

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

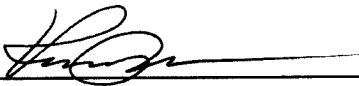
WHEREAS, the Tribal Council by Resolution No. 08-95-250 directed the Tribal Council Secretary to post the proposed Tribal Solid Waste Landfill Ordinance establishing Chapter Two of the Environmental Code in each district for a minimum of 10 days as required by the Constitution; and

WHEREAS, the Council Secretary advised the Tribal Council that said proposed ordinance has been posted in accordance with that directive; and


WHEREAS, the Tribal Council having received no opposition to the proposed Tribal Solid Waste Landfill Ordinance concludes that Ordinance No. 202 establishing Chapter Two of the Environmental Code should be enacted.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby enacts Ordinance No. 202 providing for the regulation of solid waste and landfills on the Fort Apache Indian Reservation to be codified as Chapter Two of the Environmental Code of the White Mountain Apache Tribe.

The foregoing resolution was on September 27, 1995, 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), (m), (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

OCT 05 1995

ACTING

ARTICLE I - TRIBAL SOLID WASTE PERMITTING PROGRAM

SECTION 2.1 **AUTHORITY**

(a) This Chapter, "White Mountain Apache Tribal Solid Waste Ordinance" shall be governed by the Constitution of the White Mountain Apache Tribe of the Fort Apache Indian Reservation and shall extend to all persons and subjects, to all lands and other property including natural resources, and to all waters and air space within the exterior boundaries of the Fort Apache Indian Reservation ("Reservation"), including any lands which may be later added to the Reservation by any law. White Mountain Apache tribal authority shall extend outside the boundaries of the Reservation to any persons, subjects, or real property which are, or may hereafter be, included within the jurisdiction of the Tribe under any law of the United States. The purpose of this ordinance is to regulate the disposal of solid waste on the Reservation in order to provide for the health, safety, and welfare of the Reservation environment and its populace, including temporary visitors and persons who may pass through the reservation.

(b) Any person who violates any provision of this Chapter or enforceable regulation adopted pursuant to this Chapter shall be prosecuted under tribal law pursuant to the authority of the Tribe as set forth in the Constitution and such other laws, ordinances and authorities as have or may be adopted by the White Mountain Apache Tribe of the Fort Apache Indian Reservation. The Tribal Judiciary shall be vested with all judicial powers of the Tribe, including the power to decide cases in which any person, as defined in Article II, Section 2.2 of this Chapter, is accused by the Tribal Permitting Authority of committing an offense against the laws of the Tribe. However, certain determinations regarding compliance with this Chapter may be initially made by the Tribal Permitting Authority as set forth in this Article. The powers granted to the judiciary by this Section shall include judicial powers of inherent sovereign authority or other powers which are or may later be granted or delegated by the Federal Government to the Tribe.

SECTION 2.2 **SCOPE AND DEFINITIONS**

(a) Scope.

(1) No TSWLF shall be constructed or operated at any location which is within the jurisdiction, or hereafter comes within the jurisdiction, of the White Mountain Apache Tribe except as it is in compliance with this Chapter. The TPA may impose more stringent requirements or standards than may be minimally required or authorized by this Chapter.

(b) Definitions.

(1) The definitions in Article II apply to all subparts of this Article. For purposes of this

"Permit" or "prior approval and conditions" means any authorization, license, or equivalent control document issued under the authority of this Chapter regulating the location, operation, design, ground-water monitoring, corrective action, closure, post-closure care, and financial assurance of tribal solid waste landfills.

"Permit documents" means permit applications, draft and final TSWLF permits, or other documents that include applicable design and management conditions in accordance with Article II of this Chapter and the technical and administrative information used to explain the basis of the permit conditions.

"Regional Administrator" means the Regional Administrator from Region 9 of the U.S. Environmental Protection Agency ("EPA").

"Regulations" means those provisions duly adopted or approved by the Tribal Council to implement the Tribal Solid Waste Landfill permit program, to undertake compliance monitoring activities, to initiate and prosecute enforcement actions in the Tribal Court and to undertake such other actions or activities as are authorized by this Chapter. Any such regulation adopted shall not contradict or otherwise be inconsistent with the provisions of this Chapter.

"Reservation" means the Fort Apache Indian Reservation of the White Mountain Apache Tribe.

"Tribe" means the White Mountain Apache Tribe of the Fort Apache Indian Reservation.

"Tribal Council of the White Mountain Apache Tribe" or "Tribal Council" means the recognized governing body of the White Mountain Apache Tribe of the Fort Apache Indian Reservation.

"Tribal Permitting Authority" or "TPA" means the person or entity authorized by the Tribal Council of the White Mountain Apache Tribe of the Fort Apache Indian Reservation to implement the Tribal Solid Waste Landfill permit program, to undertake compliance monitoring activities, to initiate court actions and to undertake other actions as authorized by this Chapter.

"Tribal Solid Waste Landfill" unit or "TSWLF" means tribal solid waste landfill as defined in Article II Section 2.2 of this Chapter.

"Tribal program" or "tribal permit program" means all the authorities, activities, and procedures that comprise the Tribe's system of prior approval and conditions for regulating the location, operation, design, ground-water monitoring, corrective action, closure, post-closure and financial assurance of tribal solid waste landfills.

SECTION 2.3 **RESTRICTION ON CONSTRUCTION**

(a) Until and unless this Chapter is amended, only a branch of the Tribe may engage in the management and operation of a TSWLF.

SECTION 2.4 **AUTHORITY OF TRIBAL PERMITTING AUTHORITY TO PROMULGATE REGULATIONS**

(a) The TPA may promulgate such regulations as are necessary to implement the requirements of this Chapter. Such regulations shall have the effect of tribal law upon approval by the Tribal Council in the same manner as ordinances are approved pursuant to Article XV of the Constitution of the White Mountain Apache Tribe. Any such regulation adopted shall not contradict or otherwise be inconsistent with the provisions of this Chapter.

SECTION 2.5 **[RESERVED]**

SECTION 2.6 **PERMITTING REQUIREMENTS**

(a) No TSWLF shall be constructed or operated at any location which is within the jurisdiction, or hereafter comes within the jurisdiction, of the White Mountain Apache Tribe except as it is in compliance with this Chapter. The TPA may impose more stringent requirements or standards than may be minimally required or authorized as in its judgment may be necessary to carry out the provisions of this chapter. Compliance with permitting requirements means that all facilities must meet the requirements contained in this Article.

(1) All TSWLF permit documents for permit determinations shall be made available for public review and comment except those which are claimed and verified by the TPA as being those which would be subject to protection under federal Freedom of Information Act, 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. §552a or other applicable law. Challenges, if any, to a determination that such information is subject to this or other protections shall be heard in the White Mountain Apache Tribal Court.

(2) All final permit determinations on TSWLF permit applications shall be made known to the public. Such determinations shall be available for review at the office of the TPA. Notice of such availability shall be published or otherwise publicly acknowledged by the TPA.

(b) Public comments on permit determinations shall be considered. A 30 day written comment period may be provided for public review of proposed operating permits. Only written comments clearly identifying the concerns or issues will be considered by the office of the TPA. Any such comments shall be provided in letter form and must clearly identify the commentor.

The TPA may respond in writing to appropriately submitted comments within 30 days of the expiration of the comment period and such responses and summary of whatever comments are actually responded to shall be available for public review at the offices of the TPA.

Public hearings shall be provided for by the TPA prior to final approval of a permit. Notice of each hearing shall be well publicized and shall also be mailed to persons who may have a particular interest in the solid waste permitting decision. A list of such persons shall be compiled and maintained. Such persons shall also be made aware of the availability of materials including policy, program, and technical information regarding the permitting decision. Notice of such public hearing shall be publicized no less than 30 days prior to the date of the hearing. The notice shall identify the matters to be discussed at the hearing and shall include or be accompanied by a discussion of the TPA's tentative determination on major issues and procedures for obtaining further information. Reports, documents and data relevant to the discussion at the public hearing shall be available to the public at least 30 days before the hearing.

The hearing(s) shall be held at times and places which, to the maximum extent feasible, facilitate attendance by the public. In cases of actions with broad interest, holding more than one hearing should be considered. The TPA shall schedule witnesses in advance, when necessary, to ensure maximum participation and allotment of adequate time for all speakers. Additional time shall be reserved for unscheduled testimony.

The TPA shall initiate the hearing by advising the audience of the issues involved in the decision to be made, the considerations the department will take into account, the department's tentative determinations (if any) and the information which is particularly solicited from the public. The TPA shall prepare a complete record of the hearing proceedings and make it available at no cost to anyone who requests it. Such record may consist of a transcript, a recording or other complete record. A copy of the record shall be available for public review.

(c) The TPA has the authority to collect all information necessary to issue permits that are adequate to ensure compliance with Article II of this Chapter. The TPA may promulgate such regulations as are necessary to further implement or clarify this Section. Such regulations, if any, shall be promulgated pursuant to Section 2.4 of this Article.

(d)(1) Prior to construction and operation a TSWLF must first obtain a permit through the tribal permit program incorporating the conditions identified in Section 2.6(d)(3) of this Article. Any such permit issued must be drafted or approved by the TPA and will not become effective until the expiration of any applicable comment period and final approval by the Tribal Council.

(2) All existing TSWLFs must obtain a permit incorporating the conditions identified in Section 2.6(d)(3) of this Article. Any such permit issued must be drafted or approved by the TPA and will not become effective until the expiration of any applicable comment period and

final approval by the Tribal Council. If no permit is issued for an existing TSWLF, the TPA shall set forth a schedule providing for the final closure of the existing TSWLF mandating closure of the facility within a period of 6 months.

(3) The TPA shall, at a minimum, incorporate into every permit authorizing the construction and/or operation of any TSWLF requirements adequate to ensure compliance with Article II of this Chapter. The requirements include:

- (i) General standards which achieve compliance with Article II Subpart A.
- (ii) Location restrictions for TSWLF which achieve compliance with Article II Subpart B.
- (iii) Operating criteria for TSWLF which achieve compliance with Article II Subpart C.
- (iv) Design criteria for TSWLF which achieve compliance with Article II Subpart D.
- (v) Ground-water monitoring and corrective action standards for TSWLF which achieve compliance with Article II Subpart E.
- (vi) Closure and post closure care standards for TSWLF which achieve compliance with Article II Subpart F.
- (vii) Financial assurance standards for TSWLF which achieve compliance with Article II Subpart G.
- (viii) Acknowledgment that the TPA may conduct any inspections, perform any tests (at the facility or on materials or samples gathered at the facility), require responses to requests for information, or take any other action reasonably calculated to assert the TPA's authority to carry out its duties pursuant to Section 2.7 of this Article and the rest of this Chapter.

SECTION 2.7 COMPLIANCE MONITORING AUTHORITY

(a) The TPA is empowered to:

(1) obtain any and all information, including records and reports, from an owner or operator of a TSWLF necessary to determine whether the owner/operator is in compliance with the tribal permitting program requirements;

(2) conduct monitoring, testing, or inspection calculated to ensure that owners/operators are in compliance with the tribal permitting program requirements. The owner

or operator shall maintain such operating and other records as the TPA may reasonably require pursuant to either a validly issued permit or as may be directed by a validly adopted regulation.

(3) enter on or into any site or premises subject to the permit program or in which records relevant to the operation of regulated facilities or activities are kept. In the event that entry is denied, the TPA or an authorized representative(s) 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 a violation has been or is being committed. If issued without probable cause, the applicant TPA must show that the inspection is a part of a neutral scheme of inspection and review pursuant to this Chapter.

(b) Any information lawfully gathered by the TPA as a result of these or other lawful activities under this or other applicable laws may be used in enforcement proceedings brought by the TPA. However, information which may be proprietary or otherwise protected information of the White Mountain Apache Tribe may only be admitted to the Tribal Court *in camera* and shall not otherwise be discoverable or releasable for public purposes. However, any information gathered which is or would be inadmissible in Tribal Court pursuant to tribal or other applicable rules of evidence or law shall not be admissible in such enforcement proceedings.

(c) In order to ensure that the TPA's compliance monitoring activities are adequate to ensure compliance with the permit program, the TPA may:

(1) verify the accuracy of information submitted by owners or operators of TSWLFs by accompanying any permittee to take samples and to review the results of the testing of such samples either independently or with the permittee. The TPA is authorized to conduct independent inspections, testing and monitoring, at the discretion of the TPA, to ensure that all conditions of the permit are being complied with.

(2) verify the adequacy of methods (including sampling) used by owners or operators in developing information submitted to the TPA. To this end, the TPA is authorized to review the methods used by the permittee either independently, or through the assistance of retained third parties who, in the TPA's judgment, possess adequate expertise to evaluate such methods.

(3) obtain evidence admissible in an enforcement proceeding as set forth in subsection b, above.

(4) receive and ensure proper consideration of information submitted by the public. To this end, the TPA shall accept written comments or information submitted by the public addressing the compliance of persons, or lack thereof, with the provisions of this Chapter. The TPA shall consider such information within a reasonable period of time. The TPA shall act upon such information within its discretion and may provide an oral or written response to the commentor. It shall not be required that a public commentor provide his or her identity for purposes of this subsection. The TPA may promulgate such regulations pursuant to Section 2.4

of this Article as may be necessary to further implement this subsection.

SECTION 2.8 ENFORCEMENT AUTHORITY

The TPA is authorized, to the extent necessary, to employ independent counsel to prosecute enforcement and other actions addressed in this Section. Where no actual or apparent conflict of interest is present, enforcement actions may be referred to the Office of the Tribal Attorney. The Tribal Court, in an appropriately initiated action by the TPA under the Tribal Judicial Code, and the TPA are empowered and authorized to and may impose the following remedies and mandates for violation(s) of the tribal permitting program requirements and this Chapter generally:

(a) Upon TPA's adequately showing to the Tribal Court that any particular activity subject to regulation by this Chapter poses a risk of, or may currently endanger or cause damage to human health or the environment, the Tribal Court may issue an order to restrain immediately and effectively any person from engaging in the complained of activity. Actions brought under this subsection shall be conducted in accordance with the provisions of the White Mountain Apache Tribal Court Formal Rules of Civil Procedure;

(b) Upon TPA's adequately showing to the Tribal Court that any person is engaging in, threatening to engage in, or continuing any activity which violates the provisions of this Chapter, Tribal Council approved regulations adopted thereunder, TPA or Tribal Court order, or permit issued pursuant to the Tribal permit program, the Tribal Court may issue an injunction to enjoin such activity. Actions brought under this subsection shall be conducted in accordance with the provisions of the White Mountain Apache Tribal Court Formal Rules of Civil Procedure;

(c) The TPA may sue in the White Mountain Apache Tribal Court to recover civil penalties for violations of the provisions of this Chapter, Tribal Council approved regulations adopted thereunder, order, or permit issued pursuant to the Tribal permit program. Such penalties shall be in the amount of up to one-thousand dollars (\$1,000) per violation per day, to a maximum of ten-thousand dollars (\$10,000) per day. Further, costs may be awarded in accordance with the provisions of the Tribal Tort Claims Act Section 3.13 as it exists or is hereafter amended. Actions brought under this subsection shall be conducted in accordance with the provisions of the White Mountain Apache Tribal Court Formal Rules of Civil Procedure;

(d) The TPA may issue compliance orders requiring any person to undertake certain activities to come into compliance with the law or conditions of its permit; it may issue requests for information to which any person must respond regarding its operations or otherwise having to do with ensuring that such person is complying with the law or conditions of its permit; it may issue a compliance schedule to any person where the TPA determines that any person is not in compliance with the law or conditions of a permit.

(e) A person's failure to file a response to a request for information within 15 working days of the request shall constitute a civil violation of this Chapter. A person's failure to meet the terms of a compliance order or to meet the terms of a compliance schedule shall also constitute a civil violation of this Chapter.

(f) Except for an arm or branch of the White Mountain Apache Tribe or any person acting within the official and lawful scope of their duties, it shall be a criminal offense for any person to intentionally or wilfully violate the provisions of this Chapter. Persons are conclusively presumed to be aware of the requirements of this Chapter upon its adopted date. It shall not be a defense that a person was acting at the direction of a superior or supervisor. Such offenses shall be punishable to the maximum extent of the law, restricted only by the limitations set forth in the Indian Civil Rights Act of 1968, 25 U.S.C. §1302. Such matters shall be referred to the Office of the Tribal Prosecutor for consideration of filing such criminal charges. If the White Mountain Apache Tribe lacks criminal jurisdiction over the person(s) for purposes of this Chapter, the matter may be civilly prosecuted and/or referred to the appropriate federal agency or authority for criminal and/or civil prosecution.

(g) No person shall dump or otherwise dispose of any household solid waste on any lands or at any place within the jurisdiction of the White Mountain Apache Tribe other than at a TSWLF unit permitted by the TPA, or otherwise in a manner not in accordance with such permits or regulations that the TPA may issue or promulgate in order to serve the purposes and intent of this Chapter. No person shall burn household wastes. No person shall dump or otherwise dispose of any other waste, including construction debris, at any place within the jurisdiction of the White Mountain Apache Tribe other than at a site, location, or disposal unit authorized by the Tribal Council or other appropriate tribal authority.

Any person who violates these conditions or regulations shall be in violation of this Chapter and shall be subject to all enforcement actions and other provisions of this Chapter. This provision is applicable regardless of whether the activity occurs on assigned or unassigned land within the meaning of the White Mountain Apache Land Code, whether the land is leased or occupied by a tribal or non-tribal entity, and regardless of the nature of any other manner in which such lands may be held or be subject to a legal interest. Additionally, such person may be required to pay for the clean-up and other impacts (including groundwater, soil or other damage or contamination) of the illegally deposited waste. It shall be within the TPA's discretion as to whether such waste shall be removed and the area remediated by tribal or non-tribal entities not related to such person, or whether such person shall be authorized to conduct such clean-up and remediation directly. The TPA shall consider authorizing such person to complete clean-up and remediation within fourteen (14) days, or within such additional time as the TPA determines is appropriate, after the person is notified in writing of the unlawful dumping. Additional costs may be recovered in accordance with the provisions of the Tribal Tort Claims Act Section 3.13 as it exists or is hereafter amended.

(h) The TPA is authorized to issue written orders and take such other action in

accordance with subsection (c) of this section compelling the owner, assignee, or occupant of buildings, grounds, or lots or assigned lands to remove rubbish, trash, weeds, wrecked auto bodies or other accumulations of filth or debris which constitutes a hazard to the public health and safety or welfare from buildings, grounds, lots, or other places which such persons may own or control. Notice shall be provided to such person not less than thirty days before the day set for compliance. The notice shall either be personally served or mailed to the owner, assignee or person in control of the site at his or her last known address. If such person does not comply with an order validly issued by the TPA, the TPA may make arrangements for the removal of such filth or debris and may assess the person the costs of removal and proper disposal of such material. If necessary, the TPA may bring an action in Tribal Court to recover the costs and may recover such other costs as are provided for in accordance with the provisions of the Tribal Tort Claims Act Section 3.13 as it exists or is hereafter amended.

SECTION 2.9 **INTERVENTION IN CIVIL PROCEEDINGS**

(a) The TPA shall:

(1) provide notice and opportunity for public involvement in all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment);

(2) investigate and provide responses to citizen complaints about violations as set forth in section 2.7(c)(4) of this Article; and

(3) will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.

SECTION 2.10 **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.