source, industrial user of a publicly owned treatment works or a treatment works treating domestic sewage) has violated, or is in violation of, any requirement or prohibition of this Act, the regulations promulgated under this Act, or permits, orders, plans, programs or fees issued or developed pursuant to this Act, the Director may:

- (1) issue and serve on such person an order requiring such person to comply with such requirement or prohibition, including an emergency order to comply, pursuant to the provisions of this section;
- (2) issue and serve on such person an administrative penalty order in accordance with section 904 of this Act;
- (3) request that the Attorney General bring a civil action, including an action for injunctive relief, in accordance with section 903(a) of this Act; and/or
- (4) request that the Navajo Nation Prosecutor's Office bring a criminal action in accordance with section 903(b) of this Act and/or refer any criminal enforcement action or portion of such action to the U.S. Environmental Protection Agency Regional Administrator for the appropriate EPA region.

(b) Requirements for orders to comply

An order issued under subsection (a)(1) or (a)(2) of this section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to regulations promulgated by the Director under section 1001 of this Act, if such hearing is requested in writing within 30 calendar days after the date of issuance of the order, and shall 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. The order shall become effective immediately upon the expiration of the 30 calendar days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director. The order may be conditional and require a person to

refrain from particular acts unless certain conditions are met. A copy of the order shall be sent to the appropriate U.S. EPA region and, if the order is issued to a corporation, to the appropriate corporate officers and registered agent of the corporation. No order to comply issued under this section shall prevent the Navajo Nation from assessing any penalties or otherwise affect or limit the Navajo Nation's authority to enforce under other provisions of this Act, or affect any person's obligations to comply with any section of this Act or with a term or condition of any permit or other requirements promulgated or approved under this Act.

(c) Emergency compliance orders

Notwithstanding any permit issued under this Act, if the Director determines that discharge of pollutants into the waters of the Navajo Nation, into a POTW or a treatment works treating domestic sewage, pollution from a nonpoint source, or a combination of such sources, is presenting an imminent and substantial endangerment to public health or welfare or the environment and determines, in consultation with the Attorney General, that it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of a civil action pursuant to subsection (e) of this section, the Director may issue such orders as may be necessary to protect public health or welfare or the environment. Such orders may prohibit, restrict or condition any and all activities that contribute or may contribute to the emergency, shall be effective immediately upon issuance and shall remain in effect for a period of not more than 60 days, unless the Director brings an action pursuant to subsection (e) of this section within the 60-day period. If the Director brings such an action, the order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

(d) Enforcement of compliance orders

Enforcement actions of the Director shall be enforced by the Navajo Nation Environmental Protection Agency, the Navajo Department of Justice, Navajo Prosecutors Office, Resources Enforcement and/or the Division of Public Safety. Those authorized to enforce the Director's actions may take reasonable steps to assure compliance, consistent with the requirements established by this Act (including rights of appeal), including but not limited to:

- (1) entering upon any property or establishment believed to be violating the order and demanding compliance; and
- (2) terminating operations at facilities not in compliance.

(e) Injunctive relief

The Director may seek injunctive relief pursuant to section 903(a) of this Act to restrain any person who causes or contributes to an imminent and substantial threat to the public health or welfare or environment due to a discharge or other activity affecting the water quality of the Navajo Nation.

903. Judicial Enforcement

(a) Civil judicial enforcement

The Director shall request the Attorney General to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties of not less than \$500 and not more than \$25,000 per day per violation, in any of the following instances:

- (1) whenever a person has violated, or is in violation of, any provision, requirement or prohibition of this Act, including, but not limited to, a regulation or plan adopted pursuant to this Act, a permit or an order issued pursuant to this Act or a fee assessed under this Act;
- (2) whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities; or
- (3) whenever a person is creating an imminent and substantial endangerment to the public health or the environment, in which case the Director shall request the Attorney General to pursue injunctive relief but not the assessment of civil penalties, unless the endangerment is caused by a violation, as specified in paragraphs (1) and (2).

(b) Criminal penalties

Any person who intentionally:

- (1) violates any provision, requirement or prohibition of this Act, including but not limited to a regulation or plan adopted pursuant to this Act or a permit or an order issued pursuant to this Act;
- (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 required to be filed or maintained pursuant to this Act, regulations or plans adopted pursuant to this Act or a permit or an order issued pursuant to this Act; or
- (3) falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this Act, regulations or plans adopted pursuant to this Act or a permit or an order issued pursuant to this Act; shall, upon conviction, be punished by a fine of not less than \$500 and not more than \$25,000 per day of violation or, if smaller, the largest amount permissible under applicable law, or imprisonment for not more than one year, or both, notwithstanding the

provisions of 17 N.N.C. §§ 222 and 223, or be subject to any other penalty imposed by the court that is available under Navajo Nation law. In any instance where the Nation lacks jurisdiction over the person charged, or where the Director is limited in the amount of the fine that he may impose, the Director may refer the action to the appropriate EPA Regional Administrator pursuant to section 602 of this Act. For the purpose of this subsection, the term “person” includes, in addition to the entities referred to in section 102(a)(26) of this Act, any responsible corporate officer.

(c) Jurisdiction and venue

Any action under this section shall be brought in the Navajo Nation District Court in Window Rock, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil and criminal penalties up to the amounts provided in this section, collect any fees or noncompliance penalties owed the Nation under this Act, and award any other appropriate relief.

(d) Calculation of penalties

- (1) For purposes of determining the number of days of violation for which a civil penalty may be assessed under this section, section 904 or section 905, if the Director has notified the source in writing of the violation and the plaintiff 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. Notice under this section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Navajo Nation District Court in Window Rock that alleges any violation described in subsection (a) of this section.
- (2) In determining the amount of a penalty assessed under this section, section 904 or section 905, the court 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 impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any, resulting from the violation; and any other factors that the court deems relevant. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant

parameter shall be treated as a single violation.

- (3) All penalties collected pursuant to this section shall be deposited into the Clean Water Act Fund established pursuant to section 508.
- (4) In lieu of or in addition to a monetary penalty, the Director may impose or may request the Attorney General to seek from the court a requirement to remediate the damage caused or to perform community service, or both.

(e) Failure to pay penalty

If any person fails to pay an assessment of a civil penalty, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be no less than ten percent of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter; the Director may by regulation establish higher penalties to take into account situations where the prime rate is higher.

904. Administrative Assessment of Penalties

(a) Basis for penalty

The Director may issue against any person an administrative order assessing a civil administrative penalty of up to \$10,000 per day per violation whenever the Director finds that a person has violated, or is in violation of, any provision, requirement or prohibition of this Act, including, but not limited to, a regulation or plan adopted pursuant to this Act, a permit or an order issued pursuant to this Act or a fee assessed under this Act. The Director's authority under this subsection, combined with actions under subsection (c), shall be limited to matters where the total penalty sought does not exceed \$100,000 and the first alleged date of violation occurred no more than one year prior to the initiation of administrative action, except where the Director and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) utilized for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify or remit, with or without any conditions, any administrative penalty imposed under this section.

(b) Hearing requirement

The Director shall assess an administrative penalty under this section by an order made after opportunity for a hearing, pursuant to section 1001 of this Act. Before issuing such an order, the Director shall give written notice of the proposed order to the person on whom the penalty is to be assessed and provide such person an opportunity to request a hearing within 30 calendar days of receipt of the notice.

(c) Field citations

After consultation with the Attorney General, the Director may implement a field citation program through regulations establishing minor violations for which field citations (assessing civil penalties not to exceed \$1,000 per day per violation) may be issued by officers or employees designated by the Director, for any violation for which an administrative order could be issued under subsection (a) to the extent permissible under applicable law. The Director's authority under this subsection, combined with action taken under subsection (a), shall be limited in total amount by the provisions in subsection (a). Any person on whom a field citation is assessed may, pursuant to regulations issued under this section, elect to pay the penalty or request a hearing on the citation under the provisions of subsection (b). If a timely request for a hearing is not made, the penalty shall be final and the opportunity for judicial review shall be waived. Any hearing shall provide a reasonable opportunity to be heard and to present evidence. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this Act, except as to the days of violation for which the penalty required by a field citation is paid.

(d) Judicial review

Any person subject to a civil penalty under subsections (a) or (c) of this section may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock by filing a petition for review in such court within 30 calendar days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Attorney General. A notice of intent to challenge such penalty assessment, otherwise required by the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, is not required. Within 30 calendar days thereafter the Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Director may seek to recover civil penalties ordered or assessed under this section.

(e) Failure to pay penalty

If any person fails to comply with an administrative penalty order after the order or

assessment has become final, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be no less than 10 percent of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter; the Director may by regulation establish higher penalties to take into account situations where the prime rate is higher.

(f) Calculation of penalty

In determining the amount of any penalty to be assessed under this section, the Director or the court, as appropriate, shall take into consideration the factors enumerated in section 903(d) of this Act.

905. Citizen Suits

(a) Authority to bring civil action; jurisdiction

- (1) Except as provided in subsection (b) of this section, a person may commence a civil action in the Navajo Nation District Court in Window Rock on his or her own behalf against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises) who is alleged to be in violation of any provision, requirement or prohibition of this Act, including but not limited to a regulation or plan adopted pursuant to this Act, a permit or an order issued pursuant to this Act or a fee assessed under this Act.
- (2) The Navajo Nation courts shall have jurisdiction to enforce such provision, prohibition, regulation, plan, permit, order, fee or other requirement, to restrain such violation, to order such person to take such other action as may be necessary and to apply any appropriate civil penalties.

(b) Notice

An action may not be commenced under subsection (a)(1) of this section fewer than 60 days after the plaintiff has given notice of the alleged violation to the Director, the Navajo Nation and the alleged violator. In addition, an action may not be commenced if the Director has

commenced and is diligently prosecuting a civil action in court to require compliance with this Act, except that any person may intervene as a matter of right in such an action.

(c) Venue; intervention; service of complaint

- (1) Any action under this section may be brought only in the Navajo Nation District Court in Window Rock.
- (2) The Director, if not already a party, may intervene as of right in any action brought under this section.
- (3) Whenever any action is brought under this section the plaintiff shall serve a copy of the complaint on the Attorney General and on the Director. No consent judgment may be entered in an action brought under this section in which the Director is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Director, during which time the Attorney General and/or the Director may submit, on behalf of the Navajo Nation, their comments on the proposed consent judgment to the court and parties or the Director may intervene as a matter of right.

(d) Award of costs

The court, in issuing a final order in an action brought under this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever the court determines that such award is appropriate.

(e) Use of penalties

All penalties collected pursuant to this section shall be deposited into the Clean Water Act Fund established pursuant to section 508.

SUBCHAPTER 10. RULEMAKING AND JUDICIAL REVIEW

1001. Rulemaking and Other Administrative Procedures

(a) Rulemaking

- (1) Notice of any proposed regulation shall be published in a newspaper of general circulation for the areas of the Navajo Nation that are concerned and shall be given orally in English and Navajo over local radio stations. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall provide a comment period of at least 30 calendar days; shall allow any person to submit written comments, data or documentary information; shall in addition give interested persons an opportunity to present orally, in the Navajo or English languages, their views, data or arguments; and shall keep the record open for at least 10 days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.
- (2) The final regulation shall be based on the record of the rulemaking proceeding contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.

(b) Administrative hearings

The Director shall, by regulation, establish a formal administrative hearing process which meets due process standards to hear appeals taken under sections 902(b) (compliance orders) and 904 (administrative penalties and field citations). Until the Director establishes this administrative hearing process and appoints a qualified presiding officer, the Navajo Office of Hearings and Appeals is authorized to hear appeals taken under the above-cited sections; provided, however, that the Director may, in his or her discretion, transfer other appeals allowed under this Act and the regulations promulgated hereunder to the Navajo Office of Hearings and Appeals when necessary.

(c) Administrative subpoenas

- (1) In connection with any investigation, monitoring, reporting, entry,

compliance inspection or administrative enforcement proceeding under this Act, 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) Claims of confidentiality shall be processed using the provisions of section 901(c) of this Act and regulations promulgated thereunder.
- (3) Witnesses summoned shall be paid the same fees and mileage that are paid in the Navajo Nation courts. In case of contumacy or refusal to obey a subpoena, the Navajo Nation District Court for the district in which such person is found, resides or transacts business 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 an order may be punished by the court as contempt. A person may challenge the lawfulness of an administrative subpoena issued by the Director in the Navajo Nation District Court for the District of Window Rock, naming as defendant the Director in his or her official capacity and not in any other manner; in any such action, relief will be limited to declaratory relief.

1002. Review in Navajo Nation Supreme Court

(a) Petitions for review

A petition for review of any final action taken by the Director under this Act, including but not limited to promulgation of regulations, plans and standards, issuance of orders and issuance or denial of permits (but not including imposition of administrative penalties under section 904, which are subject to review under the provisions of subsection 904(d), or for challenge of an administrative subpoena, which is subject to review under the provisions of subsection 1001(c)(3)), shall be brought in the Navajo Nation Supreme Court. The petition shall be filed within 60 calendar days from the date that notice of such final 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 Act, except that if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within 60 calendar days after such grounds arise. The date of adoption of any regulation promulgated pursuant to this Act shall be the date of its approval by the Resources Committee of the Navajo Nation Council. The Navajo Nation Supreme Court, in reviewing the final action, shall limit its review to the issues and evidence that were before the Director at the time of the final action from which the appeal is taken.

(b) Limitations on review

- (1) If judicial review of a final action of the Director could have been obtained under subsection (a) of this section, that action shall not be

subject to judicial review in judicial proceedings for enforcement.

- (2) With respect to any regulations promulgated under this Act or other notice and comment actions taken pursuant to this Act, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the person raising an objection can demonstrate to the Director that it was impracticable to raise the objection within such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation or other action, the Director may convene a proceeding for reconsideration of the regulation or other action and provide the same procedural rights as would have been afforded had the information been available at the time the regulation or other action was proposed. If the Director declines to convene such a proceeding, the person may seek review of such refusal in the Navajo Nation Supreme Court. Such reconsideration shall not postpone the effectiveness of the regulation or other action, although it may be stayed by the Director or the court for up to three months.
- (3) Except as otherwise expressly allowed by Navajo law, no interlocutory appeals shall be permitted with regard to determinations made by the Director under this Act. In reviewing alleged procedural errors, the court may invalidate the regulation or other action only if the errors were so serious and related to matters of such central relevance to the regulation or permitting action that there is a substantial likelihood that the regulation or other action would have been significantly changed if such errors had not been made.

(c) Standards for review

In reviewing any final action of the Director undertaken pursuant to this Act, 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.

(d) Challenge to any provisions

Any action brought pursuant to the provisions of this section shall be brought in compliance with the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, and not in any other manner. In any such action, relief shall be limited to declaratory relief and the Navajo Nation Supreme Court shall have no jurisdiction to grant any other relief. The Navajo Nation Supreme Court shall have exclusive jurisdiction and venue over any action brought pursuant to this section, except as otherwise provided in this section.

1003. Challenge to Facial Validity of Act

- (a) Any challenge to the lawful authority of the Navajo Nation Council to enact any provision of this Act must be filed in accordance with the laws of the Navajo Nation within 90 calendar days after the date of enactment of such provision of this Act, in the Navajo Nation District Court in Window Rock, naming as defendant the Navajo Nation, and not thereafter or in any other manner.
- (b) For purposes of this section, the date of enactment of each provision of this Act shall be the date of signature by the President of the Navajo Nation after its adoption by the Navajo Nation Council, or the date of its adoption by the Navajo Nation Council if the Navajo Nation Council overrides a veto by the President.
- (c) The Navajo Nation District Court in Window Rock shall have exclusive jurisdiction and venue over any action under this section.
- (d) In any action brought pursuant to the provisions of this section, relief shall be limited to declaratory relief.
- (e) Any action brought pursuant to the provisions of this section shall be brought in compliance with the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, and not in any other manner.

1004. Legislative Oversight and Amendments

The Resources Committee of the Navajo Nation Council shall serve as the legislative oversight committee for the Navajo Nation Environmental Protection Agency, 2 N.N.C. § 1926 *et seq.* The Navajo Nation Council may amend 2 N.N.C. §§ 1921-1926 upon recommendation from the Resources Committee pursuant to 2 N.N.C. § 1927 *et seq.*