

**RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION**

WHEREAS, the Tribal Council has reviewed recommended revisions to the Government Code to repeal Chapter Seven, entitled Hazardous Material Commission, and to adopt Chapter One of the Environmental Code providing for the Establishment of a Tribal Hazardous Substances Emergency Plan; and

WHEREAS, the Tribal Council recommends that said proposed amendments attached hereto be posted for public comment as required by the Constitution.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs the Tribal Council Secretary to post the proposed adoption of Chapter One of the Environmental Code in each District for ten days as required by the Constitution.

The foregoing resolution was on October 06, 1994, duly adopted by a vote of nine for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (f), (h), (i), (q), (s), (t) and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



Chairman of the Tribal Council



Secretary of the Tribal Council

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FORT APACHE INDIAN AGENCY
WHITERIVER, ARIZONA

ORDINANCE OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION
ENVIRONMENTAL CODE OF THE
WHITE MOUNTAIN APACHE TRIBE

CHAPTER ONE
ESTABLISHMENT OF A TRIBAL HAZARDOUS
SUBSTANCES EMERGENCY PLAN

[Note: This ordinance repeals Chapter Seven of the Government Code, Hazardous Materials Commission, and adds Chapter ONE to the Environmental Code]

SECTION 1.1 **PURPOSE**

This Chapter establishes a Tribal program for improved hazardous chemicals management in order to maintain a clean, healthy, and safe environment on the Fort Apache Indian Reservation. This Chapter establishes a Tribal Emergency Response Commission and a Local Emergency Planning Committee. This Chapter also sets forth facility notification requirements necessary for the development and implementation of a Tribal Emergency Response Plan. Additionally, the chapter contains reporting requirements which provide the Tribal community with important information on the nature, location, and quantity of hazardous chemicals in their community.

SECTION 1.2 **DEFINITIONS**

In this ordinance, unless otherwise provided:

1. "Commission" means the Tribal Emergency Response Commission.
2. "Committee" means a Local Emergency Planning Committee appointed by the Commission.
3. "Extremely Hazardous Substance", "Hazardous Chemical," and "Toxic Chemical" have the meaning set forth in Section 329 of Title III, 42 U.S.C. § 11049, and regulations promulgated under Title III, currently found at 40 CFR § 355 et seq.
4. "Emergency Response Organization" means any tribal, other governmental, or private entity equipped or created for responding to environmental, health, or other emergencies. This definition includes, among other

things, federal agencies and their departments, police departments, hospitals, fire departments, emergency airlift or other medical response entities, and environmental clean-up or containment crews or companies.

5. "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned and operated by the same person (or by any person which controls, is controlled by, or under common control with such person). Facility shall include manmade structures as well as all natural structures in which chemicals are purposely placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.
6. "Person" means any individual, trust, firm, joint stock company, corporation (including government and tribal corporations), partnership, association, State, Federal Government or Division or Agency thereof, Tribe, municipality, commission, political subdivision of a State or Tribe, or interstate body. However, nothing in this Code shall constitute of waiver of Tribal Sovereign Immunity.
7. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, toxic chemical, or CERCLA hazardous substance.
8. "CERCLA Hazardous Substance" means a substance on the list defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (P.L. 96-510; 94 Stat. 2767), as amended by SARA, and regulations promulgated under CERCLA, currently located at 40 CFR § 302.4.
9. "SARA" means the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499).
10. "Title III" means Title III of SARA, the federal Emergency Planning and Community Right-to-Know Act of 1986, as amended, found at 42 U.S.C. § 11001.
11. "Reservation" means the Fort Apache Indian Reservation.

SECTION 1.3

RELATIONSHIP TO OTHER LAW

This article does not:

1. Affect or modify the obligations or liabilities of any person under federal law.

SECTION 1.4

TRIBAL EMERGENCY RESPONSE COMMISSION; POWERS AND DUTIES

- A. The Tribal Emergency Response Commission of the White Mountain Apache Tribe shall be immediately established.
- B. The Commission shall be composed of seven members: the director, manager, or chief, or their respective designees, of the (1) Tribal Police Department, (2) White Mountain Apache Tribal Fire and Rescue - Whiteriver (Tribal Fire and Rescue), (3) Tribal Emergency Medical Services, (4) Tribal Safety Department, (5) Tribal Planning Department (or other named Tribal department with primary responsibility for environmental protection and natural resources on the Reservation), (6) Tribal Legal Department, and (7) the Tribal Health Authority and may include 2 additional persons selected from the categories listed at Section 1.6B. The Chairperson of the Commission shall be the Chief of Tribal Fire and Rescue -Whiteriver, unless otherwise appointed by the Chairperson of the Tribal Council, by and with the advice and consent of the Tribal Council, from among the members of the Commission. The Chairperson of the Commission shall also appoint a coordinator for the Commission, who shall serve as the central contact for the regulated facilities.
- C. Any member of the Commission may be removed by the Tribal Council upon the recommendation of a quorum of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office. A commission member may also be removed voluntarily upon request and approval by a quorum of the Commission and approval of the Tribal Council. Members of the Commission and the Chairperson of the Commission shall serve until so removed.
- D. The members of the Commission shall serve without compensation but are eligible for reimbursement or prepayment for travel and other expenses incurred while fulfilling duties of the Commission.
- E. The Commission shall meet as often as necessary and may organize itself into such support committees as necessary to implement this chapter and Title III on this

Reservation. The full Commission shall meet at least semi-annually, but preferably, on a quarterly basis. The Commission may adopt internal operating rules.

- F. A majority of the Commission shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining commissioners may exercise all the powers of the Commission until the vacancy is filled. The Commission shall annually elect a Vice-Chairperson to act in the absence or disability of the Chairperson or in case of vacancy in the office of Chairperson.
- G. The Commission may maintain offices and hold regularly scheduled meetings in any place within the exterior boundaries of the Reservation. Sessions of the Commission shall be public, with notice provided through local media, including radio or news publication. The Commission shall develop rules providing for such reasonable notice, including provisions for emergency or other not regularly scheduled meetings. All proceedings of the Commission shall be shown on its record, which shall be a public record. The vote of each member shall be recorded. The Commission shall develop rules for maintaining such public record.
- H. The Commission shall administer this chapter and rules adopted under this chapter. The Commission shall administer Title III on the Reservation and may conduct whatever activities are necessary to implement this article and Title III on the Reservation. The Commission possesses all the authority and responsibilities of a Tribal Emergency Response Commission for purposes of Title III, as set forth in this chapter.

SECTION 1.5

COMMISSION; GENERAL POWERS

- A. The Commission has full power, jurisdiction and authority to:
 - 1. Formulate and adopt rules, regulations and forms for affecting the purposes of this chapter. The authority to adopt rules includes establishing:
 - a. Procedures for handling public information requests.
 - b. Procedures and implementing programs for chemical emergency planning and preparedness.
 - c. Community right-to-know program reporting requirements.

- d. Release reporting requirements, which may include reporting requirements in addition to those required by Federal law.
 - e. Means for supervising the activities of a Local Emergency Response Committee (LERC) if one is established under Section 1.6 of this ordinance.
2. Procure by contract the temporary or intermittent services of experts or consultants if such services are to be performed on a part-time or fee-for-services basis and do not involve the performance of administrative duties.
 3. Prepare and coordinate proposals for federal grants available under Title III and any other relevant programs. The Commission may accept on behalf of the Tribe any reimbursement, grant, or gift, that may become available for purposes of this chapter. The Commission shall transmit any such monies to the Tribal treasurer for deposit in an account set up for the specific use of the Commission in fulfilling its duties.
 4. Establish standard operating procedures for hazardous materials management and emergency response for members of the Commission and any department, enterprise, business, contractor or private party operating within the exterior boundaries of the Reservation.
 5. Collect, collate and publish statistical and other information relating to hazardous materials within the exterior boundaries of the Reservation. The Commission shall prepare an annual report on hazardous materials management and emergency response for submission to the Tribal Council by December 31st of the reporting year. Tribal Fire and Rescue - Whiteriver shall provide computer support to implement and perform Commission duties and shall maintain a Centralized Hazardous Materials Database.
 6. Conduct or participate in investigations of causes, origins, and circumstances of hazardous materials incidents within the exterior boundaries of the Reservation or affecting the Reservation populace or environment.
 7. Provide training, and seek funding for such training, in the control, containment,

transportation, and handling of hazardous materials and cooperate with other governments (local, state and federal), institutions and groups to provide and further such training.

8. Employ specialized testing services to evaluate evidence and conditions involved in hazardous materials incidents subject to the availability of funding for said purposes.
9. Any action taken by the Commission pursuant to Section 1.5 A1, 2, 3, and 4 shall be taken only upon approval by the Tribal Council.

SECTION 1.6

LOCAL EMERGENCY PLANNING COMMITTEE

- A. The Reservation is designated as one emergency planning district for the purposes of preparing and implementing an Emergency Response Plan.
- B. The Commission shall appoint members of a Local Emergency Planning Committee for the district. The Committee may include in addition to the Commission members, one or more representative from each of the following enumerated groups or organizations:
 1. Elected Tribal officials
 2. Law enforcement, civil defense, fire fighting, first aid, health, local environmental, hospital and transportation personnel.
 3. Broadcast and print media.
 4. Community groups.
 5. Owners or operators of facilities subject to the requirements of this article.
- C. The Committee shall appoint a chairperson and shall adopt procedural rules by which the Committee shall function including the requirements set forth in § 301 of Title III. Such rules shall be effective upon approval by the Tribal Council.
- D. The Commission, as it deems appropriate, may modify the designation of emergency planning districts in part A of this section. The Commission may also modify its appointments to the Local Emergency Planning Committee(s). Members of the public may petition the Commission to modify the membership of the Local Emergency Planning Committee(s).

- E. The Commission shall, for the purposes of organizational simplicity and efficiency, serve as the Committee, unless 2 or more emergency planning districts are created for the Reservation at which time two separate committees will be created pursuant to the provisions of this code.

SECTION 1.7

COMPREHENSIVE EMERGENCY RESPONSE PLANS

- A. The Committee shall comply with § 303 of Title III.
- B. Based on information from the Commission and Tribal Departments, as well as information obtained from facilities subject to this chapter and Title III, the Committee shall prepare and annually review an Emergency Response Plan in order to address emergencies due to releases from facilities and transportation vehicles in its emergency planning district. After completing the Emergency Response Plan, the Committee shall provide a copy of the plan to the Tribal Council and submit a copy to the Commission. The Commission shall review the plan and make recommendations to the Committee on revisions that may be necessary to ensure that it meets the requirements of this chapter or any rules adopted under this chapter. The Commission shall further ensure that the plan is coordinated with the emergency response plans of adjoining emergency planning districts, as applicable.
- C. The Committee shall evaluate the need for resources necessary to develop, implement, and exercise the Emergency Response Plan in its district and shall make recommendations to the Commission with respect to the need for additional resources that may be required and the means for providing such additional resources.
- D. The Emergency Response Plan shall include the provisions listed in § 303C of Title III, such as a Hazards Analysis, and, in addition, shall include:
 - 1. The Identification of emergency response organizations (ERO) in, adjacent to, or otherwise available to the district. The EROs shall work with the Commission in making determinations necessary to implement the Emergency Response Plan.
 - 2. A description of specialized equipment, facilities, personnel and emergency response organizations available in the district to respond to releases subject to this section.
 - 3. Mutual aid agreements with other jurisdictions, and any allocation of emergency response resources for responding to releases subject to this section, if

applicable.

SECTION 1.8

EXTREMELY HAZARDOUS SUBSTANCES

Unless otherwise provided in this chapter, a substance is subject to the requirements of this code if it is an extremely hazardous substance as listed and published by the administrator of the United States Environmental Protection Agency, or its successor, and it is held in quantities at or above the threshold planning quantity as established pursuant to § 302 of Title III, currently found at 40 CFR § 355, Appendix A and B, or as that section may be amended or revised in the future.

SECTION 1.9

**FACILITIES SUBJECT TO EMERGENCY PLANNING;
FACILITY EMERGENCY RESPONSE PLANS**

- A. A facility is subject to emergency planning requirements if a substance identified under Section 1.8 is present at the facility in an amount at or in excess of the threshold planning quantity for that substance.
- B. The owner or operator of a facility subject to this section shall notify the Commission that such facility is subject to the requirements of this chapter pursuant to § 302 of Title III.
- C. The Commission may designate additional facilities which are subject to this Chapter. The designation shall be accomplished after notification to the facility of the proposed designation.
- D. The owner or operator of a facility subject to this chapter shall provide to the Committee the identity of a facility representative who will participate in the emergency planning process as the facility emergency coordinator pursuant to § 303 of Title III.
- E. Upon request, the owner or operator of a facility subject to this chapter shall provide to the Committee any information necessary for developing and implementing the emergency plan. Such information may include:
 - 1. Names, addresses and emergency telephone numbers of facility emergency coordinator and alternate.
 - 2. Description of employee emergency response training and facility emergency preparedness programs.
 - 3. Description of appropriate emergency equipment necessary to respond to a release.

4. Description of emergency response procedures including notification procedures and evacuation plans in the event of a release.
 5. Identification of transport routes and transportation methods used to transport extremely hazardous substances to and from the facility.
 6. Identification of hazardous substances or hazardous chemicals present at the facility, including submittal of Material Safety Data Sheets or other information as provided for in this Chapter.
- F. Facilities shall work with the Commission and Committee to reduce, to the maximum extent practicable, inventories of Extremely Hazardous Substances, hazardous chemicals, and toxic chemicals.

SECTION 1.10 EMERGENCY NOTIFICATION OF REPORTABLE RELEASES

- A. If a release of a reportable quantity of an extremely hazardous substance or CERCLA hazardous substance occurs from a facility or transportation vehicle, the owner or operator of the facility or transportation vehicle or unit, except as excluded under 40 CFR § 355.40, shall immediately notify Tribal Fire and Rescue (1st) and the White River Police Department (2nd). Such notification shall be in accordance with § 304 of Title III and regulations promulgated thereunder, which are currently found at 40 CFR § 355.
- B. The notification shall occur immediately after the facility emergency coordinator or designee, or operator or owner of the transportation vehicle has knowledge of the reportable release, unless impracticable under the circumstances. The notice of the reportable release shall include the following to the extent known at the time of the notice and as long as no delay in responding to the emergency results:
1. The specific location of the release.
 2. The chemical name or identity of substances released and a description of the container or vessel from which the release occurred.
 3. An estimate of the quantity of substances which were released into the environment.
 4. The time and duration of the release.
 5. The medium or media into which the release

occurred.

6. Any known or anticipated acute or chronic health risks associated with the release and, where appropriate, advice regarding medical attention necessary for exposed individuals.
 7. Proper precautions to take as a result of the release, including evacuation and other proposed response actions.
 8. The name and telephone number of the person or persons to be contacted for further information.
- C. Within thirty days after a reportable release, the owner or operator of a facility where a release occurred requiring notification pursuant to this section shall submit to the Committee and to the Commission a written follow-up emergency notice, in accordance with section 304 of Title III, stating and updating the information originally provided pursuant to subsection A of this section and including the following additional information:
1. Actions taken to respond to and contain the release.
 2. Any known or anticipated acute or chronic health risks associated with the release.
 3. If appropriate, advice regarding medical attention necessary for exposed individuals.
 4. Measures which have been or will be taken at the facility to avoid a reoccurrence of similar releases.
- D. After any additional information becomes known, the owner or operator shall update the notice in writing within seven calendar days.

SECTION 1.11 LISTS OF HAZARDOUS CHEMICALS; MATERIAL SAFETY DATA SHEETS

- A. For the purposes of this Chapter only, the Tribe references the standards set forth in 29 CFR § 1910.1200 [Hazard Communication] regarding hazardous chemicals and Material Data Safety Sheets ("MSDS"), derived from the Occupational Health and Safety Act of 1970 (P.L. 91-593; 84 Stat. 1590).

- B. A person who owns or operates a facility which is subject to emergency planning under this Chapter, shall submit to the Committee, the Commission, and the fire department with jurisdiction over the facility a MSDS for each chemical, or a list of hazardous chemicals stored, handled, or processed at the facility pursuant to § 311 of Title III and regulations establishing minimum threshold levels adopted under that Act, currently found at 40 CFR § 370.
- C. If a list of hazardous chemicals is submitted under this section it shall include:
1. Information prescribed by § 311 of Title III.
 2. The chemical abstract service registry number applicable to each such chemical and substance, if available.
 3. An indication of whether the owner elects to withhold information about the hazardous chemical or extremely hazardous substance from disclosure as a trade secret.
- D. On request of the Committee, the Commission, or the fire department with jurisdiction over the facility, an owner or operator of a facility who has submitted a list pursuant to this section shall also submit the MSDS for any chemical on the list to the requesting agency. On request by any person, the Committee may make available a MSDS or transmit the request to the Commission which shall make the MSDS available, subject to the trade secret provisions and regulations adopted under Title III. If the Committee or Commission does not have the requested MSDS, the Committee or Commission shall request the MSDS from the facility owner or operator. The facility owner or operator shall make the MSDS available within thirty days after receiving the request to the Committee or Commission and the Committee or Commission shall make the MSDS available to the requesting person subject to the trade secret provisions and regulations adopted under Title III.
- E. Within three months after discovery by an owner or operator of a facility of significant new information concerning an aspect of a hazardous chemical for which a list or MSDS was submitted, or within three months of after a facility obtains a new hazardous chemical subject to the reporting requirements of this section, the owner or operator shall update and submit a revised list or MSDS to the Committee, the Commission and the fire department with jurisdiction over the facility.

SECTION 1.12 EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORM

- A. A person who owns or operates a facility which is required to provide a MSDS or chemical listing under Section 1.11 shall submit to the Committee, the Commission, and the fire department with jurisdiction over the facility, an emergency and hazardous chemical inventory form prepared by the commission and in substantial conformance with that developed by EPA pursuant to § 312 of Title III as well as comply with § 312 of Title III and regulations adopted under that Act, currently found at 40 CFR § 370.40.
- B. The inventory form shall be submitted on or before March 1 of each year, and shall contain data on hazardous chemicals present at the facility during the preceding calendar year above minimum thresholds established in regulations under § 312 of Title III. The owner or operator shall submit a "tier II form."
- C. The tier II inventory form shall contain the following information:
1. The chemical name or the common name of the chemical as provided on the material safety data sheet and the CAS number.
 2. An estimate, in ranges, of the maximum amount of the hazardous chemical present at the facility at any time during the preceding year.
 3. An estimate, in ranges, of the average daily amount of the hazardous chemical present at the facility during the previous year.
 4. A brief description of the manner of storage of hazardous chemical.
 5. The location of the hazardous chemical at the facility.
 6. An indication of whether the owner elects to withhold location information or other information about a specific hazardous chemical from disclosure to the public as a trade secret.
- D. An owner or operator of a facility subject to this section shall submit the information required by this section on the inventory form provided by the Administrator of the United States Environmental Protection Agency unless the Commission establishes its

own form which prescribes identical content as prescribed by 40 CFR § 370.40.

- E. For purposes of this section, Tier II forms are the forms established under 40 CFR § 370.

SECTION 1.13 TOXIC CHEMICAL RELEASE FORMS; DEFINITIONS

- A. For purposes of this section:

1. "Administrator" means the Administrator of the United States Environmental Protection Agency.
2. "Manufacture" means to produce, prepare, import or compound a toxic chemical.
3. "Process" means the preparation of a toxic chemical after its manufacture for distribution in commerce either:
 - (1) In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance, or
 - (2) As part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product.

- B. In order to implement § 313 of Title III the owner or operator of a facility subject to the requirements of this section and § 313 of Title III and regulations adopted under that Act shall complete a toxic chemical release form as supplied by the Administrator, pursuant to § 313 of Title III, or as supplied by the Commission, for each toxic chemical listed by the Administrator pursuant to § 313 of Title III that was manufactured, processed or otherwise used in quantities exceeding the toxic chemical threshold quantity as established in § 313 of Title III and regulations promulgated under that Act during the preceding calendar year at that facility. The regulations are currently found at 40 CFR § 372. The form shall be submitted to the Administrator and to the Commission on or before July 1 of each year and shall contain data reflecting releases during the preceding calendar year.

- C. The release forms required under this section are intended to provide information to the Tribe and to the

public, including citizens of communities surrounding facilities covered by this section. The release form shall be available consistent with the trade secret provisions of Title III to inform persons about releases of toxic chemicals to the environment and to assist Tribal agencies in reducing chemical releases.

SECTION 1.14 **INSPECTION BY TRIBAL FIRE AND RESCUE OR TRIBAL SAFETY OFFICER**

- A. For the purposes of this Chapter, upon reasonable notice, Tribal Fire and Rescue or the Tribal Safety Officer may enter and inspect facilities in order to determine compliance with this chapter and for gathering information on hazardous chemicals for the purposes of emergency planning. Facilities over which Tribal Fire and Rescue has jurisdiction shall allow on-site inspection and shall provide to the department specific location information on hazardous chemicals at the facility.
- B. Tribal Fire and Rescue, and any other authorized officer, may execute a search warrant issued by the Tribal Court in matters arising under this Chapter. Such warrant shall issue with or without a showing of probable cause that an offense has been or is being committed. If issued without probable cause, the applicant Tribal Fire and Rescue must show that the inspection is a part of a neutral scheme of inspection and review pursuant to this ordinance.
- C. The Tribal Court of the White Mountain Apache tribe has jurisdiction upon the filing of a verified complaint by the Tribal Fire and Rescue to issue a warrant for the inspection of a facility subject to this Chapter. If necessary, the warrant shall be executed with the assistance of the White Mountain Apache Tribal Police.
- D. At the time of such inspection, the manager or the manager's designee shall, upon inquiry, advise Tribal Fire and Rescue of the existence and location of any substance whose character is unknown, but which is suspected of being subject to regulation under this ordinance. Tribal Fire and Rescue shall be allowed access to such substance and, if it is subject to such regulation, Tribal Fire and Rescue may assist the inspected party to undertake proper storage and handling, or disposal. Tribal Fire and Rescue shall not, however, be responsible for such disposal, and that responsibility shall remain at all times with the facility and its manager(s).

SECTION 1.15 VIOLATION; PENALTIES AND INJUNCTIVE RELIEF

- A. *Civil penalties.* Any person, excluding tribal entities or tribal corporations, who fails to comply with the provisions of this ordinance shall be subject to civil penalties of up to \$25,000 per day for each day during which the violation continues. In the case of a second or subsequent violation, any such person may be subject to civil penalties of up to \$75,000 for each day the violation continues.
- B. *Criminal penalties.* Any person subject to the criminal jurisdiction of the White Mountain Apache Tribe who knowingly and willfully fails to comply with the provisions of this ordinance shall, upon conviction, be fined not more than \$5,000 or imprisoned for not more than one (1) year, or both for each violation.
- C. *Injunctive relief.* Upon proper application to the Tribal Court through the Tribal Attorney's Office, an injunction may be issued to compel action or to prohibit action in order to achieve compliance with this ordinance.

SECTION 1.16 IMMINENT DANGERS

- A. The Tribal Court of the White Mountain Apache Tribe has jurisdiction upon the filing of a verified complaint by the Commission through the Tribal Attorney's Office to restrain any hazardous materials, conditions, practices, or transportation in any place within the exterior boundaries of the Fort Apache Indian Reservation which could reasonably be expected to cause death or serious physical harm. Such authority may be immediately utilized where it does not reasonably appear that the imminence of such danger cannot be eliminated through other lawful available means. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct or remove the imminent danger and may prohibit the presence of any individual in locations or under conditions where such imminent danger exists; except, however, that individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations or where a cessation of operations is necessary to permit such to be accomplished in a safe and orderly manner shall not be so restrained.
- B. Upon filing of any such complaint the Tribal Court of the White Mountain Apache Tribe has jurisdiction to grant

such injunctive relief or temporary restraining order pending final order pursuant to this Chapter. The proceeding shall be as provided by the White Mountain Apache Rules of Civil Procedure.

- C. Whenever and as soon as the Commission or its authorized representative concludes the conditions or practices described in subsection A exist in any place within the exterior boundaries of the Fort Apache Indian Reservation, it shall inform the general public or specific population affected of the relief being requested.

SECTION 1.17 **NOT A CONSENT TO BE SUED OR WAIVER OF SOVEREIGN IMMUNITY**

The establishment of the Commission and the Committee and the authority granted to it by this Chapter shall not constitute consent to be sued nor a waiver of the sovereign immunity of the White Mountain Apache Tribe, its agents, or representatives in any manner whatsoever.

SECTION 1.18 **SEVERABILITY**

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