

Title 20

ENVIRONMENTAL PROTECTION

CHAPTER 5

HOPLAND TRIBE SOLID WASTE MANAGEMENT CODE

**(“PROHIBITING ILLEGAL DUMPING AND OPEN BURNING
WITHIN THE HOPLAND RESERVATION”)**

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Section 1. Short Title.

1. This Code shall be part of the Hopland Tribe’s Solid Waste Management Code, and specifically, shall be known as the “Illegal Dumping and Open Burning Code”.

Section 2. Purpose.

2.1. The open dumping and open burning of solid wastes shows disrespect for the natural resources of the Reservation, and for the Reservation community; it causes irreparable damage to the land and the environment; it is a threat to the health and safety of Hopland residents. Therefore, open dumping and open burning is prohibited within the boundaries of the

Hopland Reservation. Proper disposal of these materials can be accomplished through waste management facilities, licensed haulers, and removal from the Reservation.

Section 3. Definitions.

3.1. “Solid waste” is defined as all solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, construction wastes, abandoned vehicles and parts of such vehicles, discarded home appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded wastes.

3.2. “Hazardous household waste” is defined as any hazardous waste generated from normal household activities that is harmful to human health, living organisms, or the environment, and includes paint, paint thinners, turpentine, stains, solvents, aerosol cans, plastics, cleaning products, pesticides, insecticides, fungicides, herbicides, adhesives, glues, and flammable products.

Section 4. Declarations and Findings.

4.1. The Hopland Band of Pomo Indians is recognized by the people and outside governments as a sovereign government. The Tribe has the inherent authority within the exterior boundaries of its Reservation to manage and regulate the disposal of solid waste in a manner which best protects the Hopland Reservation, its natural resources, and the health, welfare and economic security of this generation of Hopland people, and the generations to follow.

4.2. This Code is enacted pursuant to the sovereign power of the Hopland Tribal Council (Council), as a recognized law-making body, to deal with Tribal lands, natural resources, and property; to promulgate and enforce codes providing for the health, safety and welfare of the Tribe and its members; to maintain law and order on Hopland land; and to protect the Hopland environment.

4.3. The Tribe retains the inherent sovereign power to exercise civil authority and jurisdiction over the conduct of both Tribal and non-Tribal members on all lands within the original boundaries of the Hopland Reservation, as necessary to protect the political integrity, economic security, and health and welfare of the Tribe and, accordingly, to maintain the environment and protect the natural resources of the Tribe.

4.4. It is necessary to adopt this Code to protect the environmentally sensitive lands within the Hopland Reservation; to prevent solid waste pollution, including pollution of the air,

and contamination of the Tribe's groundwater, surface waters, drinking water supplies and other natural resources; to prevent the deterioration of the environment, standard of living, quality of life, welfare and well-being of all persons within Hopland lands.

4.5. This Code is additionally adopted to provide and promote efficient Tribal waste management services within Hopland lands.

Section 5. Designation of Authority to the Tribal Environmental Protection Agency.

5.1. The Hopland Tribe is entrusted to protect the land, air, water, vegetation and animal life for the current residents of the Hopland Reservation and for the generations of Hopland people to come. To accomplish this mission as it relates to solid waste management, the Hopland Tribe hereby appoints the Hopland Tribal Environmental Protection Agency as the lead Tribal agency to ensure the proper management of solid wastes. The Tribal EPA (EPA) shall have the powers, duties and responsibilities provided for here.

5.2. The EPA shall develop and manage the Tribe's comprehensive waste management policy; shall communicate to the community information about the Tribe's comprehensive waste management policy; and shall make reports in a manner and containing such information as the Tribe approves, excluding confidential or privileged Tribal information.

5.3. Duties of the Hopland EPA. The EPA is entrusted to protect the land, air, water, vegetation and animal life for future generations from the detrimental effects of improper management of solid waste. The EPA's specific duties necessary to accomplish this task shall include the following:

- A. Develop and implement the Tribe's Solid Waste Management Plan in accordance with the Tribe's Environmental Master Plan.
- B. Build on the community's inherent respect for the natural environment by developing processes which incorporate both technical standards and criteria for solid waste management and the customs and traditions of the Hopland people.
- C. Maintain an inventory of all sites on the Hopland Reservation where solid wastes have been disposed and develop and implement a plan to close those sites permanently.
- D. Develop a mechanism to ensure continued community involvement and input in the Tribe's solid waste management plan.

- E. Prepare technical reports as needed.
- F. Identify, investigate, and apply for private funds, federal or state grants, and financial and technical assistance, so as to further implement the Tribe's Environmental Master Plan for solid waste.
- G. Develop a process for the issuance of permits for the collection and transportation of solid waste, and for the burning of approved solid waste materials.
- H. Ensure that hazardous waste is handled with respect for the environment and for the health, safety and welfare of the people of the Reservation.

5.4. The EPA has a duty to investigate under this Code. Upon receiving a credible complaint or report, the EPA shall, on its own initiative, or in conjunction with Tribal law enforcement or other cooperating agencies, perform a thorough investigation of any violations alleged against any person or entity.

Section 6. Open Dumping.

6.1. It shall be unlawful for any person or entity to dump, scatter, or place, or cause to be dumped, scattered or placed any solid waste material, hazardous or not, within the boundaries of the Hopland Reservation outside of any authorized landfill. Any site where such solid waste may have been disposed previously is deemed to be permanently closed unless it has been determined to be, and public notice is issued declaring its status as, an authorized landfill under applicable Tribal and federal law.

6.2. Any person who engages in the act of illegal dumping is subject to a civil fine and penalties, as set forth in this Code.

6.3. All vehicles or other property seized and held as evidence shall be subject to towing and storage costs until the matter is finally resolved in accordance with this Code.

6.4. In addition to any civil fines and penalties as described here, any vehicle or other personal property used in the illegal dumping of solid waste materials on the Hopland Reservation may be impounded by law enforcement officials and held in a secure facility.

6.4.1. Within five days of impoundment, a Notice of Impoundment and Possible Forfeiture shall be sent by certified mail, return receipt requested, to the registered owner(s) of the vehicle or other property. The Notice shall inform the owner(s) of the time and place of a hearing to determine whether the vehicle was operated, or property used, in violation of this Code, whether any damages resulted from such operation, and of the possible forfeiture of the vehicle and/or property. The Notice shall also inform the

owner(s) that he or she may pursue traditional dispute resolution, rather than a Tribal Court remedy, in such a restorative “PeaceKeeping Court” as may be established by the Hopland Tribal Council in accordance with Section 8 of this Code. A civil complaint and copy of the Notice shall be filed against the registered owner(s) in the Hopland Tribal Court.

6.4.2. Within 30 days after receipt of the Notice, the owner(s) of the vehicle or property may file in the Hopland Tribal Court a verified Answer to the Complaint and Notice. The owner(s) may elect to proceed in the traditional dispute resolution forum, as opposed to the Hopland Tribal Court, by an affirmative request to proceed in the “PeaceKeeping Court” in accordance with the procedures outlined in Section 8. Unless there are documented extenuating circumstances that make the traditional dispute resolution forum inappropriate, such a request to proceed in the “PeaceKeeping Court” shall be granted.

6.4.3. Upon receipt of a verified Answer, the Tribal Court shall set the matter for hearing in accordance with the rules of procedure of that court. If the Tribal Court has approved a transfer to the “PeaceKeeping Court”, the Tribal Court will forward all associated documentation to the “PeaceKeeping Court”. Once the “PeaceKeeping Court” receives the transferred file from the Tribal Court, it will provide notice to the owner(s), in accordance with its policies and procedures, regarding the traditional dispute resolution process. If the owner(s) elect to participate in the Hopland Tribe’s traditional dispute resolution process, the process will be governed by the traditional laws and customs of the Tribe.

6.4.4. In the event that a verified Answer is not filed within 30 days of the mailing of the Notice of Impoundment, the Court shall set a time and place to hear evidence upon the claim of illegal use of the vehicle or property, and order appropriate relief. Such relief may include an order that: a) forfeits the vehicle to the Hopland Tribe; b) orders the vehicle sold and the resulting funds paid to the Tribe as reimbursement for damages caused by use of the vehicle; or, c) releases the vehicle to the registered owner upon a showing that the vehicle was not used in connection with illegal dumping.

Section 7. Open Burning of Solid Wastes.

7.1. Any burning of solid wastes will be done in accordance with the Hopland Tribal Police Department’s open burning permit requirements and such open burning regulations as are established by the Hopland EPA’s Clean Air Program.

7.2. The Hopland Tribal Police Department may authorize, by permit, the infrequent

open burning of certain solid wastes, such as agricultural wastes, silvicultural (forestry) wastes, land-cleaning debris, diseased trees, or related materials.

7.3. Open burning without a permit issued by the Hopland Tribal Police Department is prohibited, unless such open burning is performed in association with a Hopland Tribal ceremony in accordance with section 7.6.

7.4. Any person who intentionally engages in the act of open burning without a Hopland Tribal Police Department permit is subject to civil fines and penalties, as set forth in this Code, unless such open burning is exempt in accordance with the ceremonial exception in section 7.6.

7.5. The EPA and the Tribal Police Department shall maintain a list of “prohibited items” that shall not be burned at any time within the boundaries of the Hopland Reservation. The EPA and the Tribal Police Department reserve the right to add, change, or amend this list of prohibited items at any time, without notice. No permit shall be obtained to authorize the burning of these prohibited items, except that the Police Department and the EPA may designate a “community burning” site for items that cannot be disposed of or removed, if appropriate. Prohibited items include, without limitation:

- A. Household trash
- B. Medical waste
- C. Hazardous household waste
- D. Flammable products (including propane tanks, kerosene, home heating oil, diesel fuel, gas, oil, lighter fluid, lighters)
- E. Automotive products (including motor oil, fuel additives, carburetor and fuel injection cleaners, air conditioning refrigerants, starter fluids, automotive batteries, transmission and brake fluid, antifreeze)
- F. Cleaning products (including oven cleaners, drain cleaners, wood and metal cleaners and polishes, toilet cleaners, tub, tile, and shower cleaners, bleach, pool chemicals, and associated cleaning items)
- G. Indoor pesticides (including ant sprays and baits, cockroach sprays and baits, flea repellants and shampoos, bug sprays, houseplant insecticides, moth repellents, mouse and rat poison and baits)
- H. Workshop/painting supplies (including adhesives and glues, furniture strippers, oil or enamel based paint, stains and finishes, paint thinners and turpentine, paint strippers and removers, photographic chemicals, fixatives and other solvents)
- I. Lawn and garden products (including herbicides, insecticides, fungicides, wood preservatives)
- J. Infectious waste
- K. Automotive parts

- L. Any machine or electronic appliance (including computers, printers, copiers, fax machines, telephones, toaster ovens, microwaves) and their components and parts
- M. Tires (including their components and parts)
- N. Refuse (including dead animals, offal, and street sweepings)
- O. Sewage and sewage sludge
- P. Radioactive wastes
- Q. Polychlorinated Biphenyls (PCBs)

7.6. Ceremonial Exception: The EPA shall maintain a list of items associated with Hopland Tribal ceremonies that are exempt from the permitting requirements outlined in this Code. At no time shall the open burning of items associated with a Hopland Tribal ceremony by a member of the Hopland Band of Pomo Indians, or by a Hopland Tribal member's family or household member, result in the imposition of any civil fines and penalties under this Code.

Section 8. Administrative Remedies.

8.1. If appropriate, the EPA, in its sole discretion, will attempt to resolve any unauthorized open dumping and open burning through its administrative process, as outlined below. The EPA reserves the right to bypass the administrative process and immediately file a civil action.

8.2. Verbal Warning: If appropriate, the EPA will first provide a verbal warning to the alleged offender that he or she has violated this Code. The verbal warning will explain in plain terms:

- A. The purpose of the Code.
- B. The specific conduct that violated the Code.
- C. The date(s) the conduct occurred.
- D. The section of the Code that has been violated, including its contents.
- E. What steps must be taken to address the violation, including how to avoid violating the Code again.
- F. The date by which the person must come into compliance with the Code to avoid the imposition of further penalties and fines.
- G. The penalties that may be imposed if the offender continues to violate the Code, including the filing of a civil action.
- H. The contact information for the Tribal EPA, and that a meeting may be scheduled with the EPA to discuss the reasons that the conduct violated the Code.

8.3. A written record will be made documenting the verbal warning, including the date,

time, and section of the Code that was violated. If it is not feasible to contact the alleged offender in person or by telephone, or if the conduct is deemed sufficiently serious to warrant the bypassing of a verbal warning, the EPA may, in its sole discretion, immediately issue a written citation.

8.4. Citation: If appropriate, the EPA will issue a written citation to the alleged offender that he or she has violated this Code. The citation will explain in plain terms the conduct that has violated the Code. The citation should include the following information:

- A. The purpose of the Code.
- B. The specific conduct that violated the Code.
- C. The date(s) the conduct occurred.
- D. The section of the Code that has been violated, including its contents.
- E. What steps must be taken to address the violation, including how to avoid violating the Code again.
- F. The date by which the person must come into compliance with the Code to avoid the imposition of further penalties and fines.
- G. The penalties that may be imposed if the offender continues to violate the Code, including the filing of a civil action.
- H. The contact information for the Tribal EPA, and that a meeting may be scheduled with the EPA to discuss in more detail the reasons that the conduct violated the Code.
- I. That the offender may administratively appeal, in writing, the EPA's finding that a violation has occurred, and the date by which this appeal must be received by the EPA.

8.5. The EPA may issue up to three (3) citations for alleged violations of this Code within one (1) calendar year period.

- A. First Offense: The EPA may, in its sole discretion, impose a fine up to \$100.00 dollars.
- B. Second Offense: The EPA may, in its sole discretion, impose a fine up to \$200.00 dollars.
- C. Third Offense: The EPA may, in its sole discretion, impose a fine up to \$500.00 dollars.

A record of all citations will be maintained. If a written citation has already been issued to the offender within the calendar year, subsequent citations may increase in seriousness; for example, subsequent citations may impose greater fines for non-compliance, or may require that the offender take specific remedial steps, as determined by the EPA, to avoid further action being taken against the person. The EPA may, in its sole discretion, proceed to file a civil action or injunction against the offender, or take any other action as it deems necessary, at any time.

8.6. Administrative Appeal: If, after receiving a citation, the alleged offender believes that he or she has not violated the terms of the Code, he or she may appeal the EPA's finding in writing to the EPA Director. This appeal must be received by the EPA within two (2) weeks of the date of the written citation. The appeal must clearly state why the person believes that he or she has not violated the Code, and may include any supporting documentation. The EPA will include a copy of the appeal in that person's file. Within two (2) weeks of receiving such an appeal, the EPA will either:

- A. Schedule a formal meeting with the Director, the offender, and any other interested parties regarding the appeal; or,
- B. The Director will affirm or deny the appeal in writing without scheduling a meeting.

If a formal meeting is scheduled, a formal decision will be provided in writing within two (2) weeks of the meeting. The EPA will attempt to use a shared decision-making process during this process whenever possible. A copy of the decision will be sent to the offender, as well as placed in his or her file. The decision of the EPA regarding the administrative appeal shall be final.

Section 9. Civil Damages.

9.1. Any person who violates any of the provisions of this Code is subject to an assessment of civil damages for such unlawful activities. The Director of the EPA is authorized to file a civil action against such person on behalf of the Tribe in Tribal Court, or another court of competent jurisdiction, seeking recovery for damages incurred by the unlawful conduct, including a reasonable attorney's fee and costs. Any person who is found by the court to have committed the alleged violations shall be subject to an obligation to reimburse the Tribe for all costs incurred to date, and in the future, for such violations (including, but not limited to, the costs incurred in cleanup, abatement, and related acts), in addition to, in the discretion of the court, a civil penalty in an amount up to \$500.00 dollars for each day of each violation.

9.2. All civil damages shall be paid to the Tribe. Reasonable attorney's fees and costs shall be paid to the Tribe.

9.3. Any person who is not a member of the Hopland Tribe who is found by a court to have violated any provision of this Code may be excluded from the Reservation, and may have his or her rights to engage in commercial transactions or consensual dealings on the Reservation suspended or terminated.

9.4. Civil damages, civil penalties, fees, costs, and related recoveries do not limit any other remedies which may be available to the Tribe, including the filing of an action for an injunction in a court of competent jurisdiction.

Section 10. Traditional Dispute Resolution (“PeaceKeeping Court”).

10.1. The Hopland Tribal Council may, at its discretion, and in accordance with its sovereign power as a recognized law-making body, create a traditional dispute resolution process in accordance with the Tribe’s traditional laws and customs. The forum for this traditional dispute resolution process shall be known and referred to as the “PeaceKeeping Court”.

10.2. Any person over whom the Tribe retains the inherent sovereign power to exercise civil jurisdiction, and over whom the Tribe chooses to exercise such jurisdiction in accordance with any alleged violation of this Code, may elect to use the Tribe’s “PeaceKeeping Court” as an alternative to the Tribal Court, unless the EPA demonstrates that extenuating circumstances indicate that a referral to the “PeaceKeeping Court” is not in the Tribe’s best interests. Such extenuating circumstances may include, but are not limited to: the offender’s recidivism, as demonstrated by previous offenses; previous referrals to the “PeaceKeeping Court” where the offender demonstrated a failure to fully cooperate with the traditional dispute resolution process; a demonstrated lack of good faith in the offender’s request to transfer the action to the “PeaceKeeping Court”.

10.3. If an action is filed in the Hopland Tribal Court by the EPA against any person over whom the Tribe has civil jurisdiction, Notice of such a pending action will be provided to the alleged offender. This Notice will inform the alleged offender that he or she, in accordance with the policies and procedures of the Tribal Court, may affirmatively request in writing to proceed in the “PeaceKeeping Court”, as an alternative to the Tribal Court, within thirty (30) days of receipt of Notice of the pending action.

10.4. If the Tribal Court receives a request to proceed in the “PeaceKeeping Court” within the thirty (30) days allotted for responding to the Notice, the Court shall approve such a request, unless the EPA demonstrates that it is not in the best interests of the Tribe, in accordance with section 8.2. The Tribal Court will then provide Notice to all relevant parties that the request to transfer to the “PeaceKeeping Court”, as established by the Tribal Council,

has, or has not, been approved.

10.5. If the Tribal Court approves such a request to transfer a matter to the “PeaceKeeping Court”, the Tribal Court will forward all associated documentation to the “PeaceKeeping Court”. Once the “PeaceKeeping Court” receives the transferred file from the Tribal Court, it will provide notice to the alleged offender, in accordance with its policies and procedures, regarding the traditional dispute resolution process. If the offender elects to participate in the Tribe’s traditional dispute resolution process, the process will be governed by the traditional laws and customs of the Tribe.

10.6. The Tribal Court will retain continuing jurisdiction over any matter transferred to the “PeaceKeeping Court”.

Section 11. Arbitration and Mediation.

11.1. The EPA reserves the right to use arbitration or mediation to resolve any conflicts that arise from alleged violations of this Code. The EPA may initiate arbitration or mediation proceedings instead of filing a civil action in the Tribal Court, PeaceKeeping Court, or any other court of competent jurisdiction, in its sole discretion.

11.2. Any person who is alleged to have violated the terms of this Code, and who has had a civil action filed against them in the Tribal Court, PeaceKeeping Court, or any other court of competent jurisdiction, may request arbitration or mediation by requesting this in writing within two (2) weeks of the date of notice regarding the civil action. The written request must be filed with the appropriate court, as well as with the EPA. If the EPA does not object, the court shall grant such a request at its own discretion. The person will receive written notice regarding whether his or her request to proceed in arbitration or mediation has been approved or denied by the EPA within two (2) weeks of the date of such a request.

Section 12. Severability.

12.1. If any section, provision, or portion of this Code is determined by a court of competent jurisdiction to be invalid, such a determination shall not affect, impair, or invalidate any other section, provision, or portion of this Code, nor shall a determination by a court of competent jurisdiction that a section, provision, or portion of this Code is invalid as applied render such section, provision, or portion inapplicable to other persons or other circumstances.

Section 13. Sovereign Immunity.

13.1. The Hopland Band of Pomo Indians’ sovereign immunity shall not be waived or

