

Title 20

ENVIRONMENTAL PROTECTION

CHAPTER 8

HOPLAND TRIBE WATER QUALITY MANAGEMENT AND PROTECTION CODE

(“IMPLEMENTING THE PERMITTING, MONITORING, AND ENFORCEMENT OF  
WASTEWATER TREATMENT AND DISPOSAL STANDARDS  
WITHIN THE HOPLAND RESERVATION”)

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**Section 1. Short Title.**

1.1 This Code shall be part of the Hopland Tribe’s Water Quality Management and Protection Code, and specifically, shall be known as the “Wastewater Storage, Treatment, and Disposal Code”.

**Section 2. Purpose.**

2.1. The inadequate storage, treatment, and disposal of wastewater can contaminate and degrade water resources on which many people depend for domestic, agricultural, recreational, and other beneficial uses within the exterior boundaries of the Hopland Reservation. The

improper disposal or discharge of wastewater, including the improper use and maintenance of wastewater treatment and disposal systems, such as septic tanks, 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, in order to protect the Reservation's water resources, this Code implements a comprehensive regulatory and permitting scheme for wastewater storage, treatment and disposal within the boundaries of the Hopland Reservation.

### **Section 3. Definitions.**

3.1. "Alternative System" is defined as any wastewater system consisting of the storage, treatment, or disposal of sewage or wastewater in a structure or facility other than a septic tank or wastewater treatment facility. An alternative system includes, but is not limited to, portable restroom facilities, subsurface absorption systems, lagoons, aeration ponds, and mound systems.

3.2. "Septic Tank" is defined as any watertight pretreatment receptacle which receives the discharge of wastewater and is designed and constructed so as to permit the separation of floating solids from the liquids, detention, and digestion of the organic matter prior to discharge of the liquid portion.

3.3. "Sewage" and "Wastewater" are defined as any human or domestic waste from residences, buildings, motor homes, outhouses, or other facilities, including any human or domestic waste combined with water or other substances, regardless of whether such waste is treated or untreated. *See*, Section 11.02.330 of the Sanel Tribal Utility Code.

3.4. "Sewage Systems" and "Wastewater Systems" are defined as any system that stores, treats, or disposes of human or domestic waste from residences, buildings, motor homes, or other structures and facilities, including, but not limited to, septic tanks and wastewater treatment facilities. *See*, Section 11.02.320 of the Sanel Tribal Utility Code.

3.5. "Tribal Sanitary Sewer System" or "Tribal System" is defined as the sanitary sewer system that is owned and operated by the Hopland Band of Pomo Indians' Sanel Tribal Utility District ("STUD"). *See*, the Sanel Tribal Utility Code.

3.6. "Water Resources" are defined as any water, surface or underground, contained within, flowing through, or bordering the Hopland Reservation, including water bodies, tributary streams, streambeds, riparian areas adjacent to water bodies and streams, ponds, and seasonal waterways, regardless of whether such waterways are dry.

## **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 its water resources 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 water resources within the Hopland Reservation from the unauthorized discharge or disposal of wastewater. Specifically, this Code is enacted to protect these significant water resources for future use and conservation, ensuring that future generations will benefit from the continued existence of such water resources.

4.5. This Code adopts a permitting scheme, including the permitting, monitoring, and enforcement of wastewater storage, treatment, and disposal standards and regulations within the boundaries of the Hopland Reservation, including the assessment of civil fines and damages for non-compliance with the permitting process and such standards and regulations adopted by the EPA.

4.6. In addition to conserving, managing, protecting and regulating the Reservation's water resources to ensure their survival and use for future generations, this Code also authorizes the Hopland EPA, and its authorized representatives, to inspect and monitor all sewage systems, alternative systems, and sewage treatment and disposal on the Reservation. The EPA will inspect and monitor such sewage systems, alternative systems, and sewage treatment and disposal as necessary to ensure that the EPA's regulations and standards have been, and continue to be, maintained.

## **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 the protection and management of water resources, the Hopland Tribe hereby appoints the Hopland Tribal Environmental Protection Agency as the lead Tribal agency to ensure the proper management of sewage, septic tanks, alternative systems, and sewage treatment and disposal. The Tribal EPA (EPA) shall have the powers, duties and responsibilities provided for here, and shall work in conjunction with the Tribal Council and other Tribal Departments in carrying out this Code.

5.2. The EPA, in conjunction with the Sanel Tribal Utility District, shall develop and manage the Tribe's comprehensive Wastewater Management and Disposal Program; shall communicate to the community information about the Tribe's comprehensive Wastewater Management and Disposal Program; and shall make reports in a manner, and containing such information, as the Tribe approves regarding the development and management of this Program.

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 the improper storage, treatment, and disposal of sewage, including the improper maintenance of sewage systems, alternative systems, and wastewater treatment facilities. The EPA's specific duties necessary to accomplish this task shall include the following:

- A. Develop and implement the Tribe's Wastewater Management and Disposal Program in accordance with the Tribe's Environmental Master Plan.
- B. Draft wastewater management and disposal regulations and standards.
- C. Develop processes which incorporate both technical environmental cataloguing standards for wastewater management and disposal and the customs and traditions of the Hopland people.
- D. Inspect and monitor all sewage, sewage systems, alternative systems, and sewage treatment and disposal on the Hopland Reservation, as necessary.
- E. Develop a mechanism to ensure continued community involvement and input in the Tribe's Wastewater Management and Disposal Program.
- F. Approach nonprofit groups and other agencies for assistance or guidance in appropriate sewage storage, treatment, management and disposal. Cultivate partnerships with such groups or agencies in order to better address sewage management and disposal.
- G. 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 wastewater management and disposal.

- H. Develop a permitting process for the storage, treatment, and disposal of sewage, including the construction of sewage systems, alternative systems, and sewage treatment and disposal on the Hopland Reservation.

## **Section 6. Inspection, Monitoring and Maintenance of Sewage Systems.**

6.1. The EPA, in conjunction with the Sanel Tribal Utility District and such other agencies, nonprofit groups, and community members as they see fit, will inspect and monitor all sewage storage, treatment and disposal, including sewage systems and alternative systems, on the Hopland Reservation. The EPA will ensure through such inspections and monitoring that sewage treatment and disposal systems, including sewage systems and alternative systems, are properly maintained.

6.2. Any septic tank being used within the exterior boundaries of the Hopland Reservation on and after the effective date of this Code must be pumped and inspected at least once every five (5) years by a certified septic tank pumping, cleaning, and maintenance business. The EPA reserves the right to shorten or lengthen the time limit for such septic tank maintenance on a case-by-case basis.

6.3. The owner of property containing a septic tank must, upon request, provide documentation to the EPA in the form of an official receipt or document that such pumping has been performed within the last five (5) years, or within the period required by the EPA for that specific septic tank. Alternatively, the owner may request a waiver in writing from the EPA. A waiver request must be submitted to the EPA within two (2) weeks of the receipt of the EPA's pumping documentation request, and must clearly demonstrate why such maintenance is not required at the present time. The EPA may approve or deny such a waiver request in its sole discretion. If the EPA denies the waiver request, the owner must perform the required pumping and maintenance within thirty (30) days of receipt of the EPA's response.

6.4. Failure to comply with the EPA's septic tank pumping and maintenance requirements shall subject the owner to civil fines and penalties, in accordance with section nine (9) of this Code.

6.5. The EPA will inventory all sewage systems, including septic tanks and alternative systems, on the Hopland Reservation that fail to meet the EPA's standards and regulations for

sewage treatment and disposal. Appropriate measures will be taken to bring such systems into compliance in accordance with sections 6, 7, 8, and 9 of this Code.

6.6. The EPA is hereby authorized to perform any necessary maintenance, and assess any costs associated with such maintenance on the owner, to bring any sewage system, alternative system, or septic tank located within the exterior boundaries of the Hopland Reservation into compliance with this Code and the EPA's standards and regulations. The EPA will provide the owner with written notice that such maintenance is planned, and that such costs will be assessed against the owner, unless an imminent environmental or public health and safety threat exists, as determined by the EPA in its sole discretion.

6.7. The EPA's finding that a wastewater system's, alternative system's, or septic tank's maintenance is necessary shall be final. If the EPA performs necessary maintenance on a wastewater system, alternative system, or septic tank and assesses the cost upon the owner, the owner shall be entitled to request a payment plan. The owner shall request a payment plan in writing within two (2) weeks of whichever date is later: 1) the date of actual maintenance; 2) the date of the notice that such maintenance is planned; or, 3) the date of the notice that maintenance has occurred and that the costs have been assessed against the owner. The payment plan request must clearly demonstrate why the owner is unable to pay the assessed maintenance cost, and should include supporting documentation if appropriate. The EPA may request documentation from the owner regarding his or her income, or request any other documentation as is reasonably necessary to evaluate such a request, prior to granting the payment plan request. The EPA will grant or deny a payment plan request in its sole discretion, taking into account the circumstances of the case.

## **Section 7. Permitting, Management, and Monitoring of Sewage and Sewage Systems.**

7.1. Any storage, treatment, or disposal of sewage within the exterior boundaries of the Hopland Reservation must be done in accordance with the regulations established by the Hopland EPA's Sewage Management and Disposal Program and the Sanel Tribal Utility District.

7.2. The EPA may authorize by permit the storage, treatment, or disposal of sewage at established levels.

7.3. No person shall discharge sewage by any means from any sewage storage, treatment, or disposal system, including septic tanks and alternative systems, into surface water, onto the surface of the ground, into the groundwater, or in any other place on the Hopland Reservation without an EPA permit, unless a person has received a variance in accordance with section 7.6. This includes unintentional and intentional discharges of wastewater.

7.4. Any person who discharges sewage from any sewage storage, treatment, or disposal system, including septic tanks and alternative systems, without an EPA permit or a variance, including both intentional and unintentional discharge, is subject to civil fines and damages in accordance with this Code.

7.5. Notice: If a person discharges any sewage into any Reservation water resource, or in any place within the exterior boundaries of the Hopland Reservation, without an EPA permit or variance, regardless of whether the discharge was intentional or unintentional, that person shall immediately notify the EPA of such a discharge and shall fully disclose the information regarding the discharge, including the type of the sewage, the amount, the location, and any other relevant information.

7.6. Variations: The EPA may exempt a person from the permit requirements associated with the storage, treatment, or disposal of sewage by granting a variance. In order to obtain a variance, the person must request a variance in writing from the EPA. This request will be approved or denied by the EPA in its sole discretion. The applicant must demonstrate that:

- A. The Hopland Reservation's water resources will not be permanently altered or impaired;
- B. Public health and safety will not be threatened;
- C. No significant adverse environmental effects will occur;
- D. A mitigation plan will be implemented to offset the storage, treatment, or disposal of sewage.

A variance may only be granted for a specific period of time, not to exceed one (1) calendar year. At no time shall a person who has obtained a variance be subject to civil fines and damages for the storage, treatment, or disposal on the Hopland Reservation in accordance with the terms of the variance. However, the EPA reserves the right to verify that a person is acting in accordance with the terms of the variance through inspection and monitoring.

7.7. Duty to Investigate: The EPA has a duty to investigate the unauthorized storage, treatment, or disposal of sewage 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 groups or agencies, perform a thorough investigation of any alleged violations.

7.8. Inspections and Entry: The EPA, and any authorized Tribal representative of the EPA, shall be allowed to enter and inspect any sewage storage, treatment, or disposal system, including septic tanks and alternative systems, operating with or without an EPA permit. Inspections, measuring, sampling and monitoring will be done at reasonable times for the

purposes of assuring permit compliance, compliance with environmental standards and regulations, or for any other purpose as is determined necessary by the EPA to carry out the purpose of this Code. The EPA reserves the right to inspect, measure, sample and monitor all sewage, sewage storage, treatment, or disposal systems, facilities, and structures on the Reservation, regardless of whether a permit has been requested, a permit has been formally granted, is pending, or has been denied.

## **Section 8. Administrative Remedies.**

8.1. If appropriate, the EPA, in its sole discretion, will attempt to resolve any unauthorized storage, treatment, disposal or discharge of sewage, including the improper maintenance of sewage systems and alternative systems, using the administrative process outlined below. The EPA reserves the right to bypass the administrative process and file a civil action at any time.

8.2. Written Citation (“Cease and Desist Order”): If appropriate, and in its sole discretion, 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 which conduct 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. That the individual must “cease and desist” from engaging in any conduct that may result in the improper storage, treatment, discharge or disposal of sewage, including the improper maintenance of sewage systems and alternative systems, on the Hopland Reservation.
- F. If applicable, that an individual is in violation of his or her EPA permit.
- G. What steps must be taken to address the violation.
- H. The date by which the person must come into compliance with the Code or the permit to avoid the imposition of further penalties and fines and, if applicable, the revocation of the permit.
- I. The penalties that may be imposed if the offender continues to violate the Code or the permit, including the revocation of the permit, the maintenance of the sewage system and assessment of the cost upon the owner, or filing of a civil action.
- J. The contact information for the Tribal EPA, and that an “informal conference” may be requested to discuss the alleged violation.

K. 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.

8.3. A record of all citations will be maintained. If a citation has already been issued to the offender, subsequent citations may increase in seriousness; for example, subsequent citations may impose increased 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 at any time to revoke a permit, perform necessary maintenance and assess the cost upon the owner, file a civil action or injunction against the offender, or take any other action as it deems necessary, at any time.

- 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 \$500.00 dollars.
- C. Third Offense: The EPA may, in its sole discretion, impose a fine up to \$1000.00 dollars.

8.4. Administrative Appeal: If, after receiving a written 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 warning. 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 and 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 fines and 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 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 associated with such violations, including the costs of clean-up, abatement, and the administrative costs associated with the enforcement of this Code, in addition to, at the court's discretion, a civil penalty in an amount up to \$500.00 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 demonstrated that it was not in the best interests of the Tribe, in accordance with section 10.2. 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



ATTESTED:

          /signed/            
Roman Carrillo, Secretary

          2/1/06            
Date