

YUROK TRIBE UNDERGROUND STORAGE TANK ORDINANCE

SECTION 1. AUTHORITY

This Ordinance governing underground storage tank (UST) use on the Yurok Indian Reservation (YIR) is established by the Yurok Tribal Council (Council) under the authority delegated to it by Article IV, Section 5 of the Constitution of the Yurok Tribe (Tribe), as ratified on November 19, 1993.

Article IV, Section 5 states in part “...*the Yurok Tribal Council shall have the authority to enact legislation, rules and regulations not inconsistent with the Constitution to further the objectives of the Yurok Tribe as reflected in the Preamble to this Constitution, [and to] enact civil and criminal laws.*”

Under the authority vested in Article IV, Section 5 of the Constitution of the Yurok Tribe the Yurok Tribal Council does hereby ordain as follows:

SECTION 2. PURPOSE

The health and safety of our tribal members and their families and the quality of our air, land and water resources is an overriding cultural imperative for the Council and Tribe. Many Tribal members use the animals, plants, and aquatic resources on the YIR for ceremonial, traditional, and subsistent purposes. The use of USTs on lands within the exterior boundaries of the YIR has been determined, by the Council and people, to be a potential threat to the health and safety of human, plant, and animal life, and to have potentially detrimental impacts upon the quality of the YIR's air, land and water resources.

Pursuant, to the Code of Federal Regulations (CFR) 40 parts 280 and 281, known as the Underground Storage Tank Regulations, there is a jurisdictional need for implementing a Yurok Tribal Ordinance for UST.

Pursuant to enacting UST codes for environmental protection on Tribal lands, the Yurok Tribe (Tribe) hereby adopts CFR 40 parts 280 and 281 as the Tribal code for regulation of UST.

This Tribal code for UST will contain all parts of CFR 40 parts 280 and 281. The CFR 40 parts 280 and 281 will be in full force and effect until and unless the Yurok Tribal Council deems it necessary to include a further definition of Yurok Tribal codes for UST.

SECTION 3. FINDINGS AND DECLARATIONS.

The Council finds and declares that:

1. It wishes to regulate UST and administer UST operation, installation and removal within the exterior boundaries of the Yurok Indian Reservation (YIR).

2. UST regulation is necessary to maintain environmental integrity, and the health and welfare of the YIR and its residents.
3. This Ordinance and all UST use on the YIR is subject to review by the Council, which maintains authority to amend this Ordinance or grant exemptions from provisions of this Ordinance.

SECTION 4. JURISDICTION

The applicability of this Ordinance shall extend to all persons, owners and operators within the exterior boundaries of the YIR. The applicability of this Ordinance shall not conflict with PL280. This Ordinance does not override or supercede any previously approved or applicable rules and regulations and orders of the Tribe.

SECTION 5. DEFINITIONS

- 5.1 **“Above Ground Storage Tank, AST”** shall mean any receptacle completely above the ground surface for the containment of any material.
- 5.2 **“Exemption,”** means the Council maintains the authority to exempt through open session and/or public hearing any pesticide use or applicator from the provisions of this Ordinance.
- 5.3 **“Underground Storage Tank, UST”** shall mean any receptacle partially or completely placed under the ground for the storage of any material, including both hazardous and non-hazardous materials.
- 5.4 **“Reservation, Yurok Indian Reservation, or YIR,”** means the YIR as established, existing, and geographically defined under the laws of the United States, encompassing all territory within its exterior boundaries as now or hereafter prescribed or ascertained, including all trust lands, fee patented lands, allotted lands, townsites, roads, airspace, waters and lands and rights-of-way owned, used or claimed by any person. The term YIR shall also include lands that the Tribe assumes pesticide regulatory jurisdiction over under a cooperative agreement with any other governmental agency. References herein to **“within the YIR”** shall be deemed to include the air space both over the surface of the YIR and in such proximity to it that any pesticide released in such air space is deposited or reasonably could be expected to drift over or otherwise be deposited within the exterior boundaries of the YIR.

SECTION 6. EXEMPTIONS.

Any owner or operator of an above ground storage tank (AST) is exempt from the provisions of this Ordinance.

SECTION 7. ENFORCEMENT PROCESS

- 8.1 YTEP is charged with conducting investigations, including inspections of relevant properties, of violations of this Ordinance or any conditions of a permit.

- 8.1.1 Investigations of such violations by YTEP shall be initiated upon the filing of a

written complaint, signed under penalty of perjury, by tribal members, Tribal Council members, Tribal Environmental Programs Office staff, Tribal Public Safety Officers, other staff of the Tribe, or residents of the YIR.

8.1.1.1 The written complaint shall be submitted on a form developed by YTEP and shall include, at a minimum, the following information:

- name of the complainant;
- date and time of the alleged violation;
- location of the alleged violation; and
- a brief description of the factual basis for the complaint.

8.1.1.2 The written complaint must be submitted to YTEP, during normal business hours, within six (6) months of the alleged violation.

8.1.1.3 YTEP shall initiate an investigation of the complaint within ten (10) days of receiving the complaint, upon a finding that the complaint sets forth a reasonable basis for believing that a violation has occurred.

8.2 Following an investigation, if YTEP determines that a violation has occurred, YTEP may take any one of the following actions which it deems most appropriate considering the gravity of the offense, any harm to human health or the environment resulting from the violation, and the circumstances of the person committing the violation:

8.2.1 Informally contact any alleged violator about possible violations of this Ordinance, or practices which may result in violations of this Ordinance, to assist the alleged violator in adhering to practices which protect environmental quality and comply with this Ordinance;

8.2.2 Issue a warning of violation, in the form of a letter from YTEP to the alleged violator, explaining the basis for the warning; possible measures which the alleged violator may take to mitigate the basis of the warning; and an explanation of the steps YTEP may take if the alleged violator does not take positive corrective action;

- 8.2.3 Assess a civil fine or penalty as described in section 9, against the alleged violator, following the procedures set out in section 8.3, below; and/or
 - 8.2.4 Upon a finding that a violation is taking place or appears imminent, and that such activity if allowed to proceed will present an immediate hazard or cause irreparable damage, may issue an order to the person responsible for such activity to cease and desist from further commission of such violation, following the procedures set out in section 8.3, below.
- 8.3 The following procedures shall govern enforcement actions taken pursuant to sections 8.2.3 and 8.2.4, above:
- 8.3.1 YTEP shall issue a notice of violation, describing with particularity; the violation and the proposed penalty, or other enforcement action, to the person who is charged with the violation.
 - 8.3.1.1 The notice of violation shall be served by personal service or U.S. certified mail, return receipt requested. Notice shall be considered received on the date of personal service or three (3) days after the date the notice is dispatched by U.S. mail.
 - 8.3.1.2 The notice shall include a warning that if the person does not respond within seven (7) business days of the date of receipt, the assessed civil penalty or other enforcement action will become permanent, and the person will lose all rights to appeal.
 - 8.3.2 Within seven (7) days of receipt of the notice of violation, the person who is charged with the violation may submit a written request for an administrative hearing before YTEP on the proposed enforcement action described in the notice of violation.
 - 8.3.2.1 If a hearing is requested, YTEP must hold an administrative hearing within thirty (30) days of receiving the request. If the person requesting the hearing makes a showing, supported by a declaration or other written documentation, in the request for hearing submitted to YTEP that the proposed enforcement action will result in great financial loss or harm to person or property before YTEP is required to hold a hearing, YTEP may hold a hearing immediately, or may delay or reverse any enforcement action until YTEP holds the requested hearing.
 - 8.3.2.2 If the alleged violator does not request a hearing within seven (7) days of receipt of the notice of violation, an assessed civil penalty or other enforcement action will become permanent and the person shall lose all rights to appeal.

- 8.3.3 At any hearing before YTEP, the alleged violator must come forward with evidence, including declarations, written documents, and statements by witnesses, indicating that the finding of violation is erroneous as described in the notice of violation.
- 8.3.4 Within fifteen (15) days of the hearing, YTEP shall issue a decision on whether to affirm the proposed penalty, or other enforcement action described in the notice of violation.
 - 8.3.4.1 YTEP shall serve a written notice of the decision on the violator. The notice of decision shall be served by personal service or U.S. certified mail, return receipt requested. Notice shall be considered received on the date of personal service or three (3) days after the date the notice is dispatched by U.S. mail.
- 8.3.5 The decision of YTEP on appeal may be appealed to the Tribal Court upon written request submitted to the Tribal Council within five (5) days of the receipt of the notice of decision after the initial hearing. The request for a hearing before the Tribal Court must state the grounds for overturning YTEP's decision.
 - 8.3.5.1 The Tribal Court shall hold a hearing within thirty (30) days of receiving the notice of appeal.
 - 8.3.5.2 The violator and YTEP shall have the opportunity to present oral arguments at the hearing.
 - 8.3.5.3 The written record from the administrative hearing before YTEP, together with all papers and requests filed in the proceeding before YTEP, shall constitute the exclusive record for decision on appeal.
 - 8.3.5.4 The Tribal Court shall set aside YTEP's decision only upon a finding that YTEP's decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.
 - 8.3.5.5 Within sixty (60) days of the hearing, the Tribal Court shall issue a written decision on the appeal.
 - 8.3.5.6 The Tribal Court shall serve a notice of the decision on the violator. The notice of decision shall be served by personal service or U.S. certified mail, return receipt requested.
 - 8.3.5.7 Decisions of the Tribal Court are final.
- 8.4 YTEP and/or the Tribal Court, or a representative authorized by either body, may institute proceedings in Tribal Court to enforce a penalty issued by YTEP and/or upheld by the Tribal Court on appeal.

8.5 This Ordinance in no way restricts an individual's or the Tribe's right to file suit against a party in Tribal Court for damages incurred from actions which violate this Ordinance.

SECTION 8. ENTRY AND INSPECTION.

For purposes of carrying out this Ordinance, the Yurok Tribe Environmental Program (YTEP), or its designated agent may enter public or private premises at reasonable times by permission or warrant obtained from the Yurok Tribal Court (Tribal Court) for inspection of UST installations, removals, operations, sampling, and other activities as stated in (CFR) 40 Part 280 or for observational purposes.

SECTION 9. CITATIONS

The provisions of this Ordinance shall be enforced by YTEP. Any YTEP employee, Tribal Public Safety Officer, or any person officially appointed by the Council in consultation with the Director of YTEP may issue the following for violations:

- 9.1 Cease orders, Citations, or Notices of Violation: Upon determination that any person is violating the provisions of this Ordinance, a cease order, citation, or notice of violation will be served.
- 9.2 It shall be a civil offense, for which a fine of not less than \$100.00 shall be assessed, to obstruct or otherwise interfere with investigative or other activities of any agent or officer of the Tribe carrying out this Ordinance.

SECTION 10.0 ENFORCEMENT PROCESS

10.1 YTEP is charged with conducting investigations, including inspections of relevant properties, of violations of this Ordinance.

10.1.1 YTEP shall initiate an investigation of such violations upon the filing of a written complaint, signed under penalty of perjury, by tribal members, Tribal Council members, YTEP staff, Tribal Police Officers, other staff of the Tribe, or residents of the YIR.

10.1.1.1 The written complaint shall be submitted on a form developed by YTEP and shall include, at a minimum, the following information:

- name of the complainant;
- date and time of the alleged violation;
- location of the alleged violation; and
- a brief description of the factual basis for the complaint.

10.1.1.2 The written complaint must be submitted to YTEP, during normal business hours, within six (6) months of the alleged violation.

- 10.1.1.3 YTEP shall initiate an investigation of the complaint within ten (10) days of receiving the complaint, upon a finding that the complaint sets forth a reasonable basis for believing that a violation has occurred.
- 10.2 Following an investigation, if YTEP determines that a violation has occurred, YTEP may take any one of the following actions which it deems most appropriate considering the gravity of the offense, any harm to human health or the environment resulting from the violation, and the circumstances of the person committing the violation:
- 10.2.1 Informally contact any alleged violator about possible violations of this Ordinance, or practices which may result in violations of this Ordinance, to assist the alleged violator in adhering to practices which protect environmental quality and comply with this Ordinance;
- 10.2.2 Issue a warning of violation, in the form of a letter from YTEP to the alleged violator, explaining the basis for the warning; possible measures which the alleged violator may take to mitigate the basis of the warning; and an explanation of the steps YTEP may take if the alleged violator does not take positive corrective action;
- 10.2.3 Assess a civil fine or penalty as described in section 12, against the alleged violator, following the procedures set out in section 11.3, below; and/or
- 10.2.4 Upon a finding that a violation is taking place or appears imminent, and that such activity if allowed to proceed will present an immediate hazard or cause irreparable damage, may issue an order to the person responsible for such activity to cease and desist from further commission of such violation, following the procedures set out in section 11.3, below.
- 10.3 The following procedures shall govern enforcement actions taken pursuant to sections 11.2.3 and 11.2.4, above:
- 10.3.1 YTEP shall issue a notice of violation, describing with particularity; the violation and the proposed penalty, or other enforcement action, to the person who is charged with the violation.
- 10.3.1.2 The notice of violation shall be served by personal service or U.S. certified mail, return receipt requested. Notice shall be considered received on the date of personal service or three (3) days after the date the notice is dispatched by U.S. mail.
- 10.3.1.3 The notice shall include a warning that if the person does not respond within seven (7) business days of the date of receipt, the assessed civil penalty or other enforcement action will become permanent, and the person will lose all rights to appeal.

- 10.3.2 Within seven (7) days of receipt of the notice of violation, the person who is charged with the violation may submit a written request for an administrative hearing before YTEP on the proposed enforcement action described in the notice of violation.
- 10.3.2.2 If a hearing is requested, YTEP must hold an administrative hearing within thirty (30) days of receiving the request. If the person requesting the hearing makes a showing, supported by a declaration or other written documentation, in the request for hearing submitted to YTEP that the proposed enforcement action will result in great financial loss or harm to person or property before YTEP is required to hold a hearing, YTEP may hold a hearing immediately, or may delay or reverse any enforcement action until YTEP holds the requested hearing.
- 10.3.2.3 If the alleged violator does not request a hearing within seven (7) days of receipt of the notice of violation, an assessed civil penalty or other enforcement action will become permanent and the person shall lose all rights to appeal.
- 10.3.3 At any hearing before YTEP, the alleged violator must come forward with evidence, including declarations, written documents, and statements by witnesses, indicating that the finding of violation is erroneous as described in the notice of violation.
- 10.3.4 Within fifteen (15) days of the hearing, YTEP shall issue a decision on whether to affirm the proposed penalty, or other enforcement action described in the notice of violation.
- 10.3.4.2 YTEP shall serve a written notice of the decision on the violator. The notice of decision shall be served by personal service or U.S. certified mail, return receipt requested. Notice shall be considered received on the date of personal service or three (3) days after the date the notice is dispatched by U.S. mail.
- 10.3.4.3 The decision of YTEP on appeal may be appealed to the Tribal Court upon written request submitted to the Tribal Council within five (5) days of the receipt of the notice of decision after the initial hearing. The request for a hearing before the Tribal Court must state the grounds for overturning YTEP's decision.
- 10.3.4.4 The Tribal Court shall schedule a hearing within thirty (30) days of receiving the notice of appeal.
- 10.3.4.5 The violator and YTEP shall have the opportunity to present oral arguments at the hearing.

10.3.4.6 The written record from the administrative hearing before YTEP, together with all papers and requests filed in the proceeding before YTEP, shall constitute the exclusive record for decision on appeal.

10.3.4.7 The Tribal Court shall set aside YTEP's decision only upon a finding that YTEP's decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

10.3.4.8 Within sixty (60) days of the hearing, the Tribal Court shall issue a written decision on the appeal.

10.3.4.9 The Tribal Court shall serve a notice of the decision on the violator. The notice of decision shall be served by personal service or U.S. certified mail, return receipt requested.

10.3.4.10 Decisions of the Tribal Court are final.

10.4 YTEP and/or the Tribal Court, or a representative authorized by either body, may institute proceedings in Tribal Court to enforce a penalty issued by YTEP and/or upheld by the Tribal Court on appeal.

10.5 This Ordinance in no way restricts an individual's or the Tribe's right to file suit against a party in Tribal Court for damages incurred from actions which violate this Ordinance.

SECTION 11. CIVIL PENALTIES.

11.1 Any owner, wholesaler, dealer, retailer, or other distributor violating any provision of this Ordinance may be assessed a civil penalty by the Tribal Court not to exceed \$5,000.00 per occurrence of violation, plus \$1,000.00 per day until the violation is remediated, plus associated costs.

11.2 Any lessee or other person who violates any provision of this Ordinance may be assessed a civil penalty by the Tribal Court of not more than \$500.00 plus any associated costs for the first offense nor more than \$1,000.00 for each subsequent offense plus any associated costs.

SECTION 12. CRIMINAL PENALTIES.

Any individual violating any provision of this Ordinance may be guilty of a crime. All criminal violations will be referred to the U.S. Environmental Protection Agency for further action.

SECTION 13.0. CIVIL DAMAGES AND/OR INJUNCTIVE ACTIONS

In the event that any person, as a result of his or her violations of this Ordinance, should proximately cause any physical damage to any other person(s) residing within, or to any real or

personal property situated in, the YIR, YTEP or the person(s) adversely affected shall have the right to seek monetary and/or injunctive relief in any judicial forum of competent jurisdiction.

SECTION 14.0. ENVIRONMENTAL PROTECTION FUND

14.1 Any monies collected by the Tribe as a result of violations of this Ordinance shall be deposited with the Tribe to be credited to the Environmental Protection Fund.

14.2 The Environmental Protection Fund shall be used for expenses related to protecting human health and the environment within the YIR, enforcing the provisions of the various environmental ordinances adopted by the Tribe, promoting environmental projects, and furthering environmental education for tribal members and residents of the YIR.

SECTION 15. SEVERABILITY.

If any provision of this Ordinance or the application, thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without regard to the invalid provision or application, and to this end the provisions of this Ordinance are severable.

SECTION 16.0. SOVEREIGN IMMUNITY

The sovereign immunity of the Tribe is in no manner waived by this Ordinance or by any action by the Tribal Council, YTEP, or other staff of the Tribe acting pursuant to this Ordinance.

SECTION 17.0. AMENDMENTS

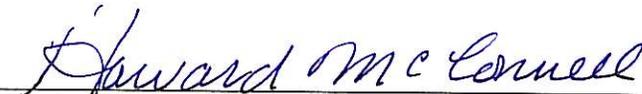
This Ordinance may be amended at any time by the Tribal Council.

SECTION 18.0. EFFECTIVE DATE

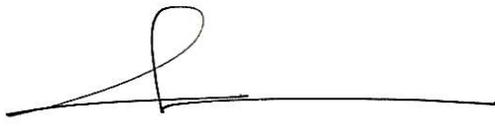
This Ordinance shall take effect immediately upon passage.

SECTION 19.0. CERTIFICATION

Approved this seventh day of April, 2005:



Council Chairperson



Recording Secretary