

§ 551. Development of television reception

The Navajo Nation Council approves of the further development of television reception to areas of the Navajo Nation not presently receiving this service.

History

CN-70-59.

Revision note. § 551 was not repealed by CD-56-86 and is not inconsistent with the Navajo Telecommunications Regulatory Code.

Chapter 6. [Reserved]

§§ 601 to 617. [Reserved]

History

Former §§ 601 to 617 were transferred to 5 N.N.C. §§ 1651 to 1655 pursuant to CAP-23-03.

Title 22

Water

Chapter 1. Development and Improvement

Subchapter 1. Generally

§ 1. Program; authority to prepare and present

The President of the Navajo Nation is authorized and directed, with the approval of the Resources Committee, to prepare and present to the Navajo Nation Council a program to increase the supply of available water on Navajo Nation lands and by sanitary measures to make a larger portion of such water safe for domestic use.

History

CF-36-57, February 15, 1957.

CJ-66-53, 1953 Res. p. 276, July 31, 1953.

CJ-23-53, 1953 Res. p. 274, January 23, 1953.

CJ-15-53, 1953 Res. p. 268, January 15, 1953, authorized water development programs and appropriations for such programs.

Shortages of water; control. ACJN-95-66, June 15, 1966.

Sewage treatment facilities at Tuba City. CAP-43-65, April 21, 1965.

Water development survey. By ACMA-25-65, March 15, 1965.

Agreement for repair and maintenance of water wells. CD-60-64, December 11, 1964.

Water and sanitation facilities-Support of federal program. CN-62-59, November 12, 1959.

Agreements with Surgeon General:

ACMY-65-66, May 3, 1966.

ACD-174-64, December 3, 1964.

ACJN-90-64, June 15, 1964.

ACJN-88-64, June 15, 1964.

ACMA-37-64, March 19, 1964.

ACMA-36-64, March 19, 1964.

ACJA-10-64, January 15, 1964.

ACJN-95-63, June 27, 1963.

ACJN-94-63, June 27, 1963.

ACJN-93-63, June 27, 1963.

ACJN-83-63, June 3, 1963.

ACF-45-63, February 15, 1963.

ACJY-99-60, July 5, 1960.

ACJY-98-60, July 5, 1960.

ACAP-56-60, April 25, 1960.

ACD-169-59, December 2, 1959.

CN-62-59, November 12, 1959.

Subchapter 3. Emergency Water Transportation Assistance Program

§ 51. Establishment

The Navajo Nation Council established the Emergency Water Transportation Assistance Program and the Program will be operated within the Water Operations and Maintenance Department within the Division of Natural Resources.

History

ACJN-66-84, June 12, 1984.

§ 52. Justification

The lack of rainfall and snowfall on Navajo rangelands has resulted in severe drought conditions. Navajo stockmen are subject to unbearable hardship and, therefore, as an absolute necessity to alleviate some of the hardship suffered by the livestock during this drought season, prompt implementation of the Emergency Water Transportation Assistance Program is imperative.

History

ACJN-66-84, June 12, 1984.

§ 53. Objective

A. The Water Operations and Maintenance Department shall be responsible for the implementation of the Emergency Water Transportation Assistance Program in close coordination with the Bureau of Indian Affairs, Land Operations, Navajo Tribal Utility Authority, the Indian Health Services, the Grazing Committees and the Land Board Members, chapter officers, and other agencies engaged in water and livestock resources.

B. A Coordinator shall be employed by the Water Operations and Maintenance Department who will be responsible for the administration and implementation of the Emergency Water Transportation Assistance Program.

History

ACJN-66-84, June 12, 1984.

§ 54. Duties and responsibilities

The duties and responsibilities of the Coordinator are as follows:

A. The Coordinator shall implement the Emergency Water Transportation Assistance Program. The Construction Supervisor II of the Water Operations and Maintenance Agency Stations will designate "Field Inspectors" to monitor and provide directions to the Navajo Truckers in their respective areas on a daily basis, during the duration of this Emergency Water Transportation Assistance Program.

B. The Coordinator will keep and maintain accurate records of all expenditures, keep accurate records of all Trucking Agreements and submit a weekly financial and general program status report to the Director of the Water Operations and Maintenance Department.

C. The Coordinator shall insure adherence to proper accounting procedures, and existing policies and procedures established by the Navajo Nation Division of Finance.

D. The Coordinator shall have sufficient supervisory control to insure

that the intent and objectives of the Emergency Water Transportation Assistance Program are accomplished.

E. The Coordinator shall receive all resolutions for water hauling which shall be reviewed by the Director of the Water Operations and Maintenance Department for proper action. Priorities will then be established according to the severity of the drought conditions existing in the various areas of the Navajo Nation.

History

ACJN-66-84, June 12, 1984.

Revision note. Slightly reworded for purposes of clarity.

§ 55. Trucking operation

A formal "Trucking Agreement" shall be drawn up with the individual truckers who shall provide trucks, water tanks, and insurance in accordance with conditions set forth in the Agreement. It shall be the responsibility of the Field Inspector to see that the truckers adhere to all the conditions contained in the Agreement.

History

ACJN-66-84, June 12, 1984.

§ 56. Amendment

This Plan of Operation may be amended, as necessary and appropriate, by the Government Services Committee of the Navajo Nation Council.

History

ACJY-115-85, July 9, 1985.

Subchapter 5. Distribution to Drought-Distressed Areas

History

Change of name. The Division of Water and Sanitation, referred to in ACJY-128-60 and ACJY-129-60, is the predecessor to the Resources Division and the Ground Water Development Department. The Water Department is now under the Division of Natural Resources.

§ 121. Applications; survey of drought-stricken areas

Applications for water for drought stricken areas shall be made by chapter organizations to the Division of Natural Resources. After the approval of applications by the Division of Natural Resources, the Division shall survey the drought stricken areas to determine the extent of distress and suggest feasible economical sources of relief.

History

CAP-25-67, April 13, 1967.

QN-67-66, June 9, 1966.

CJY-32-63, July 16, 1963.

ACJY-128-60, July 26, 1960.

ACJY-129-60, July 26, 1960.

CJY-49-60, July 22, 1960.

§ 122. Contract trucks; Navajo Nation trucks

A. The Division of Natural Resources shall contract for individually owned trucks to haul water to designated areas and each trucker shall be assigned the source from which the water is to be hauled. Preference shall be given to Navajo truck owners who are not presently employed elsewhere. Contract truckers shall be paid 14 cents (14 per ton mile, in liquid measurements, or equivalent thereof, one-way, and there will be no payment for dead runs. The maintenance and upkeep of the contracted trucks shall be the responsibility of the truck owner.

B. Trucks for hauling water shall be provided by the Navajo Nation whenever contract truckers are not available or when tanks cannot be found. Special equipment, repairs and the cost of operating Navajo Nation vehicles shall be paid for out of appropriated funds.

History

ACJY-128-60, July 26, 1960.

Revision note. The last sentence of subsection (B) was slightly rephrased for purposes of clarity.

§ 123. Development of water sources; equipment and labor; costs

A. All reasonable efforts shall be made to develop water sources already available in stricken areas. Where sound wells equipped with windmills are not producing properly, engines and pump jacks shall be installed. Equipment and labor shall be paid for out of appropriated funds, but operation of the installations shall be at the direction of each community, and the costs paid for by the people making use of the facilities.

B. In areas where natural water sources are not adequate, special equipment shall be purchased and installed under the special water program. Storage tanks, hauling tanks, drinking troughs, pumps, pipe and fixtures shall be acquired and installed under the program where the need and efficiency make it most feasible.

History

ACJY-28-60, July 26, 1960.

Subchapter 7. Window Rock Water Supply and Storage System

§ 171. Construction and operation; authority

The President of the Navajo Nation, with the approval of the Resources Committee, is authorized, empowered, and instructed to do any and all things deemed to be necessary, advisable or incidental to accomplish the construction and operation of a water supply and storage system for Window Rock.

History

CJA-18-59, January 23, 1959.

Chapter 2. [Reserved]

Chapter 3. Use of Water by Non-Navajos

§ 401. Sale-Generally

All water sales to non-Navajo individuals and organizations shall be by means of a "standard water purchase contract".

History

ACO-140-65, October 22, 1965.

ACD-168-59, December 2, 1959.

Nonpotable water. ACF-17-65, February 11, 1965.

§ 402. Price

A. Well water shall be sold at the rate of 30 cents (30 per 1,000 gallons on a "pump it yourself" basis.

B. Surface water shall be sold at the rate of 25 cents (25 per 1,000 gallons.

C. The selling price of water supplied from a pumping station or system operated by the Navajo Nation shall be determined in each such case by the President of the Navajo Nation.

History

ACD-168-59, December 2, 1959.

§ 403. Exploration or drilling of wells; permit

No exploration or drilling of wells by non-Navajo individuals or organizations shall be done without first obtaining from the Navajo Nation a permit to perform such exploration or drilling.

History

ACD-168-59, December 2, 1959.

Chapter 5. Irrigation Projects

Cross References

Irrigated farm lands, see 3 N.N.C. §§ 45 and 61.

§ 601. Responsibility for operation and maintenance; policy

It is in the best interests of the Navajo Nation to accept responsibility for the operation and maintenance of irrigation projects on the Navajo Nation.

History

CMY-36-67, May 9, 1967.

CO-106-66, October 5, 1966.

CAP-56-66, April 28, 1966.

ACJN-80-65, June 9, 1965.

ACAU-129-64, August 24, 1964.

CMA-14-64, March 2, 1964.

ACJY-113-62, July 19, 1962.

CJA-15-60, January 22, 1960.

CJA-12-60, January 20, 1960.

CF-11-58, February 14, 1958.

CD-86-5, December 12, 1957.

CS-81-57, September 18, 1957.

CF-33-57, February 6, 1957

Cross References

Navajo Indian Irrigation Project, for text of Act, see Appendix in Title I of this Code.

§ 602. Acquisition of land

A. The Resources Committee of the Navajo Nation Council is authorized to cooperate with the Secretary of the Interior in the purchase of non-Navajo

ranches within the boundaries of the Navajo Indian Irrigation Project insofar as such purchases pertain to private and state lands.

B. The President of the Navajo Nation shall enter into, and execute on behalf of the Navajo Nation, such agreements as he or she finds may be necessary and desirable to acquire lands within the Navajo Indian Irrigation Project, and is further authorized and directed to do any and all things necessary, advisable or incidental to the accomplishment of the purpose and intent of this Chapter.

History

CJN-44-71, June 1, 1971.

Cross References

Land acquisitions, 2 N.N.C. § 695(B) (3).

Chapter 7. [Reserved]

History

The Emergency Services Department Plans of Operation codified previously at Chapter 7, §§ 801-807 deleted pursuant to Navajo Nation Attorney General's memorandum dated January 4, 1991. See Plans of Operation for Emergency Management, Disaster Assistance, and the Public Safety Committee.

Chapter 9. Water Development Technical Review Board

§ 1001. Establishment

The Navajo Water Development Technical Review Board is established.

History

ACMY-51-82, May 11, 1982.

Revision note. Slightly reworded for purposes of clarity.

§ 1002. Purposes

The purposes of the Water Development Technical Review Board are:

A. To act as a technical review board for proposed water projects of the Navajo Nation.

B. To authorize, review and implement a five year water development plan with regard to the economic and construction feasibility of proposed Navajo water projects as was authorized by Navajo Tribal Council Resolution CF-17-82.

History

ACMY-51-82, May 11, 1982.

Revision note. Slightly reworded for purposes of clarity.

§ 1003. Membership; selection; term

Five members shall be appointed by the President of the Navajo Nation who shall serve at the pleasure of the President of the Navajo Nation.

History

ACMY-51-82, May 11, 1982.

§ 1004. Powers; duties and responsibilities

A. General. The Navajo Water Development Technical Review Board shall have all powers, duties and responsibilities necessary to carry out its purposes as set forth in 22 N.N.C. § 1002, pursuant to Navajo Tribal Council Resolution CF-17-82.

B. Enumerated duties and responsibilities. The Water Development Technical Review Board shall have the following duties and responsibilities:

1. To review all documents presenting proposals for Navajo Nation water development projects.

2. To determine if the construction of a proposed water development project is economically and technically feasible.

3. To require that all necessary Tribal and local approvals and clearances have been obtained.

4. To finally review, authorize and prepare water development project proposals, with the assistance of such technical advisors as deemed necessary or appropriate by the Board so that the project may be implemented.

5. To assist in development and to approve a budget for each proposed Navajo Nation water development project so that the project can be included in the budget of the Navajo Nation for implementation in any one given Navajo Nation fiscal year.

6. To submit to the Resources Committee two written reports each year on the status and progress of all pending and approved water projects of the Navajo Nation.

History

ACMY-51-82, May 11, 1982.

Revision note. Slightly reworded for purposes of clarity.

§ 1005. Meetings

A. Regular meetings of the Navajo Water Development Review Board shall be

held not more than two times per month. Special meetings may be called by the Chairperson of the Board of Navajo Water Development Technical Review Board.

B. Procedures. The Water Development Technical Review Board is empowered to develop its own procedures for the conduct of meetings, provided that all formal substantive action shall be taken by written resolution duly certified by the presiding officer, or memorialized by written memorandum setting forth the action taken and signed by the presiding officer and filed with the Central Records Department of the Navajo Nation.

C. Members of the Navajo Water Development Technical Review Board shall have authority only when acting as a Board legally in session; the Review Board shall not be bound in any way by any statement or action on the part of any individual Board member or advisor, unless such statement or action is in pursuance of a specific resolution or authority of the Review Board, which shall be duly recorded in minutes of the Board meetings, and attested to by the Chairperson of the Navajo Water Development Technical Review Board.

D. The Chairperson of the Navajo Water Development Technical Review Board shall be appointed by the President of the Navajo Nation. In the absence, of the Chairperson or the Vice-Chairperson or other Review Board member as the Chairperson or Vice-Chairperson shall delegate, shall call, conduct and preside at all meetings of the Navajo Water Development Technical Review Board, enforce the procedural rules adopted by the Review Board and sign all papers and documents required for action by the Review Board.

E. A majority of the members of the Review Board shall constitute a quorum for the transaction for business, and all actions and decisions of the Review Board shall be determined by a vote of the majority of Review Board members, including the Chairperson and members represented by duly executed proxy. Each such member shall have one vote.

F. A Review Board member may designate any other Review Board member present, by prior written authorization as his or her proxy to vote upon any or all matters to be determined at a specified Review Board meeting, or to take any other action on his or her behalf as specified in his or her said proxy.

G. A Review Board member may vote only one proxy vote and must be present at the specified meeting in order to vote as proxy for a Review Board member who is not present there at.

H. Advisors. The Chairperson of the Navajo Water Development Technical Review Board is authorized to enlist the assistance of representatives of such Navajo Nation entities and other technical staff advisors as deemed appropriate in furtherance of the function and duties of the Navajo Water Development Technical Review Board, who the Chairperson may designate as official advisors to the Review Board on a continuing or on a designated project basis, and such advisors shall provide appropriate support, advice and counsel on substantial matters.

History

ACMY-51-82, May 11, 1982.

Revision note. Slightly reworded for clarity.

§ 1006. Compensation

A. Members of the Navajo Water Development Technical Review Board shall be provided per diem allowances for expenses for attendance at regular or special meetings or in the performance of official duties as assigned and authorized in writing by the Chairperson of the Navajo Water Development Technical Review Board, at the rate of fifty dollars (\$50.00) per diem for such meetings held within the exterior boundaries of the Navajo Nation and one hundred dollars (\$100.00) per diem for such meetings held elsewhere, together with the current Tribal mileage rate for their travel expenses.

B. Technical or other advisory staff members may be reimbursed by written authorization of the Chairperson of the Navajo Water Development Technical Review Board at the current Tribal rates for actual travel expenses only and will receive no additional compensation.

C. Members of the Navajo Water Development Technical Review Board and Navajo Nation advisory staff shall otherwise assume their responsibilities in addition to their other responsibilities as employees of the Navajo Nation.

History

ACMY-51-82, May 11, 1982.

Cross References

Travel and travel expenses, see 2 N.N.C. § 3851 *et seq.*

See also Navajo Nation Personnel Policies and Procedures.

Chapter 11. Navajo Nation Water Code

Subchapter 1. General Provisions

§ 1101. Declaration of purposes; assertion of authority

In order to provide for a permanent homeland for the Navajo People to protect the health, the welfare and the economic security of the citizens of the Navajo Nation, to develop, manage, and preserve the water resources of the Navajo Nation, to secure a just and equitable distribution of the use of water within the Navajo Nation through a uniform and coherent system of regulation, and to provide for the exercise of the inherent sovereign powers of self-government by the Navajo Nation, the Navajo Nation asserts its sovereign authority over all actions taken within the territorial jurisdiction of the Navajo Nation which affect the use of water within the Navajo Nation.

History

CAU-34-84, August 2, 1984.

§ 1102. Application of the Code

Upon the effective date of this Code, it shall be unlawful for any person within the territorial jurisdiction of the Navajo Nation, as defined in 7 N.N.C. § 254, to impound, divert, withdraw, otherwise make any use of, or take any action of whatever kind affecting the use of water within the territorial jurisdiction of the Navajo Nation unless the applicable provisions of this Code and regulations and determinations made hereunder have been complied with. No right to use water, from whatever source, shall be recognized, except use-rights obtained under and subject to this Code.

History

CAU-34-84, August 2, 1984.

§ 1103. Nature of ownership

A. The Navajo Nation is the owner of the full equitable title to all of the waters of the Navajo Nation as defined in § 1104 of this Subchapter, and that title resides undiminished in the Navajo Nation; the United States holds the legal title to those waters solely as trustee for the Navajo Nation.

B. All rights to the use of the waters of the Navajo Nation are held subject to the overriding, prior and supreme rights, interests and governmental authority of the Navajo Nation, and the policy and provisions contained in this Code, amendments hereto, and administrative regulations and determinations hereunder.

History

CAU-34-84, August 2, 1984.

§ 1104. Waters of the Navajo Nation defined

The waters of the Navajo Nation are defined as: (1) all waters reserved at any time for any purpose to the Navajo Nation, and to Navajo Indian lands by the Navajo Nation or by the United States including any waters which, in the course of nature or as the result of artificial works or artificial streamflow enhancement or weather modification methods, flow into or otherwise enhance such waters; (2) all waters held by the Navajo Nation through prior or existing use, appropriation, purchase, contract, gift, bequest, or other means of acquisition; (3) all surface and groundwaters which are contained within hydrologic systems located exclusively within the lands of the Navajo Nation; and (4) all groundwaters located beneath the surface of the lands held in trust by the United States of America for the Navajo Nation.

History

CAU-34-84, August 2, 1984.

Subchapter 2. Notice of Enactment and Effect

§ 1201. Notice required

To insure that all persons and entities affected by this Code are given adequate notice of the enactment and effect of this Code, the Director of the Division of Natural Resources shall, within 30 days after the effective date of this Code, provide for public notice of its enactment and effect in accordance with the provisions of this Subchapter.

History

CAU-34-84, August 2, 1984.

§ 1202. Contents of notice

A. Such public notice shall contain the following statement, prominently displayed and in large, boldface type:

NOTICE: AFTER _____ NO PERSON OR PUBLIC OR PRIVATE ENTITY OF ANY KIND SHALL BE ENTITLED TO TAKE ANY ACTION WITHIN THE TERRITORIAL JURISDICTION OF THE NAVAJO NATION WHICH AFFECTS THE USE OF WATER WITHIN THE NAVAJO NATION, UNLESS SUCH ACTION IS AUTHORIZED BY A PERMIT AS PROVIDED FOR BY THE NAVAJO NATION WATER CODE. NO OTHER WATER USE RIGHTS OF ANY KIND, FROM WHATEVER SOURCE, SHALL BE RECOGNIZED. THE NECESSARY FORMS MAY BE PROCURED FROM THE DIVISION OF NATURAL RESOURCES, POST OFFICE BOX 308, WINDOW ROCK (NAVAJO NATION), ARIZONA 86515, (928) 729-5281-5284. COMPLETE COPIES OF THE NAVAJO NATION WATER CODE ARE ALSO AVAILABLE AT THE ABOVE ADDRESS.

B. In addition to the foregoing statement, the Director of the Division of Natural Resources may include in such public notice additional information deemed necessary in order to assure adequate notice of the enactment and legal effect of this Code.

History

CAU-34-84, August 2, 1984.

§ 1203. Notice—How given

A. The Director of the Division of Natural Resources shall give notice of the provisions of this Code as follows:

1. The notice provided above shall be placed in the Navajo Times at least once each week over a 6-week period.

2. The notice provided above shall be placed in a prominent and conspicuous location at the chapter houses, the Navajo Nation government offices, the Bureau of Indian Affairs offices, U.S. Post Offices, Indian Health Service hospitals and clinics, and in such other locations as are deemed necessary or appropriate.

3. The Director of the Division of Natural Resources may take any other steps and post any other notices as is deemed necessary to provide notice of the provisions of this Code.

History

CAU-34-84, August 2, 1984.

Subchapter 3. Resources Committee of the Navajo Nation Council

§ 1301. Resources Committee—General powers

A. In administering this Code, the Resources Committee may in addition to other actions:

1. Enter appropriate orders;
2. Recommend to the Navajo Nation Council for consideration, adoption, modification, or amendment such regulations as are deemed necessary to implement this Code;
3. File or intervene in any lawsuit, at the direction of Navajo Nation Council, or the President of the Navajo Nation Council;
4. Receive regular reports from the Director of the Division of Natural Resources;
5. Make determinations of availability and need as provided for in Subchapter 8 of the Code;
6. In cooperation with the Navajo Land Department, negotiate for and propose to the Navajo Nation Council the purchase or sale of real or personal property or other interests;
7. With the consent of the appropriate standing committees of the Navajo Nation Council and/or the Navajo Nation Council, enter into administrative agreements, exchange information, and otherwise cooperate with governmental agencies both on and off Navajo Nation lands, for appropriate purposes including the administration of interstate streams and groundwaters;
8. In cooperation with the other standing committees of the Navajo Nation Council, determine existing and foreseeable uses of and needs for water and other related resources; and
9. Take other actions as provided for in this Code.

History

CAU-34-84, August 2, 1984.

Cross References

Resources Committee powers, 2 N.N.C. § 694 *et seq.*

§ 1302. Disqualification

Any member of the Resources Committee may be disqualified either on his or her own motion or upon a majority vote of the Resources Committee whenever he or she is unable, because of a direct economic interest or other conflict of

interest, to serve impartially with respect to any matter.

History

CAU-34-84, August 2, 1984.

§ 1303. Water reserves

In connection with a determination of availability and need as provided for in Subchapter 8 or in connection with other actions taken under this Code, the Resources Committee may establish within particular areas dependent on common water supplies, reserve water supplies which, although subject to existing uses on an interim basis, are set aside for a definite or indefinite term of years for future Navajo Nation and other needs.

History

CAU-34-84, August 2, 1984.

§ 1304. Water assessments

Whenever the Resources Committee of the Navajo Nation Council determines that water not presently available is necessary for purposes and projects beneficial to a part or all of the Navajo Nation and the inhabitants thereof, the Resources Committee may assess individual water users a fair share of water, in predetermined units for such purposes, according to the relative priorities of the classes of uses.

History

CAU-34-84, August 2, 1984.

§ 1305. Designations of local management areas

The Resources Committee may, upon the recommendation of the Director of the Division of Natural Resources, Navajo Nation Departments or any person, isolate and define, within the surface and groundwater systems in which individual water uses are to some degree related by reason of common supply, "local management areas," such as municipal water districts or irrigation districts, for specialized administration under regulations adopted pursuant to this Code.

History

CAU-34-84, August 2, 1984.

§ 1306. Large user water permits

The Resources Committee may, at its option or upon application, recommend for consideration by the Navajo Nation Council the granting of water use permits for amounts in excess of 1000 acre feet per year and/or for uses which require assurance of long-term supply. Such permits may be conditioned upon payment of consideration and contain other contractual terms including but not limited to, limited periods of times of use, differing conditions of

revocability or terminability, and other conditions providing varying degrees of permanence.

History

CAU-34-84, August 2, 1984.

§ 1307. Charges for water uses

Reasonable charges may be imposed by regulations of the Resources Committee for the use of the waters of the Navajo Nation. Such charges shall not apply to domestic uses, stockwatering uses, fish and wildlife uses and irrigated agriculture uses. Additional charges may be imposed on users by regulations of the Resources Committee for the operation and maintenance of water delivery systems. Waivers of charges may be granted by the Resources Committee, if the use is shown to be of benefit to the Navajo Nation.

History

CAU-34-84, August 2, 1984.

§ 1308. Resources Committee—Method of operation

In performing its duties under this Code, the Resources Committee is a standing committee of the Navajo Nation Council subject to the oversight and control of the Navajo Nation Council.

History

CAU-34-84, August 2, 1984.

Subchapter 4. Division of Natural Resources

§ 1401. Information function

It is the duty of the Director of the Division of Natural Resources to gather for Navajo Nation use and for submission to the Resources Committee information related to the waters administered under this Code. To this end the Director of the Division of Natural Resources shall:

A. Collect, organize and catalog existing information and studies available from all sources, both public and private, pertaining to the waters within the Navajo Nation;

B. Develop such additional data and studies pertaining to water availability, quality, and use as are necessary to accomplish the objectives of this Code;

C. Solicit public comment, consult the Chapters and obtain expert advice when appropriate;

D. Investigate water uses and other activities affecting the waters within the Navajo Nation to determine compliance with this Code and with

applicable regulations, orders, determinations, permits, water quality standards, etc., issued pursuant to this Code;

E. Investigate water quality when appropriate; and

F. Develop standards and regulations concerning water quality and water allocation and submit them for recommendation by the Resources Committee and for consideration and approval by the Navajo Nation Council.

History

CAU-34-84, August 2, 1984.

§ 1402. Enforcement function

It shall be the duty of the Director of the Division of Natural Resources to insure compliance with this Code, and with the conditions of all permits, determinations, orders, regulations, plans and other actions taken under this Code, as well as the policies and guidelines expressed throughout the Code. To this end the Director of the Division of Natural Resources may:

A. Remove, render inoperative, shut down, close, seal, cap, modify or otherwise control methods of diversion, withdrawal, and impoundment, obstructions to the flow of water and other activities adversely affecting water quantity or quality;

B. Initiate by means provided herein, proceedings for violations of this Code and the actions taken under this Code; and

C. Enter upon land to inspect methods of diversion, withdrawal and impoundment, inspect other activities affecting water quality and quantity, install and monitor measuring and recording devices when necessary, and compel testimony and data, by Navajo Nation Court subpoena, if necessary, concerning actions affecting the quality or quantity of the waters administered under this Code.

D. All enforcement actions shall be subject to the limitations imposed by the Indian Civil Rights Act, 25 U.S.C. § 1301 *et seq.*, and the Navajo Nation Bill of Rights, 1 N.N.C. § 1 *et seq.*

History

CAU-34-84, August 2, 1984.

§ 1403. Advisory function

The Director of the Division of Natural Resources may, from time to time, make proposals to the Resources Committee concerning the following:

A. The advisability of establishing local management areas as provided for in Subchapter 3 of this Code;

B. The advisability of making determinations of availability and need as provided for in Subchapter 8 of this Code;

C. The advisability of taking other actions and adopting other plans and methods in order to optimize available water supplies and to minimize pollution and thermal degradation;

D. The advisability, in cooperation with the Navajo Land Department, of purchasing, selling, exchanging and acquiring any interest in real or personal property;

E. The advisability of participating in administrative proceedings, law suits and other legal proceedings;

F. The advisability of entering into administrative agreements and other cooperative ventures with tribal, local, state or federal agencies outside of the Navajo Nation Council and the Resources Committee, for appropriate purposes including the administration of interstate streams and groundwaters;

G. The advisability of amending or otherwise changing Sections of this Code or adding new Sections; and

H. The advisability of taking other actions which will further the policies and purposes contained herein and increase the effectiveness of this Code.

History

CAU-34-84, August 2, 1984.

Cross References

Intergovernmental agreements, see 2 N.N.C. § 824(B)(4) and (6).

§ 1404. Administrative function

In administering this Code, the Director of the Division of Natural Resources may:

A. Grant, deny, modify and revoke water use permits;

B. Make determinations of water use rights;

C. Initiate proceedings to enforce this Code;

D. Insure, in coordination with other appropriate agencies, adequate water levels in streams, rivers, ponds, and lakes to protect Navajo traditional religious practices, wildlife conservation and other values; and

E. Enter appropriate orders.

History

CAU-34-84, August 2, 1984.

Subchapter 5. Guidelines for Administration

§ 1501. General policy provisions

In taking any action under this Code, the Resources Committee and the Director of the Division of Natural Resources shall be guided by the following basic policy guidelines:

A. Whenever practicable, actions taken should benefit the Navajo Nation and the members of the Navajo Nation and further the objective for which the Navajo Nation was created to provide a permanent home and abiding place for the members of the Navajo Nation, both now and in the future. Alternatives to existing and proposed uses are to be considered whenever practicable in order to achieve this goal. Included in those alternatives shall be the option to restrict or prohibit entirely any further use of water for the benefit of the Navajo Nation. If there is presented to the Resources Committee or the Director of the Division of Natural Resources a conflict between water uses for the benefit of the Navajo Nation or any of the members of the Navajo Nation and non-Navajo Nation projects or uses, the Resources Committee or the Director of the Division of Natural Resources may grant such preference as may be required by this Code, which lie in the best interests of the Navajo Nation and its members.

B. In taking any action under this Code which may impose substantial economic hardship on persons or entities presently using water, or which threaten degradation of other economic, cultural, religious, historic, aesthetic, natural or environmental values, the Resources Committee, or the Director of the Division of Natural Resources shall, in reaching their decision, carefully consider and weigh:

1. The economic dislocation and hardship which will be imposed by such actions;

2. The investment in time, money and other resources made by the parties affected in reliance upon any previous system of distribution and use of water;

3. Any other burdens as may be imposed by such action;

4. The nature and extent of degradation of other economic, cultural, religious, historic, aesthetic, natural or environmental values.

C. The Resources Committee or the Director of the Division of Natural Resources, when considering a proposed action, shall balance the adverse effects against the benefits to the Navajo Nation and other interests which are advanced as justifying the proposed action; shall consider alternatives to the proposed action which will lessen adverse effects; and shall shape any final action so that its adverse effects will be minimized to the greatest extent possible to protect the water resources.

D. When insufficient water supplies are present for whatever reason or term, the following priority of uses shall be considered in the order in which

they are listed:

1. Domestic and municipal uses;
2. Stock watering uses;
3. Agricultural uses;
4. Instream needs, for fish, wildlife conservation and recreational uses;
5. Economic development uses including industrial and power uses;
and
6. Other uses.

History

CAU-34-84, August 2, 1984.

§ 1502. Guidelines for making most effective use of available resources

In addition to the policy guidelines contained in the previous section, the Resources Committee and the Director of the Division of Natural Resources shall take appropriate actions to:

- A. Insure adequate water supplies;
- B. Maintain water levels for diversion and withdrawal systems;
- C. Maintain head and pressure in groundwaters;
- D. Prevent or reduce obstruction of surface water flows;
- E. Increase efficiency of conveyance systems; increase efficiency in water application; increase return flow; prevent waste and maximize use of the available supply,
- F. Create and enhance the efficiency of natural and artificial surface and underground storage;
- G. Enhance natural and artificial recharge of aquifers;
- H. Define and control interbasin transfers of both surface and groundwaters;
- I. Provide for some degree of overdraft from aquifers when short term recharge is not possible;
- J. Minimize interference between competing users of water sources, whether above or below ground;
- K. Minimize water quality degradation and the adverse effects of water pollution whether from point sources or non-point sources;

L. Minimize thermal degradation or the adverse effects of thermal degradation;

M. Minimize interaquifer communication;

N. Plan for long-term water development;

O. Penalize misuse; and

P. Otherwise insure conformity with the policies and provisions of this Code.

History

CAU-34-84, August 2, 1984.

§ 1503. Additional policy guidelines

A. Rivers, streams, lakes and ponds within the Navajo Nation are to be retained substantially in their natural conditions, with the base flows and water levels necessary to provide for preservation of traditional and religious, recreation, wildlife, fish, scenic, aesthetic, and other environmental values, to the extent possible. Withdrawals of water which would conflict with these interests should be authorized only where it is clear that overriding considerations of the public interest and welfare will be served.

B. Multiple-purpose impoundment structures are to be preferred over single-purpose structures. Due regard shall be given as to means and methods for protection of recreation, fish and wildlife resources in the planning for and construction of water impoundment structures and other artificial obstructions.

C. Individuals, corporations, groups, associations and other entities shall be required to carry out reasonable practices of water and resource conservation and environmental protection as they relate to the use of waters within the Navajo Nation.

History

CAU-34-84, August 2, 1984.

Subchapter 6. Descriptions of Use and Applications for Permit

§ 1601. Existing use inventory

In order to determine existing uses of water within the Navajo Nation, the Division of Natural Resources shall cause an inventory of existing water uses to be made and completed within two years following the effective date of this Code. The inventory shall be based upon the information contained in § 1602, "Descriptions of Use".

History

CAU-34-84, August 2, 1984.

§ 1602. Description of Use-Required

All persons desiring to continue to operate existing uses must file a "Description of Use", as required by this Subchapter, within one year of the effective date of this Code. After such date, it shall be unlawful to continue to operate any use or to continue any other action within the jurisdiction of the Navajo Nation which affects the waters therein except as authorized by this subchapter. Individuals or groups making use of a well or other water source operated by another need not file a Description of Use unless the operator fails to do so.

History

CAU-34-84, August 2, 1984.

§ 1603. Application for permit-Required

Upon the effective date of this Code, all persons desiring to initiate new uses of, or take other actions within the jurisdiction of the Navajo Nation affecting the waters therein shall file an Application for Permit as required by this Subchapter. After such date, it shall be unlawful for any person to make any new use or take any other action within the jurisdiction of the Navajo Nation affecting the waters therein except as authorized by this Code.

History

CAU-34-84, August 2, 1984.

§ 1604. Description of Use and Application for Permit-Contents

"Descriptions of Use" and "Applications for Permit" shall be on forms provided by the Director of the Division of Natural Resources and shall include the following information;

- A. The name and mailing address of the claimant;
- B. The name, if available or a description of the source or sources from which water is or will be diverted or withdrawn;
- C. The purpose or purposes for which water is or will be used;
- D. The quantity of water which is or will be used;
- E. A legal description, if such is readily available, and other descriptions reasonably describing the point or points of diversion, withdrawal or impoundment;
- F. A description of the method or methods of diversion, withdrawal or impoundment. The description of the method or methods of groundwater withdrawals shall be by a Drilling Permit on a form approved by the Resources Committee;

G. A description of how water is or will be applied or consumed, including acreage and crop if the water is for irrigation; the kind and number of stock if the water is for stock watering; and the number of people and/or homes to be served if the water is for domestic or municipal use;

H. The best estimate reasonably possible of return flow to the source or sources, including how, when, at what point or points, and with what changes in quality and temperatures;

I. The estimated date on which the use or uses began or will be commenced;

J. If any preexisting use is claimed, a description of any documents or programs upon which it is based; any statute or statutes or legal doctrine upon which the use is based; and any pertinent litigation creating or affecting the use;

K. The water user's plan for future development of the water use or uses and related activities; and

L. Any other information deemed necessary by the Resources Committee.

History

CAU-34-84, August 2, 1984.

§ 1605. Interim permits

A "Description of Use" which is made with respect to a use existing prior to the effective date of this Code shall, until a permit is issued or denied, serve as an interim permit authorizing the use of a reasonable quantity of water for the uses described and actually made while the application is pending. Additional uses planned but not commenced prior to the effective date of this Code may be made on an interim basis upon Emergency Certification by the Director of the Division of Natural Resources until a permit covering such uses is issued or until other action is taken under this Code.

History

CAU-34-84, August 2, 1984.

§ 1606. Fees

Each "Application for Permit" shall be accompanied by a twenty-five dollars (\$25.00) filing fee. Provided, however, that the Director of the Division of Natural Resources may waive payment of such filing fee in cases of demonstrated financial hardship.

History

CAU-34-84, August 2, 1984.

§ 1607. Public notice of Descriptions of Use and Applications for Permit-

Initial notice

As soon as possible and no more than two years after the effective date of this Code, the Director of the Division of Natural Resources shall divide the Navajo Nation into hydrologic basins or watersheds in which water uses are to some degree interrelated and prepare:

A. A map of the Navajo Nation showing such basins or watersheds;

B. A listing for each basin or watershed of each use described and permit applied for, which listing shall include names and addresses of applicants, descriptions of water sources, quantities applied for, points of diversion, withdrawal or impoundment, methods of diversion, withdrawal or impoundment and descriptions of the uses to be made;

C. A statement that the applicants described in the listing have applied for permits under the Navajo Nation Water Code and that any persons claiming that their uses may be adversely affected by the issuance of such permits may object to their issuance in accordance with the provisions for objection, notice and hearing provided for in this Code;

D. A brief description of the objection, notice and hearing provisions of this Code and information which will assist the objecting parties in procuring the necessary forms and commencing an objection;

E. A statement that any person may comment either orally or in writing on the issuance of any permit; and

F. A brief description of the public comment and investigation Sections of this Chapter.

G. The map, listings, statements and descriptions prepared under the preceding Paragraphs shall forthwith be published and posted in the same manner as provided in § 1203 "Notice-How given", subject to the following exceptions: (A) maps and description of objection procedures may be omitted if deemed impractical; (B) newspaper publications may be limited to four weekly notices; and (C) listings need be published and distributed only in the hydrologic basins or watersheds affected by proposed or existing uses.

History

CAU-34-84, August 2, 1984.

§ 1608. Public notice of Applications for Permit—Continuing operation

When additional "Applications for Permit" are received during the course of the administration of this Code, the Director of the Division of Natural Resources shall, in conformance with the preceding Section:

A. Include in the listing provided for in § 1607(B) the necessary information concerning the new use or action.

B. Prepare a statement that one or more new "Applications for Permit" have been made and objections may be made to them in accordance with § 1607(C).

C. Prepare the descriptions and statements provided in § 1607(D), (E) and (F).

D. The revised listing, statements and descriptions provided for in the preceding paragraphs shall forthwith be published, posted and mailed in the affected area in the same manner as provided for in § 1607, in order to assure adequate notice and an opportunity for hearing to persons who may be adversely affected by the proposed uses or actions.

History

CAU-34-84, August 2, 1984.

§ 1609. Objections affecting descriptions of use and applications for permit

Any person or entity whose interests are or may be affected by a water use described and/or applied for may, within 30 days from the date of publishing, and posting of notice that such use has been described and/or applied for, file a formal objection to the issuance of the permit applied for.

History

CAU-34-84, August 2, 1984.

§ 1610. Form and contents of objections

A. Objections may be made on forms prepared and made available by the Director of the Division of Natural Resources and shall include the name and mailing address of the party objecting; the name of the applicant whose application is objected to; a description of the water use objected to; a short and plain statement of reasons why a permit should not be issued or should be issued in a form different from that applied for; and any suggested conditions or other provisions which should be included in any permit granted.

B. Oral objections may be made to the Director of the Division of Natural Resources when it is determined by the Director that the circumstances permit an oral objection. Such oral objections shall be reduced to writing on the proper forms by the Director of the Division of Natural Resources.

History

CAU-34-84, August 2, 1984.

§ 1611. Reply by applicant

Any applicant for a permit whose use is objected to may reply in writing or orally in the same manner as provided herein for objections.

History

CAU-34-84, August 2, 1984.

§ 1612. Hearings regarding issuance of permits

Any applicant directly affected or any party objecting in accordance with this Subchapter may request and obtain as a matter of right a hearing on such objection. In addition, the Director of the Division of Natural Resources or the Resources Committee may schedule a hearing concerning the issuance of a permit or permits on their own motion whenever they determine that such hearings are needed. Provided, that whenever possible hearings concerning proposed or existing uses in a particular basin or area shall be consolidated to promote efficiency, minimize expense or hardship, and prevent duplication. Unless otherwise provided for in this Subchapter, notice of such hearings shall be as provided for in Subchapter 10, and shall be given to: the applicants whose uses are objected to; the objecting parties; other persons designated by the objecting parties and applicants; all other persons affected by the proposed use in question and all other persons requesting notice. Unless otherwise provided for in this Subchapter, hearings shall be conducted as provided for in Subchapter 10.

History

CAU-34-84, August 2, 1984.

§ 1613. Public comment

Any person or entity may comment orally or in writing upon the proposed issuance of any permit under this Code. It is the policy of the Navajo Nation that all interested parties be given the opportunity to participate in the decision making process as set forth in this Code.

History

CAU-34-84, August 2, 1984.

§ 1614. Investigation and review of permit issuance

In addition to gathering information from the objections, comments, and hearings as provided for above, the Director of the Division of Natural Resources may make any reasonable investigation of the facts and circumstances surrounding the permit application; may solicit comments and information from the public and from appropriate governmental agencies; and may otherwise gather information which will assist in making the decision to issue or deny a permit in accordance with the provisions of this Subchapter.

History

CAU-34-84, August 2, 1984.

§ 1615. Issuance or denial of permits

As soon as possible after application, hearing, if any, and a reasonable period for public comment shall have passed, and no more than 90 days after the date of the application, if uncontested, or the hearing, if a hearing is held, the Director of the Division of Natural Resources shall review the comments and information gathered with respect to a specific application and either deny a permit or issue a permit in the form provided for in Subchapter 7.

History

CAU-34-84, August 2, 1984.

Subchapter 7. Water Use Permits

§ 1701. Form

Water use permits issued in accordance with this Code shall be on a form approved by the Resources Committee.

History

CAU-34-84, August 2, 1984.

§ 1702. Information contained

Each permit shall include:

- A. The name and mailing address of the permittee;
- B. The name of, if available, or a description of, the source or sources from which water is or will be diverted, withdrawn or impounded;
- C. The quantity of water which will be used;
- D. The legal description, if such is readily available, or other description reasonably describing the point or points of diversion, withdrawal or impoundment;
- E. A description of the method or methods of diversion, withdrawal or impoundment;
- F. The purpose or purposes for which water is or will be used;
- G. A description of how water may be applied or consumed, including acreage and crop if the water is for irrigation, the kind and number of stock if the water is for stock watering, and the number of people and/or homes to be served if the water is for domestic or municipal use;
- H. The approximate date upon which the use or uses permitted began or will be commenced;
- I. Any other information as is deemed necessary and appropriate.

History

CAU-34-84, August 2, 1984.

§ 1703. Conditions

Each water use permit issued pursuant to this Code shall contain whatever

conditions are necessary to insure adequate quality and quantities of water; to otherwise further the purposes, policies and guidelines contained within this Code; and to assist in the effective administration of this Code. These may include, but are not limited to, conditions and limitations concerning:

- A. The source from which water may be diverted, withdrawn or impounded;
- B. The quantity of water which may be diverted, withdrawn or impounded during any particular time;
- C. The point or points of diversion, withdrawal or impoundment;
- D. The method or methods of diversion, withdrawal or impoundment;
- E. The purposes for which water will be used;
- F. The method of application;
- G. The location and purpose of application, including acreage for crops and number of livestock for livestock watering;
- H. The quantity and quality of return flow;
- I. The time period during which water may be used;
- J. Schedules for diversion, withdrawal or impoundment, including optional rotation schedules;
- K. Provisions for surface or groundwater storage of surplus flows;
- L. Provisions for increasing the efficiency of diversion, withdrawal or impoundment and application;
- M. Provisions for maintaining minimum pools and streamflows for fish, wildlife, recreation, aesthetic and Navajo religious values;
- N. Provisions for insuring minimum pumping and diversion levels with respect both to surface and underground water;
- O. Provisions designed to maintain head and pressure in groundwaters;
- P. Provisions designed to prevent or reduce obstruction of surface water flows;
- Q. Provisions designed to minimize point and non-point source pollution, water quality degradation and thermal degradation;
- R. Provisions designed to enhance recharge of aquifers;
- S. Provisions designed to define and control interbasin transfers of surface and groundwaters;
- T. Provisions for some degree of overdraft from aquifers when short-term recharge is not possible;

U. Provisions designed to prevent or reduce interference between competing users or water sources whether above or below ground;

V. Provisions to minimize interaquifer communication;

W. Provisions to insure long-term water development;

X. Any other provisions necessary to insure conformity with the policies and provisions of this Code and actions taken pursuant to this Code.

History

CAU-34-84, August 2, 1984.

§ 1704. Entry on land

No person shall be authorized to use or otherwise take any action affecting the waters administered under this Code unless he or she shall consent to reasonable entry upon his or her land by Navajo Nation employees engaged in the administration of this Code. Every permit issued under this Code shall contain the condition that no use or other action affecting the waters in question may be made unless the applicant consents to such reasonable entry upon his or her land.

History

CAU-34-84, August 2, 1984.

§ 1705. Effect

A water use permit issued under this Code constitutes nothing more than Navajo Nation permission to use the water within the territorial jurisdiction of the Navajo Nation, subject to the terms and conditions of the permit, to this Code, and to actions taken pursuant to this Code. No water use permit issued hereunder shall be construed as creating or recognizing any right other than Navajo Nation permission to use water, nor shall any water use permit ripen into any interest other than such limited permission.

History

CAU-34-84, August 2, 1984.

§ 1706. Revocability

Unless otherwise indicated, water permits issued under this Code are revocable by the Director of the Division of Natural Resources in accordance with the policies, purposes, guidelines and procedures established in this Code, and in accordance with the Indian Civil Rights Act, 25 U.S.C. § 1301 *et seq.*, and the Navajo Nation Bill of Rights 1 N.N.C. § 1 *et seq.*

History

CAU-34-84, August 2, 1984.

§ 1707. Modification

Water permits are modifiable in accordance with the procedures provided in this Code, and in accordance with the Indian Civil Rights Act 25 U.S.C. § 1301 *et seq.* and the Navajo Nation Bill of Rights 1 N.N.C. § 1 *et seq.*

History

CAU-34-84, August 2, 1984.

Subchapter 8. Determination of Availability and Need

§ 1801. When proceeding available

Whenever at any time after the Existing Use Inventory is completed an application for a permit covering a new or changed use of, or other action affecting water is made, or a complaint concerning an existing or proposed use, or other action affecting the water is made, or a request is made by the Resources Committee, and it appears probable to the Director of the Division of Natural Resources that a water supply common to a particular area is or will be used beyond its capacity, or otherwise adversely affected, the Director of the Division of Natural Resources may initiate a proceeding to determine the availability of and need for water in accordance with the provisions of this subchapter.

History

CAU-34-84, August 2, 1984.

§ 1802. Purposes

The purposes of a proceeding to determine availability of and need for water under this Subchapter shall be: to evaluate existing and future needs dependent upon a particular supply; to compute with reasonable certainty the characteristics of a particular supply, including quantity, surface and groundwater levels, rates and directions of flow, rates of recharge, out-of-basin sources, pollution, thermal degradation, and other characteristics, at particular locations and times; to explore various methods for increasing supply such as artificial recharge, storage, increased efficiency, alternatives to present uses, alternatives to activities presently requiring the consumption of water; to assist in land use planning in accordance with the policies and action of the Navajo Nation; and to make available to other Navajo Nation, local, state and federal agencies and to members of the public information concerning the waters in question.

History

CAU-34-84, August 2, 1984.

§ 1803. Notice of proceeding

A. Whenever a proceeding is initiated under § 1801 of this Subchapter,

the Director of the Division of Natural Resources shall provide notice of such proceeding in the same manner as provided in § 2002 to all parties who are using or will use or otherwise affect or rely upon the water supply in question, or will otherwise be directly affected by such proceeding.

B. Such notice shall state in plain and simple language the reason for initiation of the proceeding; the nature of the proceeding; the geographic area covered by the proceeding; and, as nearly as may be determined, the possible effects of such a proceeding on individual water uses.

C. The Director of the Division of Natural Resources shall make every reasonable effort to ensure that all persons or entities whose interests are or will be affected by the proceeding have reasonable notice of the nature, scope and possible effects of the proceeding and a reasonable opportunity to prepare for and participate in the proceeding.

History

CAU-34-84, August 2, 1984.

§ 1804. Division of Natural Resources—Investigation initiation

As soon as the Director of the Division of Natural Resources determines that a proceeding shall be initiated under this subchapter, he or she shall define as accurately as possible the area covered by the proceeding and commence an investigation as provided herein.

History

CAU-34-84, August 2, 1984.

§ 1805. Division of Natural Resources—Information gathering

The Director of the Division of Natural Resources shall initiate an investigation to gather and evaluate all available, pertinent data from whatever sources concerning the water supply and needs for water in question; to formulate proposals concerning the use of the water in question; and to provide other information, alternatives, and recommendations shall be contained in the report of the Director of the Division of Natural Resources provided for in § 1806 of this Code.

History

CAU-34-84, August 2, 1984.

§ 1806. Division of Natural Resources—Report

Upon completion of the investigation provided for in § 1805, and no more than 90 days after the initiation of the investigation, the Director of the Division of Water Resources shall transmit to the Resources Committee the report concerning the availability of and need for water in the particular area to which the proceeding applies. The report shall include the following:

A. A geographic and geologic description of the area studied, setting out

as precisely as possible the boundaries of the area;

B. A general description of the water supply in that area, from all sources;

C. A description of the various characteristics of the water supply which are relevant to present and proposed uses and other actions;

D. A computation of the water supply available at particular times and places;

E. A description of present and proposed uses of and other actions affecting the water supply in question;

F. A description and evaluation of the need for each such present or proposed use or other action;

G. A description of possible methods for increasing available water supply;

H. A description of economic and technical methods which may be implemented to increase the efficiency of use;

I. Alternatives for present uses which will minimize the impacts described in § 1501 of this Code;

J. Amounts of water within the particular supply which shall be subject to a reserve as provided in § 1303 of this Code;

K. Proposals for assessing varying amounts of water as provided for in § 1304 of this Code; and

L. Any additional information and recommendations which the Director of the Division of Natural Resources deems is necessary for inclusion.

History

CAU-34-84, August 2, 1984.

§ 1807. Proposed Determination of Availability and Need

As soon as possible and no more than 30 days after receipt of the report of the Director of the Division of Natural Resources, the Resources Committee shall cause to be prepared a proposed "Determination of Availability and Need" in accordance with the provisions of this subchapter.

History

CAU-34-84, August 2, 1984.

§ 1808. Determination of Availability and Need—Contents

"Determination of Availability and Need" may include the following, either as recommendations or mandatory provisions:

- A. A description and map of the affected area;
- B. A description of the water supply in the affected area, including a description of the various characteristics of the supply which are especially pertinent to present and proper water uses within that area;
- C. A description of the various, present and future needs for using or affecting the water supply in the area;
- D. A list of priorities to be observed within the affected area;
- E. A list of storage methods which are or may be proposed and implemented;
- F. A description of methods for increasing efficiency;
- G. A description of possible interbasin transfers; and
- H. Other information, provisions and recommendations or requirements reasonably calculated to inform the affected parties concerning the future management of the water supply in question.

History

CAU-34-84, August 2, 1984.

§ 1809. Notice of hearing

As soon as possible and no more than 30 days after the drafting of a proposed "Determination of Availability and Need", the Director of the Division of Natural Resources shall provide notice, in the manner provided for in § 1803, of a public hearing at which interested persons may present oral or written comments concerning the proposed "Determination of Availability and Need". Included in the notice shall be a description and map of the affected area; a description of the proceeding to date and a clear statement that copies of the proposed "Determination of Availability and Need" shall be made reasonably available to interested person. The notice shall state the date, time and place for a hearing to be held not less than 30 nor more than 60 days after the date notice is required.

History

CAU-34-84, August 2, 1984.

§ 1810. Hearing

A hearing shall be held with respect to every proposed "Determination of Availability and Need". Whenever possible, such hearings shall be held in the affected area, at a date, time and place which is reasonably convenient to a major portion of the parties affected. At such hearings, the Resources Committee or its designees shall provide a brief oral statement of the purpose of the hearing and a description of the proceeding to date, including the proposed "Determination". At least one member of the Resources Committee shall

be present and shall preside over the hearing. After the presentation is made by the Resources Committee or its designees, public comment shall be allowed. Public comment may be limited by reasonable rules adopted by the Resources Committee to insure an opportunity for full comment. Hearings may be continued if necessary to such times and places as are deemed appropriate upon adequate notice.

History

CAU-34-84, August 2, 1984.

§ 1811. Final Determination of Availability and Need

As soon as possible, and no more than 60 days after the public hearing provided in § 1810, the Resources Committee shall cause to be prepared a final "Determination of Availability and Need". Notice of this final "Determination" shall be made in the same manner as provided for in § 1803 and shall indicate that copies of the "Determination" are reasonably available for public review.

History

CAU-34-84, August 2, 1984.

§ 1812. Subsequent action

Upon completion of the above proceedings, the Director of the Division of Natural Resources shall make copies of the "Determination of Availability and Need" made under the provisions of this Subchapter reasonably available to parties requesting the same; shall grant, revoke, deny or modify permits in accordance with such "Determination", shall enter appropriate orders and take other actions authorized by this Code to prevent overuse and/or pollution in accordance with such Determination; and shall take whatever other actions are necessary and authorized by this Code to assist in the implementation of the "Determination" and of the policies, provisions and guidelines set forth in this Code.

History

CAU-34-84, August 2, 1984.

§ 1813. Appeal

Appeals from the final "Determination of the Availability and Need" shall be taken in the same manner as provided for in Subchapter 11 of this Code.

History

CAU-34-84, August 2, 1984.

Subchapter 9. Transfer and Loss of Rights

§ 1901. Transfer, assignment, descent, distribution and creation of security interest

Permits issued under this Code shall not be subject to transfer, assignment, descent, distribution or creation of any security interest without the express written consent of the Director of the Division of Natural Resources. Applications for transfer, assignment, or creation of a security interest shall be made on forms prepared and made available by the Director of the Division of Natural Resources. Such forms shall be designed to solicit information concerning any substantial changes which will or may occur as a result of the transfer, assignment or creation of a security interest in a water use permit. Every attempt should be made to conform with the purposes of Subchapter 6, governing "Descriptions of Use and Applications for Permit". Heirs and successors in interests of permittees shall apply for permits in their own names; however, such substitute permits shall be freely granted unless changing hydrological conditions clearly warrant a modification of the prior permits.

History

CAU-34-84, August 2, 1984.

§ 1902. Loss by non-use

A. Any right to use or otherwise affect in any way water within the territorial jurisdiction of the Navajo Nation, regardless of its origin, shall become void and revert, to the extent of the abandonment or non-use, to the Navajo Nation when the holder of such use right wholly or partially abandons the same, or voluntarily fails without sufficient cause to use all or a portion of the water available under such use right for a period of five consecutive years.

B. "Sufficient cause" shall include:

1. Drought or other unavailability of water;
2. Active service in the armed forces of the United States;
3. The operation of legal proceedings;
4. The application of any laws restricting water use;
5. Incarceration in a penal institution;
6. Confinement in a mental institution, whether voluntary or involuntary;
7. Incompetence by reason of age or mental incapacity;
8. Provisions for future use as provided in this Code; or
9. Other causes of non-use beyond the control of the holder or holders of the use right claimed.

C. Before such rights to use water may be deemed lost by non-use or abandonment, the Director of the Division of Natural Resources shall serve

notice on the holders of such use rights to appear at a hearing to be held before the Resources Committee not less than 30 days after the mailing or personal service of such notice and show cause why their use rights should not be deemed void. Such notice and hearing shall be in the manner provided for in Subchapter 10 of this Code governing notice and hearing.

History

CAU-34-84, August 2, 1984.

§ 1903. Loss by adverse possession, prescription, estoppel, or acquiescence

No right to use or otherwise affect the quantity, level, flow, pressure, quality, or temperature of water may be acquired by adverse possession, prescription, estoppel or acquiescence.

History

CAU-34-84, August 2, 1984.

§ 1904. Outside proceedings

No use right granted under this Code may be reduced or taken or otherwise affected in any procedure or determination or adjudication except as provided for in this Code, and in compliance with the Indian Civil Rights Act, 25 U.S.C. § 1301 *et seq.*, and the Navajo Nation Bill of Rights, 1 N.N.C. § 1 *et seq.*

History

CAU-34-84, August 2, 1984.

Subchapter 10. General Hearing Provisions

§ 2001. Applicability

Unless otherwise provided for in this Code, hearings shall be held in accordance with the provisions of this Subchapter.

History

CAU-34-84, August 2, 1984.

§ 2002. Notice

A. All parties who will or may be directly affected by a proposed action shall be given notice by mail of any hearings held under this Subchapter. In addition, notice of hearings shall be published in one paper having general circulation in the affected area and notice of hearings shall be posted in prominent places in the affected area, as set forth in Subchapter 2 of this Code.

B. Every attempt shall be made to give each party who will or may be directly affected by any action actual notice of that action and fair and

adequate opportunity to be heard.

History

CAU-34-84, August 2, 1984.

§ 2003. Time and place of hearing

Whenever possible hearings shall be held in the affected area, at a date, time and place which is convenient for a major portion of the parties affected.

History

CAU-34-84, August 2, 1984.

§ 2004. Continuances

Continuances shall be freely granted when the ends of justice so require and in order to assure adequate notice and opportunity to be heard.

History

CAU-34-84, August 2, 1984.

§ 2005. Presiding officer

The Resources Committee shall designate a qualified and impartial hearing officer to preside over hearings provided for in this Subchapter.

History

CAU-34-84, August 2, 1984.

§ 2006. Forms of evidence

Evidence may be submitted in any practical form including oral testimony, written evidence, and descriptive evidence. The ordinary rules of evidence shall not apply but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfairly admitted, may be excluded or admitted only under special conditions or stipulations.

History

CAU-34-84, August 2, 1984.

§ 2007. Consolidation of hearings

Whenever possible, hearings concerning proposed or existing actions in a particular watershed or area shall be consolidated to promote efficiency, minimize expense or hardship, and to prevent duplication.

History

CAU-34-84, August 2, 1984.

§ 2008. Recording

Hearings shall be recorded by mechanical means, provided, that any person may provide at his or her own expense for a stenographic record.

History

CAU-34-84, August 2, 1984.

§ 2009. Decision

Whenever a decision is required in accordance with the provisions of this Code following a public hearing, the Hearing Officer shall prepare findings of fact and conclusions of law and shall recommend a proposed decision to the Director of the Division of Natural Resources. The Director may make such modifications as are clearly warranted by the evidence and applicable law and shall issue a final decision, including an explanation for any changes made in any recommendation of the Hearing Officer, within 30 days of such recommendation. Such decision shall be published and served upon the parties in the same manner as provided in § 2002 governing notice of hearings.

History

CAU-34-84, August 2, 1984.

Subchapter 11. Appeals

§ 2101. Appeals provided for

There shall be no appeal from actions taken under this Code except as provided herein. Appeals shall be to the Supreme Court of the Navajo Nation.

History

CAU-34-84, August 2, 1984.

Cross References

Navajo Rules of Civil Appellate Procedure, see Rule 7.

Supreme Court of the Navajo Nation, 7 N.N.C. § 801.

§ 2102. Notice of Appeal—Jurisdiction

Any party aggrieved by any final action taken under this Code may, by filing a Notice of Appeal with the Supreme Court of the Navajo Nation, obtain review of such final action. The Supreme Court shall have no jurisdiction to hear any appeal initiated pursuant to this subchapter unless the Notice of Appeal is filed with the Supreme Court of the Navajo Nation within 30 days after the date of the final action. "Final action" means any action taken under this Code for which no further consideration by the Director of the Division of Natural Resources or the Resources Committee is required.

History

CAU-34-84, August 2, 1984.

§ 2103. Notice of Appeal—Service

Upon filing of the Notice of Appeal the party appealing the final action shall forthwith, and no more than 10 days after filing of the Notice of Appeal, cause the Notice of Appeal to be served on all parties to the proceeding being appealed from, on the Director of the Division of Natural Resources, and on the Chairperson of the Resources Committee.

History

CAU-34-84, August 2, 1984.

§ 2104. Transmittal of record

A. Upon receipt of the Notice of Appeal, the Director of the Division of Natural Resources and the Resources Committee shall cause all pertinent documents in their possession, and any other articles of evidence in their possession, to be transmitted to the Supreme Court of the Navajo Nation.

B. Any party to an appeal may, at the Director's own expense, cause a transcript of any hearings or other proceedings below to be prepared and transmitted to the Supreme Court of the Navajo Nation. Provided that the Director of the Division of Natural Resources in his or her discretion shall bear the final financial burden of preparing such transcript when it appears, after good cause shown, that a party is financially unable to do so.

History

CAU-34-84, August 2, 1984.

§ 2105. Oral argument

Upon receipt of the Notice of Appeal, the Supreme Court of the Navajo Nation shall, as soon as possible and no more than 15 days after receipt thereof, notify the Resources Committee, the Director of the Division of Natural Resources, the appealing party, and the other parties to the proceedings of a date certain for full hearing before the Supreme Court of the Navajo Nation.

History

CAU-34-84, August 2, 1984.

§ 2106. Briefs

Parties may at their own option or shall when requested to do so by the Supreme Court of the Navajo Nation file briefs in support of their appeal. Briefs shall be due on dates set by the Supreme Court of the Navajo Nation and no less than 30 days after receipt of the notice provided for in § 2105 of this

Subchapter.

History

CAU-34-84, August 2, 1984.

§ 2107. Scope of review

The Supreme Court of the Navajo Nation, in reviewing the final action appealed from, shall limit its review to the issues and the evidence which were before the Director of the Division of Natural Resources or the Resources Committee at the time of the final action appealed from. The Supreme Court may affirm, reverse, modify in whole or in part, or remand for further consideration, any final action appealed from. Provided, final actions appealed from may only be reversed, modified or remanded when they are arbitrary, capricious, unsupported by substantial evidence, not in substantial conformity with this Code, or otherwise contrary to law.

§ 2108. The Supreme Court--Additional powers

A. The Supreme Court of the Navajo Nation may on its own motion or upon motion of any party dismiss an appeal for want of prosecution, gross procedural irregularity, or mootness when the ends of justice so require.

B. In addition, the Supreme Court may stay the operation of final actions appealed from, in whole or in part, and may when the ends of justice require, provide for a supersedeas bond or other security from the parties to the appeal.

History

CAU-34-84, August 2, 1984.

Subchapter 12. Definitions

§ 2201. Director of the Division of Natural Resources

"Director of the Division of Natural Resources" means the Executive Director of the Division of Natural Resources of the Navajo Nation government, his or her designated representative or agent, or his or her successor in responsibility, as determined by the President of the Navajo Nation.

History

CAU-34-84, August 2, 1984.

§ 2202. Domestic use

"Domestic use" means any use of water for individual personal needs or for household purposes such as drinking, bathing, heating, cooking, or sanitation.

History

CAU-34-84, August 2, 1984.

§ 2203. Effective date

The "effective date" referred to herein shall be the date of the resolution of the Navajo Nation Council approving adoption of this Code.

History

CAU-34-84, August 2, 1984.

§ 2204. Municipal use

"Municipal use" means all reasonable water uses necessary in carrying out the functions of municipal government, local Chapter government and growth centers or towns.

History

CAU-34-84, August 2, 1984.

§ 2205. Person

"Person" includes an individual; a partnership; a corporation, whether public and private; and a governmental entity, unit or agency, whether tribal, local, state or federal.

History

CAU-34-84, August 2, 1984.

Subchapter 13. Prohibited Acts

§ 2301. Waste of water prohibited

No waters that have been withdrawn, diverted, impounded or otherwise taken pursuant to a valid permit or otherwise shall be wasted. The withdrawal of reasonable quantities of water in connection with construction, development, testing or repair of diversion, withdrawal and impoundment works shall not be construed as waste. In the event of inadvertent loss of water owing to defects in equipment for diversions, withdrawals and impoundments such shall not be construed as waste if reasonable diligence is shown by the permittee in effecting necessary repairs.

History

CAU-34-84, August 2, 1984.

§ 2302. Unauthorized actions affecting waters prohibited

Whenever any use or other action affecting the use of waters within the territorial jurisdiction of the Navajo Nation is required by this Code to be

authorized under the provisions of this Code, it shall be a violation of this Code to knowingly make such use or take such other action without the authorization required.

History

CAU-34-84, August 2, 1984.

§ 2303. Obstruction of Navajo Nation employees

The willful obstruction of or interference with Navajo Nation employees performing their lawful duties under this Code shall be a violation of this Code.

History

CAU-34-84, August 2, 1984.

§ 2304. Misstatement of material facts

The knowing misstatement of any material fact by any person or entity when providing information required by this Code, with respect to "Descriptions of Use and Applications for Permit" or otherwise, shall be a violation of this Code.

History

CAU-34-84, August 2, 1984.

§ 2305. Sanctions for Code violations

Violations of this Chapter may subject the person(s) or entity(ies) responsible to forfeiture or suspension of rights to the use of water administered under this Code. Sanctions may also include the requirement of payment for water improperly used or adversely affected by the improper use; payment of the costs for all associated remedial actions taken, including the replacement of lost water; payment of associated administrative costs incurred by the Navajo Nation as a result of the violation; and payment of such other costs as are necessary to render the Navajo Nation and its inhabitants whole. Sanctions shall be imposed by the Director of the Division of Natural Resources subject to the limitations imposed by the Indian Civil Rights Act 25 U.S.C. § 1301 *et seq.*, and the Navajo Nation Bill of Rights, 1 N.N.C. § 1 *et seq.*

History

CAU-34-84, August 2, 1984.

Subchapter 14. Miscellaneous Provisions

§ 2401. Severability

If any provision of this Code or the application thereof to any person or circumstances is held invalid, the Code can be given effect without the invalid

provision or application; and to this end the provisions of this Code are declared to be severable.

History

CAU-34-84, August 2, 1984.

§ 2402. Construction

This Code shall be liberally construed to effectuate its objectives, policies, guidelines, purposes, and provisions.

History

CAU-34-84, August 2, 1984.

§ 2403. Review of authority

The Resources Committee and the Director of the Division of Natural Resources shall, from time to time, review the authority granted to them under this Code and propose amendments and additions thereto to the Navajo Nation Council in order to improve administration under this Code.

History

CAU-34-84, August 2, 1984.

§ 2404. Extension of time limits

The time limits provided for in various places of this Code may be extended, for good cause shown, by the agency before whom the proceeding is pending when the ends of justice so require.

History

CAU-34-84, August 2, 1984.

§ 2405. Representation

Parties appearing at hearings and other proceedings provided for by, this Code may represent themselves or may be represented by individuals licensed to practice before the Courts of the Navajo Nation if they so desire.

History

CAU-34-84, August 2, 1984.

Chapter 13. Navajo Nation Safe Drinking Water Act

History

The Navajo Public Water Systems Supervision Program, previously adopted by resolution CD-57-86, December 10, 1986, and codified at 22 N.N.C. § 2501 et

seq., was rescinded and replaced by resolution CJY-50-95 which originally enacted the Navajo Nation Safe Drinking Water Act. The Navajo Nation Safe Drinking Water Act was subsequently amended by resolutions CJY-70-98 and CAU-69-01. For purposes of organizational consistency and to maintain the NNSDWA's subchapters, the NNSDWA has been relocated from Subchapter 15 of Chapter 11 to its own Chapter 13 within Title 22 but maintains its section numbers at 22 N.N.C. § 2501 *et seq.*

Subchapter 1. General Provisions

§ 2501. Title

This Act may be cited as the "Navajo Nation Safe Drinking Water Act" (NNSDWA).

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

§ 2502. General policy

It is the policy of the Navajo Nation to recognize, preserve, and protect the health and welfare of the Navajo People by ensuring that water is safe for drinking and to protect underground sources of drinking water from contamination by the subsurface emplacement of fluids by injection wells as well as by surface and subsurface discharges.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

§ 2503. Purpose

The purpose of this Act is to protect the health and welfare of the Navajo People and the environment by establishing appropriate drinking water standards to ensure that drinking water is safe for consumption, and by protecting underground sources of drinking water from potential contamination by underground injection activities.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

§ 2504. Definitions

A. "Administrator" - Means the Administrator of the United States Environmental Protection Agency.

B. "Aquifer" - means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

C. "Attorney General" - means the Attorney General of the Navajo Nation.

D. "Contaminant" - means any physical, chemical, biological or radiological substance or matter in water including uranium and other radiological isotopes.

E. "Community Water System" - A public water system that:

1. Serves at least 15 service connections used by year-round residents of the areas served by the system; or

2. Regularly serves at least 25 year-round residents. Community water systems serve a residential population on a year-round basis. Users of community systems are likely to be exposed to any contaminants in the water supply over an extended time period.

F. "Director" - Means the Executive Director of the Navajo Nation Environmental Protection Agency or his/her designee.

G. "Endangerment to Drinking Water Sources" - Means, in reference to underground injection, that such injection may result in the presence of any contaminant in underground water which supplies or can reasonably be expected to supply a public water system, and that the presence of such contaminant may result in such system's not complying with a Navajo Nation Primary Drinking Water Regulation or may otherwise adversely affect the health of any person.

H. "EPA" - The United States Environmental Protection Agency.

I. "Exempted Aquifer" - Means an aquifer or portion of an aquifer that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures in the Navajo Nation Underground Injection Control regulations.

J. "Exemption" - Means a waiver granted by the Director to a public water system pursuant to this Act and regulations promulgated hereunder.

K. "Fluid" - Means any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gas or any other form or state.

L. "Groundwater" - Means water below the land surface in a zone of saturation.

M. "Injection Well" - Means a "well" into which "fluids" are being injected.

N. "Lead-Free" - When used with respect to solders and flux, "lead-free" shall mean not more than two-tenths percent (0.2%) lead, and when used with respect to pipes and pipe fittings, "lead-free" means not more than eight percent (8%) lead.

O. "Maximum Contaminant Level" – means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system, except in the case of turbidity, where the maximum permissible level is measured at the point of entry to the distribution system.

P. "Navajo Nation" – Means:

1. When referring to the body politic, except as the context by otherwise require, the same meaning as set forth in 1 N.N.C. § 552.

2. When referring to governmental territory, all lands and water within the territorial boundaries of the Navajo Nation, including:

a. All lands and waters within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency or within the boundaries of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments, all without regard to the nature of this title thereto;

b. All lands and waters held in trust by the United States for or restricted by the United States or otherwise set apart under the superintendence of the United States for the use or benefit of the Tribe, any Band of Navajo Indians, or any individual Navajo Indians as such; and

c. All other lands and waters over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.

Q. "Navajo Nation Environmental Protection Agency, or NNEPA" – Means the agency established by the Navajo Nation Council pursuant to CAP-47-95, 2 N.N.C. § 1921 *et seq.* to carry out the environmental laws and regulations adopted by the Navajo Nation.

R. "Non-Community Water System" – Means a public water system that is not a community water system.

S. "Person" – means an individual, public or private corporation, company, partnership, firm, association or society of persons, the federal, state or local governments or any of their programs or agencies, any Indian tribe, including the Navajo Nation, or any of its agencies, divisions, departments, programs, enterprises, companies, chapters or other political subdivisions.

T. "Primary Drinking Water Regulations" – Means requirements promulgated under this Act that:

1. Apply to public water systems;

2. Specify contaminants which, in the judgment of the Director, may have an adverse effect on the health of persons;

3. Specify for each contaminant either:

a. A maximum contaminant level if, in the judgment of the Director, it is economically and technologically feasible to ascertain the level of contaminant in public water systems; or

b. If, in the judgment of the Director, it is not economically or technologically feasible to so ascertain the level of contaminant, each treatment technique known to the Director which leads to a reduction in the level of contaminant sufficient to satisfy the requirements of § 1412 of the SDWA, 42 U.S.C. § 300g-1, and of Subchapter 3 of this Act; and

4. Contain criteria and procedures to assure a supply of drinking water which dependably complies with maximum contaminant levels, including accepted methods for quality control and testing procedures to ensure compliance with such levels and to ensure proper operation and maintenance of the public water system, and requirements as:

a. To the minimum quality of water which may be taken into the system; and

b. Siting for new facilities for public water systems.

U. "Public Water System Owner or Operator" – Means any person who owns and/or operates a public water system.

V. "Public Water System" –

1. The term "public water system" means a system for the provision to the public water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

a. Any collection, treatment, storage and distribution facilities under control of the operator of such system and which are used primarily in connection with such system; and

b. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system is either a "community water system" or a "non-community water system."

2. For purposes of Paragraph 1, a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if:

a. The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);

b. The Director determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for

residential or similar uses for drinking and cooking; or

c. The Director determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable primary drinking water regulations.

W. "PWSSP" – Means the NNEPA program responsible for implementing and enforcing the provisions of this Act pertaining to public water systems.

X. "Regularly Serves" – Means that a public water system serves an average of at least 25 individuals daily at least 60 days out of the year.

Y. "Resources Committee" – Means the standing committee of the Navajo Nation Council as defined in 2 N.N.C. § 691 *et seq.* with oversight authority over the Navajo Nation Environmental Protection Agency as provided for by the Navajo Nation Council Resolution No. CAP-47-95.

Z. "Safe Drinking Water Act or SDWA" – means the Public Health Service Act, as amended by the Safe Drinking Water Act Amendments of 1986 as amended, 42 U.S.C. § 300f *et seq.*

AA. "Sanitary Survey" – Means an on-site review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of the source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.

BB. "Secondary Drinking Water Standards" – Standards promulgated under this Act that apply to public water systems and specify the maximum contaminant levels which, in the judgment of the Director, are requisite to protect the public welfare primarily with regard to aesthetic qualities. Such standards may apply to any contaminant in drinking water;

1. Which may adversely affect the odor or appearance of water and, consequently, may cause a substantial number of persons served by the public water system providing such water to discontinue its use, or

2. Which may otherwise adversely affect the public welfare. Such standards may vary according to geographic and other circumstances.

CC. "Tamper" – Means to introduce a contaminant into a public water system with the intention of harming persons; or to otherwise interfere with the operation of a public water system with the intention of harming persons.

DD. "Total Dissolved Solids" – Means the total dissolved (filterable) solids as determined by use of established US EPA test methods.

EE. "Underground Injection Activity or Facility" – means any underground injection well or another facility or activity that is subject to regulation under the SDWA.

FF. "Underground Injection Control (UIC) Program" – Means the NNEPA program responsible for implementing and enforcing the provisions of this Act

pertaining to underground injection and the protection of underground sources of drinking water.

GG. "Underground Injection" – Means the subsurface emplacement of fluids by well injection. The term does not include the underground injection of natural gas for purposes of storage.

HH. "UIC Owner or Operator" – Means any person who owns or operates an underground injection facility.

II. "Underground Source of Drinking Water (USDW)" – Means an aquifer or its portion of an aquifer:

1. Which supplies any public water system; or
2. Which contains a sufficient quantity of groundwater to supply a public water system; and
 - a. Currently supplies water for human consumption; or
 - b. Contains fewer than 10,000 mg/l total dissolved solids.
3. Which is not an exempted aquifer.

JJ. "Variance" – Means a waiver granted by the Director to a public water system pursuant to this Act and regulation promulgated hereunder.

KK. "Well" – Means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than its largest surface dimension.

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

§ 2505. Applicability

A. Except as otherwise provided in this Section, the provisions of this Act and the regulations promulgated hereunder shall apply to all within the Navajo Nation.

B. This Act does not apply to any water system that meets all of the following conditions:

1. It consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
2. It obtains all of its water from, but is not owned or operated by, a public water system to which these regulations apply;
3. It does not sell water to any person;

4. It is not a carrier which conveys passengers in interstate commerce; and

5. It does not provide water to any school, tribal, state or federal governmental office or private entity serving 25 or more employees or individuals.

C. Except as otherwise provided in Subsections (D) and (E) of this Section, the provisions of this Act and/or regulations promulgated hereunder in whole or in part; shall not apply to any person or property where, but only to the limited extent that, such application would be in violation of any covenant not to regulate or otherwise exercise jurisdiction over such person or property.

D. Notwithstanding the provisions of Subsection (C) of this Section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall apply to any person who has submitted an application for and received a permit pursuant to this Act or is otherwise subject to its provisions and to all property within the Navajo Nation owned or operated by such person.

E. If not otherwise applicable in accordance with Subsection (D) of this Section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall apply to any person and to such property owned or operated by such person to such extent and under such terms and conditions as may be provided in any voluntary compliance agreement entered into pursuant to § 2506.

F. Nothing in this Act shall excuse the required performance of any act as set out in any other applicable law or regulation of the Navajo Nation.

G. Nothing in this Section shall be construed as a determination or admission by the Navajo Nation that any claim of covenant not to regulate or otherwise exercise jurisdiction is valid.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

§ 2506. Voluntary Compliance Agreement

A. Any person to whom the provisions of this Act are not otherwise applicable, may apply to the Director to enter into a voluntary compliance agreement with the Navajo Nation with respect to any property to which the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, are not otherwise applicable.

B. A proposal to enter into a voluntary compliance agreement shall be in writing, shall indicate the person and property proposed to be subject to the agreement, shall indicate the proposed term of the agreement, and shall indicate the part or parts of this Act and/or regulations promulgated

hereunder, in whole or in part, with which voluntary compliance is proposed.

C. A voluntary compliance agreement shall be for a term of not less than one year, and may be subject to renewal for successive terms of not less than one year. A voluntary compliance agreement may not vary the requirements of this Act, except that the consent required to be given in accordance with § 2572 of this Act shall be strictly limited to the application of this Act and regulations promulgated pursuant to this Act in accordance with the terms of said voluntary compliance agreement, including any renewals thereof.

D. A voluntary compliance agreement shall not be effective unless and until there is final approval of the agreement by the Director.

E. Except as otherwise expressly provided in the agreement, by entering into a voluntary compliance agreement, no person shall be deprived of the benefit of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property owned or operated by such person.

F. A person may enter into a voluntary compliance agreement in accordance with this Section, notwithstanding that the validity of such person's claim to be exempt from the provisions of this Act has not been judicially determined, whenever the Director determines that entering into such an agreement is in the best interest of the Navajo Nation. Entering into an agreement pursuant to this Subsection shall not constitute a determination of admission by the Navajo Nation that such claim of exemption is valid.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

§ 2507. Authority of Director

A. General Responsibilities.

1. The Director is responsible for administering this Act and is authorized to exercise all the legal authority necessary for this purpose. The Director may delegate to any officer or employee of the Navajo Nation Environmental Protection Agency such of his or her powers and duties under this Act, except the making of regulations, as he or she may deem necessary or expedient.

2. The Director shall promulgate regulations for the enforcement of this Act.

3. Inventory. The Director shall establish and maintain a current inventory of all public water systems and of all underground injection facilities within the Navajo Nation.

a. In compiling such inventory, the Director shall review and incorporate all appropriate materials previously developed by the USEPA, by the Navajo Nation, and by other appropriate governmental agencies. It shall, however, be the duty of each public water system owner or operator

and each UIC owner or operator to provide all information needed for this inventory, and all amendments or modifications, in the form required by the Director.

b. The Director shall make available, at the Navajo Nation EPA offices, a copy of the inventory information and other information regarding each Navajo public water system and underground injection facility and shall provide a copy when requested to the appropriate public water system owner or operator, UIC owner or operator and to the general public.

c. All public water system and UIC owners and operators shall provide, in writing, all information, corrections or amendments necessary for the development and maintenance of a complete inventory.

4. Records. The Director shall establish and maintain a file for each public water system and underground injection facility listed in the inventory. With respect to public water systems each file shall contain the information and be maintained as required by 40 C.F.R. 142.14, as that regulation may be amended from time to time, as well as any additional information deemed appropriate by the Director. These records shall be made available for public inspection at the office of the Director during regular business hours.

5. Reports. The Director shall submit reports to the USEPA as required by 40 C.F.R. 142.15, with regard to public water systems, and by 40 C.F.R. 144.8, with regard to underground injection facilities as those provisions are amended from time-to-time. These reports shall be made available for public inspection at the office of the Director during regular business hours.

B. Contracts and Grants. The Director is authorized to:

1. In compliance with Title 2 of the Navajo Nation Code enter into agreements, contracts or cooperative arrangements with other tribal departments, divisions or entities; with state, federal or interstate agencies; municipalities; local health departments, educational institutions or other organizations; or other persons for the purpose of ensuring the safety of drinking water or underground sources of drinking water within the Navajo Nation.

2. In compliance with Title 2 of the Navajo Nation Code, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this Act, provided that all monies resulting therefrom shall be deposited in the PWS Fund or the UIC Fund, as the case may be, pursuant to § 2573 and as authorized under Navajo Nation law.

3. Participate in demonstration programs, such as the sole source aquifer demonstration program provided for in § 1427 of the SDWA, 42 U.S.C. § 300h-6.

C. Investigations and Hearings. In order to fulfill the obligations of this Act, the Director is authorized to:

1. Conduct investigations, inspections and tests to carry out the duties of this Act;

2. Hold hearings related to any aspect of or matter within the duties of this Act and, in connection therewith, compel the attendance of witnesses and the production of records according to the procedures established in this Act;

3. Encourage voluntary cooperation by advising and consulting with persons or affected groups, tribes or states to achieve the purposes of this Act;

4. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, to carry out the purposes of this Act;

5. Compile and publish, from time to time, reports, data and statistics with respect to matters studied or investigated by the Director or at his or her direction;

6. Implement and administer the provisions of this Act; and

7. Perform such other activities as the Director may find necessary to carry out his or her functions under this Act.

D. Regulations

1. The Director is authorized to promulgate such regulations from time to time as may be necessary to carry out the provisions of this Act. Such regulations may include:

a. Regulations governing the determination of penalties, denials, suspension or revocation of permits;

b. Regulations governing appeals from actions taken under this Act; and

c. Regulations governing administration of this Act by the Director.

2. Notice of any proposed regulation shall be published in a newspaper of general circulation for the areas of the Navajo Nation that are concerned and shall be given orally in English and in the Navajo language over local radio and/or television stations. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question, the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall provide a comment period at least 30 calendar days; allow any person to submit written comments, data or documentary information; give interested persons an opportunity to present orally their views, data or arguments

in the Navajo or English languages; and keep the docket open for at least 10 days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.

3. The final regulation shall be based on the record of the rulemaking proceeding, contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.

4. The effectiveness and enforceability of the provisions of this Subchapter shall not be dependent upon the adoption of regulations pursuant to Subsection (D)(1) of this Section.

5. Regulations shall be effective in accordance with their terms after approval of the Resources Committee of the Navajo Nation Council.

6. Regulations promulgated under Subsection (D)(1) shall contain minimum requirements for an effective program to prevent underground injection which endangers drinking water sources. Such regulations shall require that the Navajo Underground Injection Control Program:

a. Prohibit, effective on the date on which the applicable underground injection control program takes effect, any underground injection which is not authorized by a permit issued by the EPA or NNEPA;

b. Require:

i. That the applicant for a permit to inject must satisfy to the Navajo Nation that the underground injection activity will not endanger drinking water sources; and

ii. That no regulation may be promulgated which authorizes any underground injection which endangers drinking water sources;

c. Include inspection, monitoring, record keeping, and reporting requirements; and

d. Apply to all underground injection activities on the Navajo Nation, including but not limited to:

i. Underground injections by federal agencies; and

ii. Underground injections by any other person whether or not occurring on property owned or leased by the United States, including injection for the purpose of uranium protection.

7. Regulations pertaining to underground injection control may not prescribe requirements which interfere with or impede:

a. The underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations; or

b. Any underground injection for the secondary or tertiary recovery of oil or natural gas, unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

8. The regulations of the Director under this Section shall permit or provide for consideration of varying geologic, hydrological or historical conditions in different areas within the Navajo Nation.

9. Nothing in this Section shall be construed to alter or affect the duty of ensuring that underground sources of drinking water will not be endangered by any underground injection activities.

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note: This Section previously codified at § 2506.

Cross References

Intergovernmental agreements, see 2 N.N.C. §§ 824(B)(4) and (6).

§ 2508. Severability

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall remain unaffected, and to this end the provisions of this Act are declared to be severable.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2507.

§ 2509. Construction

A. The provisions of this Act shall be liberally construed to fulfill the intent and purposes of this Subchapter and so as not to conflict with applicable law of the United States.

B. Nothing contained in this Act shall be construed to diminish, limit or otherwise adversely affect any right or remedy otherwise held or available to the Navajo Nation or its members under applicable law.

History

CJY-70-98, July 30, 1998.

CJY-50-95 July 31, 1995.

Note. This Section previously codified at § 2508.

Subchapter 2. Prohibited Acts

§ 2521. Use of lead pipes, solder and flux

A. No person may use any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption which is not lead-free, as defined in § 2504. This Subsection shall not apply to leaded joints necessary for the repair of cast iron pipes.

B. No person shall introduce into commerce any pipe or any pipe or plumbing fitting or fixture that is not lead-free, except for a pipe that is used in manufacturing or industrial processing.

C. No person engaged in the business of selling plumbing supplies, except manufacturers, shall sell solder or flux that is not lead-free.

D. No person shall introduce into commerce any solder or flux that is not lead-free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

E. The requirements of this prohibition on lead shall be enforced by the Director and through local plumbing codes or such other means of enforcement as the Navajo Nation may determine to be appropriate.

History

CAU-69-01, August 8, 2001.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2509.

§ 2522. Tampering with public water systems

It shall be unlawful to tamper or attempt or threaten to tamper with a public water system. Any person who tampers or attempts or threatens to tamper with a public water system may be subject to civil and/or criminal fines, pursuant to § 2583 of this Act.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2510.

§ 2523. Other violations

No person shall violate:

A. Any conditions of any variance, exemption, permit or order, including cease and desist orders and orders to comply, decisions, rules, or any other actions taken pursuant to this Act;

B. Any of the requirements of this Act or the regulations promulgated hereunder.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2511.

§ 2524. Operating a public water system without a permit

Within 90 days of the effective date of these amendments, no person shall operate or construct a public water system unless said person holds, or, in the case of an existing facility, has applied for a permit from the Director, pursuant to regulations promulgated under § 2571 of this Act and the NNEPA Uniform Permit Procedures, or, if a Navajo Nation PWS permit program has not yet been developed, has contacted the Director in writing and has provided whatever information the Director reasonably requests regarding the public water system.

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2512.

§ 2525. Operating an underground injection facility without a permit

Within 90 days of the effective date of these amendments, no person shall operate or construct an underground injection facility unless said person holds or, in the case of an existing facility, has applied for a permit from the Director, pursuant to regulations promulgated under § 2571 of this Act and the NNEPA Uniform Permit Procedures, or if a Navajo Nation UIC permit program has not yet been developed, has contacted the Director in writing and has provided whatever information the Director reasonably requests regarding the underground injection facility.

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

Subchapter 3. Drinking Water Regulations

§ 2531. Primary drinking water regulations

The Director may prescribe by regulation the maximum permissible levels for contaminants in all public water systems on the Navajo Nation. These regulations shall govern monitoring and reporting of the water quality of all public water systems, and shall be at least as stringent as federal regulations promulgated pursuant to the SDWA or with respect to quality control and testing procedures, as stringent as the alternative procedures published by the Administrator as guidance pursuant to SDWA § 1401(1), 42 U.S.C. § 300f(1).

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2513.

§ 2532. Secondary drinking water regulations

The Director may prescribe by regulation controls including water purification systems for contaminants in drinking water that primarily affect the aesthetic qualities (such as taste, color and smell) relating to the public acceptance of drinking water. Such secondary regulations should be guided by any national secondary drinking water regulations, but may vary from any non-mandatory federal guidelines.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2514.

§ 2533. Sampling and analytical regulations

The Director may prescribe by regulation the microbiological, inorganic, organic, radioactivity, and turbidity sampling requirements.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note: This Section previously codified at § 2515.

§ 2534. Reporting, record keeping and public notification requirements

The Director may prescribe by regulation the method of record-keeping and reporting of sample analyses as well as the requirements for public notification.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note: This Section previously codified at § 2516.

§ 2535. Surface water treatment regulations

The Director may prescribe by regulation the filtration, disinfection, analytical and sampling requirements for those public water systems that use surface water and/or groundwater under the influence of surface water.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note: This Section previously codified at § 2517.

§ 2536. Lead and copper regulations

The Director may prescribe by regulation corrosion control treatment, source water treatment and lead service line replacement requirements. These regulations may also prescribe sampling requirements, analytical methods, reporting requirements and record keeping requirements.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note: This Section previously codified at § 2518.

§ 2537. Laboratory requirements

The Navajo Nation adopts the certified laboratory lists maintained by the USEPA or any state with primacy over that state's drinking water program, as they may be amended from time to time. Public water system owners or operators are required to use a certified laboratory from such lists in contracting for

laboratory services. The Director may maintain a service contract with one or more certified laboratories to meet this requirement.

History

CJY-50-95, July 31, 1995.

Note: This Section previously codified at § 2519.

§ 2538. Wellhead Protection

A. Wellhead Protection Program. The Director shall develop by regulation a program to protect wellhead areas within the Navajo Nation from contaminants that may have an adverse effect on public health. Such program shall at a minimum:

1. Specify the duties of Navajo agencies, other governmental entities and public water supply systems with respect to the development and implementation of the program;

2. For each wellhead, determine the wellhead protection area as defined in Subsection (B) based on all reasonably available hydrogeologic information on groundwater flow, recharge and discharge and other information the Director deems necessary;

3. Identify within each wellhead protection area all potential anthropogenic sources of contaminants which may have an adverse effect on public health;

4. Describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of control measures, education, training, and demonstration projects to protect the water supply with wellhead protection areas from such contaminants;

5. Include contingency plans for the location and provision of alternate drinking water supplies for each public water system in the event of well or well field contamination by such contaminants;

6. Include a requirement that consideration be given to all potential sources of such contaminants within the expected wellhead area of a new water well which serves a public supply system; and

7. Provide for the addition of new wellhead protection areas for water well sited after promulgation of the initial program.

B. Definition of Wellhead Protection Area. As used in this Section the term "wellhead protection area" means the surface and subsurface area surrounding a water well or well field supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field. The extent of a wellhead protection area is necessary to provide protection from contaminants which may have an adverse effect on the public health and is to be determined by the Director in the program developed under Subsection (A). The Director may rely on technical guidance issued by the Administrator in making such determination. In any event, the

determination should reflect factors such as the radius of influence around a well or wellhead, the depth of drawdown of the water table by such well or well field at any given point, the time or rate of travel of various contaminants in various hydrologic conditions, distance from the well or well field, or other factors affecting the likelihood of contaminants reaching the well or well field, taking into account available engineering pump tests or comparable data, field reconnaissance, topographic information, and the geology of the formation in which the well or wellhead is located.

C. Public Participation. The Director shall establish procedures to encourage public participation in developing the wellhead protection program. Such procedures may include the establishment of technical and citizens' advisory committees and the presentation of program proposals at chapter meetings. Such procedures shall include notice and opportunity for public hearing on the program before it is promulgated by the Director.

D. Reports. Every two years after promulgation of a wellhead protection program, the Director shall submit to the Navajo Resources Committee and to the Administrator a report describing the progress in implementing the program. Such report shall include amendments to the program for water wells sited during the two year period.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

§ 2539. Operator Certification

All operators of public water systems on the Navajo Nation must be certified to operate such a facility. The Director shall develop by regulation a program, consistent with guidelines published by the Administrator pursuant to § 1419(a) of the SDWA Amendments of 1996 (Pub. L. 104-182), to certify all public water system operators in accordance with the standards described below. The Director shall serve as the Certification Administrator. The Director shall:

A. Implement a program requiring the certification of all operators of public water systems and requiring that such operators comply with the applicable requirements of the certification and training program;

B. Classify all public water systems and specify operator certification, renewal and re-certification procedures and requirements for each level of classification;

C. Establish minimum operator qualifications to validate skills, knowledge, ability and judgment for each level of classification, and include provisions for reciprocity for operator certifications from neighboring states;

D. Establish procedures for suspension, revocation and other appropriate enforcement action for operator and owner noncompliance;

E. Establish a fee system for the examination and certification of

operators;

F. Establish an advisory committee for ongoing involvement in the revision and operation of operator certification; and

G. Develop a procedure to review and evaluate the adequacy of the operator certification program, including to revise the certification requirements based on revisions to applicable law and on new technology or construction techniques that change operator requirements.

History

CAU-69-01, August 8, 2001.

Subchapter 4. General Responsibilities of Public Water System Owners and Operators

§ 2541. Record keeping

A. A public water system owner or operator shall retain, on the premises or at a convenient location near the premises of the public water system, the following records:

1. Records of microbiological analyses made pursuant to this chapter or the regulations hereunder shall be kept for no fewer than five years. Records of chemical analyses made pursuant to this Act or the regulations hereunder shall be kept no fewer than 10 years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

a. The date, place and time of sampling, and the name of the person who collected the sample;

b. Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or processed water sample or other special purpose sample;

c. Date of analysis;

d. Laboratory and person responsible for performing analysis;

e. The analytical technique or method used; and

f. The results of the analysis.

B. Records of actions taken by the public water system owner or operator to correct violations of this Act or the regulations shall be kept for a period of not less than three years after the last action taken with respect to the particular violation involved.

C. Copies of any written reports, summaries or communication relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any tribal, state, or federal agency, shall be kept for no

fewer than 10 years after completion of the sanitary survey involved.

D. Records concerning a variance or exemption to the system shall be kept for no fewer than five years following the expiration of such variance or exemption.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2520.

§ 2542. Reporting test and analyses

A. It shall be the duty of each public water system owner or operator to ensure that copies of all tests and analyses performed on each public water system, pursuant to the requirements of the Primary Drinking Water Regulations and other applicable Navajo and federal law, are, made available to the Director, on a timely basis, for inclusion in such files.

B. Except where a shorter period is specified in this Section, each public water system owner or operator shall report to the Director the results of any test, measurement, or analysis required by this Act or the regulations hereunder within:

1. The first 10 days following the month in which the result is received; or

2. The first 10 days following the end of the monitoring period required by the Director, whichever of these is shortest.

C. The public water system owner or operator shall report to the Director within 48 hours any violation of a primary drinking water regulation (including failure to comply with monitoring requirements) set forth in this Act or the regulations thereunder.

D. The public water system owner or operator is not required to report analytical results to the Director in cases where a USEPA-approved laboratory performs the analysis and reports the results to the Director.

E. The public water system owner or operator shall, within 10 days of completion of each public notice required by this Act or the regulations hereunder submit to the Director a representative copy of each type of notice distributed, published, posted, and/or made available to the media or to persons served by the system.

F. The Director may request from the public water system owner or operator all pertinent information. The public water system owner or operator shall submit to the Director, within the time stated in the request, copies of any records required by this Act or the regulations hereunder to be maintained and copies of any documents which the Director is entitled to inspect pursuant to this Act.

G. By January 1st of each year the Director shall prepare, make readily available to the public and submit to the Administrator an annual report on violations of primary drinking water regulations by public water systems within the Navajo Nation, including violations with respect to maximum containment levels, treatment requirements determined to be significant by the Administrator after consultation with NNEPA.

H. The NNEPA must make reports of the public water systems available to the public upon request, and must maintain a copy of the reports for one year. The certifications submitted by the public water system should be kept for five years.

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2521.

§ 2543. General public notification requirements

A. Each owner or operator of a public water system shall give notice of each of the following to the persons served by the public water system:

1. Failure of the public water system to comply with an applicable maximum contaminant level or treatment technique, specified in the regulations promulgated under this Act;

2. Failure to limit fluoride concentration to less than 2.0 mg/l;

3. Failure to comply with an applicable testing procedure established by this Act or the regulations promulgated hereunder;

4. The existence of a variance or exemption from an applicable maximum contaminant level;

5. Failure to comply with a schedule prescribed pursuant to such variance or exemption; or

6. Failure to perform any monitoring required by this Subchapter or the regulations promulgated hereunder; or

7. The concentration level of any unregulated contaminant for which public notice is required either under § 1414(c)(2)(E) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(c)(2)(E), or under this Section. Such notice shall comply with federal regulations issued under SDWA § 1414(c)(2) and the provisions set forth in this Section except to the extent that the Director establishes alternative requirements regarding form and content pursuant to SDWA § 1414(c)(2)(b).

B. If a community water system has violated an applicable maximum contaminant level, the public water system owner or operator shall notify the public of such violation in addition to the notification required in Subsection (C) below, as follows:

1. By publication for no fewer than three consecutive days in a newspaper or newspapers of general circulation in the area served by the system. Such notice shall be completed within 14 days after the public water system owner or operator learns of the violation.

2. By furnishing a copy of the notice to the radio and television stations serving the area served by the system. Such notice shall be furnished within seven days after the public water system owner or operator learns of the violation. The notice shall be given orally in English and in the Navajo language.

3. The requirements of Paragraph (2) of this Subsection may be waived by the Director if he or she determines that the violations have been corrected promptly after discovery, the causes of the violation have been eliminated, and there is no longer a risk to public health.

C. In addition, in the case of a community water system and with respect to all violations listed in Subsection (A) and the grant of variances and exemptions, the owner or operator of the system shall notify the users of the water system as soon as possible and in any event within three months after a violation or grant of an exemption or variance. The notification shall be by any means necessary to ensure that all users are notified of the problem. This may require the house to house distribution of handouts in cases where inclusion with monthly utility bills is not practical. Such notice shall be repeated at least once every three months as long as the violation or the variance or exemption remains in effect.

D. Customers of a community water system must be notified by the owner or operator of the public water system in question every three months when drinking water concentrations for fluoride exceed 2.0 mg/l. The notification must consist of any means necessary to make users aware of the problem. The notices must also be mailed on a quarterly basis to tribal and federal public health officials, and published in the local newspaper(s). Continued notification is desirable to alert, new users who may begin using the system. The exact form and manner of such notice shall be prescribed by the Director as may be necessary to ensure adequate notice.

E. In the case of a non-community water system, the public water system owner or operator shall give notice by continuous posting of any violation of an applicable maximum contaminant level or of the granting of a variance or exemption from any such level to the persons served by the system as long as the violation or variance or exemption continues. The form and manner of such notice shall be prescribed by the Director, and shall ensure that the public using the system is adequately informed of the violation or the variance or exemption.

F. Notice given pursuant to this Section other than that specified in Subsection (D) of this Section shall be written in a manner reasonably designed to inform fully the users of the system. The notice shall be conspicuous and

shall not use unduly technical language, unduly small print, or other methods which could frustrate the purpose of the notice. The notice shall disclose all material facts regarding the subject, including the nature of the problem and, when appropriate, a clear statement that a primary drinking water regulation has been violated and preventive measures that should be taken by the public, such as the necessity for seeking alternative water supplies. Where appropriate, or where designated by the Director, bilingual notice shall be given. Notices may include a balanced explanation of the significance or seriousness to the public health of the subject of the notice, a fair explanation of steps taken by the system to correct any problem and the results of any additional sampling.

G. Notice to the public required by this Section may be given by the Director on behalf of the public water system owner or operator, where, in the Director's discretion, this is warranted.

H. In any instance in which notification by mail or other suitable means is required by this Section but notification by newspaper, radio or television stations is not required by this Section, the Director may nevertheless require the owner or operator of a public water system to provide notification by newspaper and to radio and television stations when circumstances make more immediate or broader notice appropriate to protect the public's health.

I. Any person who violates this Section or regulations issued under this Section shall be subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000).

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2522.

§ 2544. Lead public notification requirements

A. Each owner or operator of a public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from the lead content in the construction materials of the public water distribution system or the corrosivity of the water supply sufficient to cause leaching of lead.

B. Notice shall be provided in such manner and form as may be reasonably required by the Director. Notice under this Subsection shall be provided notwithstanding the absence of a violation of any Navajo Nation Drinking Water standard.

C. Notice under this Section shall provide a clear and readily understandable explanation of the potential sources of lead in the drinking water and the potential adverse health effects. The notice shall also include reasonably available methods of mitigating known or potential lead content in

drinking water, any steps the system is taking to mitigate lead content in drinking water, and the necessity for seeking alternative water supplies, if any.

D. The public notice requirements shall apply throughout the Navajo Nation upon enactment of this Act.

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2523.

§ 2545. Emergency water plan

Each public water system owner or operator shall develop an emergency water plan and submit a copy to the Director for review within 180 days after the enactment of this Act. An emergency water plan is a plan for the provision of alternative safe drinking water in emergencies. The Director shall review and comment on the emergency water plan and notify the public water system owner or operator of his or her determinations within 90 days after having received the emergency water plan. The public water system owner or operator shall incorporate the changes or modifications, if any, recommended by the Director in his or her comments.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2524.

§ 2546. Consumer confidence reports by community water systems

Each community water system shall prepare annually a report on the quality of drinking water delivered by the system. Such report also shall characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner, and shall comply with regulations issued by the Director pursuant to this Section and applicable federal regulations. Each community water system shall mail such report annually to each customer of the system, unless other means of disseminating the report are provided by NNEPA by regulation.

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

Subchapter 5. Standards for Construction

§ 2551. Design criteria

A. Public Water Systems

1. No new or substantially modified public water system shall be authorized to begin construction or operation within the jurisdiction of the Navajo Nation until such time as the Director has reviewed the proposed design of such facility to ensure that it is capable of compliance with applicable minimum construction guidelines for public water systems. In conducting this review, the Director is authorized to rely upon the technical assistance of the Office of Environmental Health and Engineering, United States Indian Health Service.

2. In the event that the proposed design is satisfactory, the Director shall so advise the applicant, in writing, in a timely manner. Appropriate design changes must be made by the applicant prior to initiating any operation of the system.

B. Underground Injection Wells

1.¹ Proposed designs and plans for new or substantially modified underground injection wells must be submitted with the permit application for each such well. The Director shall decide what standards for construction shall be required based on the geologic formation of the area in question and any relevant standards in the regulations promulgated under this Act or in 40 C.F.R. part 146, and shall include any such requirements in the permit, if a permit is issued.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2525.

Subchapter 6. Variances and Exemptions

§ 2561. Variances

A. The Director may grant one or more variances from an applicable Primary Drinking Water Regulation to one or more public water systems which, because of characteristics of the raw water sources that are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation. A variance may be issued to a system on condition that the system install the best technology, treatment techniques, or other means which the Administrator finds are available (taking costs into consideration), and based upon an evaluation satisfactory to the Director that indicates that alternative sources of water are not reasonably available to the system. Before the Director may grant a variance under this Subsection, the Director must find that the variance will not result in an

unreasonable risk to health. If the Director grants a public water system a variance under this Subchapter, the variance shall become part of the permit issued to the public water system under § 2571, and the Director shall prescribe, at the time the variance is granted, a schedule for:

1. Compliance (including increments of progress) by the public water system with each contaminant level requirement with respect to which the variance was granted; and

2. Implementation by the public water system of such additional control measures as the Director may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

- a.¹ The Director shall provide notice and opportunity for public hearing on the schedule before such schedule may take effect. A notice given pursuant to the preceding sentence may cover the granting of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice, and may be conducted as part of the permit hearing. A schedule prescribed pursuant to this Subchapter for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable as the Director may reasonably determine.

B. The Director may grant to one or more public water systems one or more variances from any provision of a primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the Director that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system. A variance granted under this Subchapter shall be conditioned on such monitoring and other requirements as the Administrator may prescribe, which conditions shall become part of the permit.

C. Before a variance proposed to be granted by the Director under Subsection (A) or (B) of this Section may take effect, the Director shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The hearing may be conducted as part of a permit hearing. The Director shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance (and in the case of a variance under Subsection (A), the basis for the finding required by that Subsection before the granting of the variance) and documentation of the need for the variance.

D. The Director shall condition each public water system's variance granted under Subsection (A) of this Section upon compliance by the public water system with the schedule prescribed pursuant to Subsection (A) of this Section. Any schedule or other requirement on which a variance granted under Subsection (A) or (B) of this Section is conditioned may be enforced under § 2583 as if such requirement were part of a primary drinking water regulation.

E. Each schedule prescribed pursuant to Subsection (A) of this Section shall be deemed approved by the Administrator pursuant to § 1415(a) of the U.S. SDWA² unless the variance for which it was prescribed is revoked by the Administrator or the schedule is revised by the Administrator under such Section.

F. If an application for a variance under Subsection (A) or (B) of this Section is made, the Director shall act upon such application within 60 days after the date of its submission.

G. For purposes of this Subchapter, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with SDWA § 1401(1)(C)(ii))³ each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of § 1412(b)(3) of the U.S. SDWA.⁴

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2531.

§ 2562. Small systems variances

A. In general. The Director may grant a variance under this Section for compliance with a requirement specifying a maximum contaminant level or treatment technique contained in a national primary drinking water regulation to:

1. Public water systems serving 3,300 or fewer persons; and
2. With the approval of the Administrator pursuant to Subsection (I) (9), public water systems serving more than 3,300 persons but fewer than 10,000 persons, if the variance meets each requirement of this Section.

B. Availability of variances. A public water system may receive a variance pursuant to Subsection (A) if:

1. The Administrator has identified a variance technology under SDWA § 1412 300g-1(b)(15) that is applicable to the size and source water quality conditions of the public water system;
2. The public water system installs, operates, and maintains, in accordance with guidance or regulations issued by the Administrator, such treatment technology, treatment technique, or other means; and
3. The Director determines that the conditions of Subsection (C) are met.

C. Conditions for granting variances. A variance under this Section shall be available only to a system:

1. That cannot afford to comply, in accordance with affordability criteria established by the Director, with a national primary drinking water regulation, including compliance through:

a. Treatment;

b. Alternative source of water supply; or restructuring or consolidation (unless the Director makes a written determination that restructuring or consolidation is not practicable); and

2. For which the Director determines that the terms of the variance ensure adequate protection of human health, considering the quality of the source water for the system and the removal efficiencies and expected useful life of the treatment technology required by the variance.

D. Compliance schedules. A variance granted under this Section shall require compliance with the conditions of the variance not later than three years after the date on which the variance is granted, except that the Director may allow up to two additional years to comply with a variance technology, secure an alternative source of water, restructure or consolidate if the Director determines that additional time is necessary for capital improvements, or to allow for financial assistance provided pursuant to SDWA § 1452¹ or any other federal or tribal program.

E. Duration of variances. The Director shall review each variance granted under this Section not less often than every five years after the compliance date established in the variance to determine whether the system remains eligible for the variance and is conforming to each condition of the variance.

F. Ineligibility for variances. A variance shall not be available under this Section for:

1. Any maximum contaminant level or treatment technique for a contaminant with respect to which a national primary drinking water regulation was promulgated prior to January 1, 1986; or

2. A primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

G. Regulations and guidance. The Director shall promulgate regulations for variances to be granted under the Section, specifying:

1. Procedures for granting or denying variances, including requirements for notifying the Director and consumers of the public water system that a variance is proposed to be granted (including information regarding the contaminant and variance) and requirements for a public hearing on the variance before the variance is granted;

2. Requirements for the installation and proper operation of variance technology that is identified for small systems and the financial and technical capability to operate the treatment system, including operator training and certification;

3. Eligibility criteria for a variance for each primary drinking water regulation, including requirements for the quality of the source water (pursuant to § 1412(b)(15)(A) of the SDWA²); and

4. Information requirements for variance applications.

H. Approval of variances. Before proposing to grant a variance under this section to a public water system serving more than 3,300 and fewer than 10,000 person, the Director shall submit the variance to the Administrator for review and approval prior to the issuance of the variance, pursuant to SDWA § 1415(e)(9).³

I. Petition by consumers. Not later than 30 days after the Director proposes to grant a variance for a public water system, any person served by the system may petition the Administrator to object to the granting of a variance, pursuant to SDWA § 1415(e)(10).⁴

J. Timing. No variance shall be granted by the Director until the later of the following:

1. 90 days after the Director proposes to grant a variance; or

2. If the Administrator objects to the variance, the date on which the Director makes the recommended modifications or responds in writing to each objection, pursuant to SDWA § 1415(e)(10)(A).⁵

History

CAU-69-01, August 8, 2001.

§ 2563. Exemptions

A. The Director may exempt any public water system from any requirement respecting a maximum contaminant level or any treatment technique requirement, or both, of an applicable primary drinking water regulation upon a finding that:

1. Due to compelling factors (which may include economic factors) the public water system is unable to comply with such contaminant level or treatment technique requirement or to implement measures to develop an alternative source of water supply;

2. The public water system was in operation on the effective date of such contaminant level or treatment technique requirement or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system;

3. The granting of the exemption will not result in an unreasonable risk to health; and

B. If the Director grants a public water system an exemption under Subsection (A) of this Section, the exemption shall become part of the permit issued to the public water system under § 2571. The Director shall prescribe, at the time the exemption is granted, a schedule for:

1. Compliance (including increments of progress or measures to develop an alternative source of water supply) by the public water system with each contaminant level requirement and treatment technique requirement with respect to which the exemption was granted; and

2. Implementation by the public water system of such control measures as the Director may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

a.¹ Before an exemption or a schedule prescribed by the Director pursuant to this Section may take effect, the Director shall provide notice and opportunity for a public hearing on the exemption and schedule which hearing may be conducted as part of the permit hearing. A notice given pursuant to the preceding sentence may cover more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

C. A schedule prescribed pursuant to this Subchapter for a public water system granted an exemption under Subsection (A) of this Section shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the Director may reasonably determine) but not later than three years after the otherwise applicable compliance date established under SDWA § 1412(b)(10).²

1. No examination shall be granted unless the public water system establishes that:

a. The system cannot meet the standard without capital improvements which cannot be completed prior to the date established pursuant to SDWA § 1412(b)(10).²

b. In the case of a system which needs financial assistance for necessary improvements, the system has entered into an agreement to obtain such financial assistance or an assistance program is likely to be available within the period of the exemption; or

c. The system has entered into an enforceable agreement to become a part of a regional public water system; and

d. The system is taking all practicable steps to meet the standard.

2. In the case of a system which does not serve more than a population of 3,300 and which needs financial assistance for the necessary improvements, an exemption granted under Clause a or b of the

above Subsection may be renewed for one or more additional two year periods, but not to exceed a total of six years if the system establishes that it is taking all practicable steps to meet the requirements of Subsection (C) (1).

3. A public water system may not receive an exemption under this Section if the system was granted a variance under SDWA § 1415(e) ³ or § 2562 of this Act.

F. Each public water system's exemption granted by the Director under Subsection (A) of this Section shall be conditioned upon compliance by the public water system with the schedule prescribed pursuant to Subsection (B) of this Section. The requirements of each such schedule shall be enforceable by the Director under Navajo Nation law as part of the permit issued to the public water system. Any requirement of a schedule on which an exemption granted under this Section is conditioned may be enforced under § 2583 as if such requirement were part of a primary drinking water regulation.

G. Each schedule prescribed pursuant to Subsection (B) of this Section shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under § 1416(d)(2) of the SDWA ⁴ or the schedule is revised by the Administrator under such Section.

H. The Director will promptly notify the Administrator of the granting of any exemption under Subsection (A) of this Section. Such notification shall contain the reasons for the exemption (including the basis for the finding required by Subsection (a)(3) of this Section, before the exemption may be granted) and document the need for the exemption.

I. If an application for an exemption under this Section is made, the Director shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

J. The Director shall make any revisions or revocations of exemptions or schedules that may be required by the Administrator, pursuant to the Administrator's authority to review such exemptions or schedules under the SDWA. ⁵

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2541.

Subchapter 7. Permit Requirements for Public Water Systems and Underground Injection Facilities

§ 2571. Permits

A. The Director shall establish, by regulation, a permit program, requiring owners or operators of public water systems and underground injection facilities within the jurisdiction of the Navajo Nation to obtain a Navajo Nation permit to operate or construct a public water system or an underground injection facility.

B. Such permit program shall specify permit fees to be paid upon application for a PWS or UIC permit and annually thereafter upon receipt of a permit and may also include fees for the processing of variances and exemptions. Such permit program shall also specify requirements for applications for and issuance of modifications to permits, shall specify monitoring and reporting requirements and shall provide for hearings on permit determination.

C. Before a UIC permit is issued under this Section, the owner or operator of the underground injection facility must demonstrate and maintain financial responsibility and resources to close, plug and abandon the underground injection facility as required by the Director by regulation. Evidence of such financial responsibility shall include a surety bond, letter of credit, insurance, corporate guarantee or other submission acceptable to the Director.

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2553.

§ 2572. Submission of information

A. The Director may prescribe conditions for permits (by issuing regulations and/or on a case-by-case basis) and require the submission of plans, specifications, and other information in connection with permit applications of the issuance of permits or permit modifications, variances or exemptions.

B. All permit applications shall contain the following statement to which the applicant must agree and subscribe for the application to be complete and as a condition precedent to the issuance of any permit:

"Applicant hereby consents to the jurisdiction of the Navajo Nation in connection with all activities conducted pursuant to or in connection with, or directly affecting compliance with, any permit issued pursuant to this application or to which the provisions of the Navajo Nation Safe Drinking Water Act otherwise apply. This consent shall be effective when a permit is issued, and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents, including contractors and subcontractors, of the applicant."

C. The applicant shall include the foregoing statement as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the Navajo Nation in connection with any permit issued under this Act or to which the provisions of the Act otherwise apply. Each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for "applicant" as appropriate and substituting the phrase "this agreement" in place of the phrase "any permit issued pursuant to this application". If applicant fails to include such statement, or enters into an agreement with another party without such party agreeing and subscribing to such statement, applicant shall be subject to civil penalties in accordance with this Act.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

§ 2573. Program funds

Monies derived from fees and penalties collected under this Act, appropriations authorized by the Navajo Nation Council for the use of the Navajo Nation Public Water Systems Supervision Program or the Navajo Nation Underground Injection Control Program, and federal, state or other grants to such programs, shall be available solely to the Navajo Nation EPA for the administration, implementation and enforcement of this Act and the regulations promulgated hereunder. Such monies shall be deposited into one of two duly established Special Revenue Funds, call the PWS Fund and the UIC Fund, as the case may be, and shall be expended by the Director for the use of the PWS or UIC Program in accordance with the Special Revenue Fund plan of operation and pursuant to an approved budget. The Director shall report annually to the Navajo Nation Council on the sums deposited into the funds, including the sources and uses thereof. Any monies contained in either of the two funds at the end of the fiscal year shall not revert to the general fund and shall remain available for appropriation as provided in this Section.

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

Subchapter 8. Inspections, Enforcement and Judicial Review

§ 2581. Inspections

A. The Director shall make such investigations and inspections as are necessary to ensure the compliance of public water systems and underground injection facilities with this Act, the Navajo primary drinking water regulations, Navajo underground injection control regulations, and other applicable laws, decisions, orders, rules or other actions taken pursuant to this Act.

B. The Director shall have the right to enter the property of any public water system or underground injection facility for the purpose of inspecting and investigating the sanitary condition of the public water system, the quality of the water, compliance with drinking water regulations or underground injection control regulations, and compliance with applicable Navajo law. This right shall include the right to review and copy the records required to be established and maintained by this Act.

C. Except in an emergency, as determined by the Director, notify and permit the public water system owner or operator or underground injection facility owner or operator to be present when an inspection or investigation is being conducted.

D. The Director is authorized to utilize the services of the United States Indian Health Service or appropriate tribal departments to ensure that necessary inspections are performed, to coordinate his or her activities with those agencies or departments, and to rely upon competent inspections and investigations performed by those agencies or departments.

E. In any instance in which an inspection reveals that a public water system or underground injection facility is not in compliance with applicable law, the Director is authorized to charge the owner or operator of such system or facility a fee for the cost of conduction inspection, whether undertaken by the Director or by another Navajo department (in which case the department undertaking the inspection would be reimbursed). Such fee shall be based on the time taken and expenses incurred in conducting the inspection, but not to exceed the costs of such time an expenses that are reasonable in light of the circumstances.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2566.

§ 2582. General Enforcement Authority

A. In general. Whenever, on the basis of any information available to the Director, the Director finds that any person has violated, or is in violation of, any requirement or prohibition of this Act, the regulations promulgated under this Act, or permits or orders, variances, exemptions, decisions, rules, or any other actions take pursuant to this Subchapter, the Director is authorized to:

1. Issue and serve on such person an order to comply with such requirement, or prohibition, including an emergency order to comply, in accordance with provisions of this Section;
2. Issue and serve on such person an administrative penalty order, in accordance with § 2584;
3. Request that the Attorney General bring a civil action including

an action for injunctive relief in accordance with § 2583; and/or

4. Request that the Navajo Nation Prosecutor's Office bring a criminal action in accordance with § 2583(C) and/or refer any criminal enforcement action or portion of such action to the U.S. EPA Regional Administrator for Region 9.

B. Requirements for orders to comply. An administrative order, including an administrative penalty order, issued under Subsection (A)(1) or (A)(2) of this Section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to the Uniform Hearing Regulations if such hearing is requested in writing within 30 days after the date of issuance of the order, and shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the severity of the violation and any good faith efforts to comply with applicable requirements.

1.¹ The order shall become final immediately upon the expiration of the 30 days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. A copy of the order shall be sent to the appropriate EPA region and, if the order is issued to a corporation, to the appropriate corporate officers and registered agent of the corporation. No order to comply issued under this Section shall prevent the Nation from assessing any penalties nor otherwise affect or limit the Nation's authority to enforce under other provisions of this Act, nor affect any person's obligations to comply with any Section of this Act, permits, orders, variances or exemptions issued pursuant to this Act, or regulations promulgated under this Act.

C. Emergency Compliance Orders.

1. Notwithstanding any other provision of this Act, if the Director determines that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water is presenting an imminent and substantial endangerment to the public health or welfare or the environment, and determines, in consultation with the Attorney General, that it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of a civil action pursuant to § 2583, the Director may take such actions as the Director may deem necessary in order to protect the public health welfare or environment. Such actions may include requiring the immediate closure of such public water system or underground injection facility and issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment. Such orders shall be effective immediately upon issuance and shall remain in effect for not more than 60 days, unless the Director brings an action for injunctive relief pursuant to this Section within the 60 day period. If the Director brings such an action, the order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

2. In the event that the Director is required to take direct action, in place of the owner or operator of the public water system or underground injection facility at issue, to respond to an emergency in order to protect the public health and welfare from imminent and substantial endangerment, the Director may charge a fee to cover the cost of such action. Such action may include, but is not limited to, conduction cleanup, closing a facility or providing alternative water supplies to the affected population. The fee shall be charged to the owner or operator of the relevant public water system or underground injection facility, and may be in addition to any penalty imposed under Subsection (B) for failure to comply with applicable orders issued under this Section.

D. Enforcement of compliance orders. Enforcement actions of the Director shall be enforced by the Navajo Nation Environmental Protection Agency, the Navajo Department of Justice, Navajo Prosecutors Office, Resources Enforcement and/or the Division of Public Safety. Those authorized to enforce the Director's actions may take reasonable steps to assure compliance, consistent with the requirements established by this Act (including rights of appeal), including but not limited to:

1. Entering upon any property or establishment believed to be violating the order and demanding compliance; and
2. Terminating operations at facilities not in compliance.

E. Repeated violations. In addition, when a person has repeatedly violated any requirements of this Act, the regulations promulgated under this Act, or permits, orders, variances, or exemptions or other actions taken pursuant to the Act, or refused to comply with any such requirements, the Director may:

1. Issue an order prohibiting such person from continuing to operate a public water system or underground injection facility within the Navajo Nation;
2. Prohibit such person from entering into any new contracts (including leases) that would permit such person to engage in any activity within the Navajo Nation that is governed by requirements of this Act or regulations under this Act which the person has repeatedly violated;
3. Take action declaring the person ineligible to do business on the Navajo Nation pursuant to the Business and Procurement Act; or
4. Take any other action available under law.

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2568.

§ 2583. Judicial enforcement

A. Civil judicial enforcement. The Director may request the Attorney General to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including damages and the assessment and recovery of civil penalties in an amount not to exceed twenty-five thousand dollars (\$25,000) per day per violation in any of the following instances:

1. Whenever a person has violated, or is in violation of, any requirement or prohibition of this Act, the regulations promulgated under this Act, or permits, orders, variances, exemptions, rules, decisions or any other actions taken pursuant to this Subchapter.

2. Whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities; or

3. Whenever a person is creating an imminent and substantial endangerment to the public health or the environment, in which case the Director shall request the Attorney General to pursue injunctive relief but not the assessment of civil penalties, unless the endangerment is caused by a violation, as specified in Paragraphs (1) and (2).

B. Calculation of Penalties.

1. For purposes of determining the number of days of violation for which a penalty is assessed under this Section or § 2584, if the Director has notified the violator in writing of the violation and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continue or recurred past the date of notice, the days of violation shall be presumed to include the date such and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Navajo Nation District Court in Window Rock that alleges any violation described in Subsection (A) of this Section.

2. In determining the amount of a penalty assessed under this Section or § 2584, the court or the Director, as the case may be, shall consider the history, severity and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator's full compliance history, including the severity and duration of past violations, if any; the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any resulting from the violations; and any other factors that the court or the Director deems relevant. All penalties collected pursuant to this

Section shall be deposited in the PWS Fund or the UIC Fund, as the case may be, special revenue funds established under § 2573 of this Act.

C. Criminal Penalties. The Director may request that the Navajo Nation Prosecutor's Office initiate criminal proceedings against any person who knowingly:

1. Violates any requirement or prohibition of this Act, including but not limited to any regulation adopted pursuant to this Subchapter, a variance, exemption or order issued pursuant to this Act, or a reporting or notice requirement under this Act;

2. Makes any false material statement, representation or certification in, or omits material information from, or alters, conceals or fails to file or maintain any notice, record, reports, or other document required pursuant to this Act to be filed or maintained; or

3. Tamper with any public water system as prohibited in § 2522 of this Act.

Such person shall, upon conviction, be punished by a fine not to exceed five thousand dollars (\$5,000) per day of violation or imprisonment for not more than one year, or both, notwithstanding the provisions of 17 N.N.C. §§ 222 and 223, or be subject to any other penalty imposed by the court that is available under Navajo Nation law. In any instance where the Nation lacks jurisdiction over the person charged, or where the Director is limited in the amount of the fine that he may impose, the Director may refer the action to the appropriate EPA Regional Administrator pursuant to § 2582 of this Act. For the purpose of this Paragraph, the term "person" includes, in addition to the entities referred to in § 2504 of this Act, any responsible corporate officer.

D. Jurisdiction and venue. Any action under this Section shall be brought in the Navajo Nation District Court in Window Rock, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil and criminal penalties up to the amounts provided in this Section, collect any fees or noncompliance penalties owed the Nation under this Act, and award any other appropriate relief.

E. Failure to pay penalty. If any person fails to pay an assessment of a civil penalty, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this Section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be no less than ten percent (10%) of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter; the Director may by regulation establish

higher penalties to take into account situations where the prime rate is higher.

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2569.

§ 2584. Administrative Assessment of Penalties

A. Basis for penalty. The Director may issue against any person an administrative order assessing a civil administrative penalty of up to ten thousand dollars (\$10,000) per day per violation whenever the Director finds that a person has violated, or is in violation of, any requirement or prohibition of this Act, including but not limited to, a regulation adopted pursuant to this Act, or permits, orders, variances or exemptions issued pursuant to this Subchapter. The Director's authority under this Subsection, combined with actions under Subsection (C), shall be limited to matters where the total penalty sought does not exceed one hundred thousand dollars (\$100,000) and the first alleged date of violation occurred no more than one year prior to the initiation of administrative action, except where the Director and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) utilized for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify or remit, with or without any conditions, any administrative penalty imposed under this Section.

B. Hearing requirement. The Director shall assess an administrative penalty under this Section by an order made after opportunity for a hearing, pursuant to § 2585 of this Act. Before issuing such an order, the Director shall give written notice of the proposed order to the person on whom the penalty is to be assessed and provide such person an opportunity to request a hearing within 30 calendar days of receipt of the notice.

C. Field citations. After consultation with the Attorney General, the Director may implement a field citation program through regulations establishing minor violations for which field citations (assessing civil penalties not to exceed one thousand dollars (\$1,000) per day per violation) may be issued by officers or employees designated by the Director, for any violation for which an administrative order could be issued under Subsection (A) to the extent permissible under applicable law. The Director's authority under this Subsection, combined with action taken under Subsection (A), shall be limited into total amount by the provisions in Subsection (A). Any person on whom a field citation is assessed may, pursuant to regulations issued under this Section, elect to pay the penalty or request a hearing on the citation under the provisions of Subsection (B). If a timely request for a hearing is not made, the penalty shall be final and the opportunity for judicial review

shall be waived. Any hearing shall provide a reasonable opportunity to be heard and to present evidence. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this Act, except as to the days of violation for which the penalty required by a field citation is paid.

D. Judicial review. Any person subject to a penalty under Section (A) or (C) of this Section may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock, by filing a petition for review in such court within 30 days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Attorney General. A notice of intent to challenge such penalty assessment, otherwise required by the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 et seq. is not required. Within 30 days thereafter, the Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this Section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Director may seek to recover civil penalties ordered or assessed under this Section.

E. Failure to pay penalty. If any person fails to comply with an administrative penalty order after the order or assessment has become final, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, pursuant to the provisions of § 2583(E).

F. Calculation of penalty. In determining the amount of any penalty to be assessed under this Section the Director or the court, as appropriate, shall take into consideration the factors enumerated in § 2583(B) of this Act.

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

§ 2585. Administrative hearings and subpoenas

A. Administrative hearings. The Director shall, by regulation, establish a formal administrative hearing process which meets due process standards to hear appeals taken under §§ 2582(B) and 2584. Until the Director establishes this administrative hearing process and appoints a qualified presiding officer, the Navajo Office of Hearings and Appeals is authorized to conduct hearings under this Act; provided, in addition, that the Director may, at his/her discretion, transfer other hearings conducted under this Act and the regulations promulgated hereunder to the Navajo Office of Hearings and Appeals when the need arises.

B. Administrative subpoenas.

1. In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative enforcement proceeding under this Act, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may administer oaths.

2. Witnesses summoned shall be paid the same fees and mileage that are paid in the Navajo Nation courts. In case of contumacy or refusal to obey a subpoena, the Navajo Nation District Court for the district in which such person is found, resides or transacts business shall have jurisdiction to issue an order requiring such person to appear before the Director and give testimony or produce papers, books or documents, or both, and any failure to obey such an order may be punished by the court as contempt. A person may challenge the lawfulness of an administrative subpoena issued by the Director in the Navajo Nation District Court for the District of Window Rock, naming as defendant the Director in his or her official capacity and not in any other manner, in any such action, relief will be limited to declaratory relief.

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

§ 2586. Judicial review

A. Any person aggrieved by any final action of the Director taken pursuant to the authority of this Act (but not including imposition of administrative penalties under § 2584), shall have the right to appeal such action in the Navajo Nation Supreme Court. The appeal shall be taken in accordance with the Navajo Rules of Civil Appellate Procedure. The Navajo Nation Supreme Court, in reviewing the final action, shall limit its review to the issues and the evidence that were before the Director at the time of the final action from which the appeal is taken. The Supreme Court may affirm, reverse, modify in whole or in part, or remand for further consideration, any final action that is the subject of the appeal, provided that final actions may be reversed, modified or remanded only when they are:

1. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
2. In excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or
3. Without observance of procedure required by law; or
4. Unsupported by substantial evidence.

B. Any challenge to the lawfulness of authority of the Navajo Nation Council to enact any provision of this Act or regulations promulgated thereunder must be filed in accordance with Navajo law within 90 calendar days

after the date of enactment of this Act in the district court for the District of Window Rock, naming as defendant the Navajo Nation, and not thereafter or in any other manner. Provided, however, that any challenge to regulations promulgated under this Act must be filed within 90 days of their adoption. In any such action, relief shall be limited to declaratory relief. The district court for the District of Window Rock shall have exclusive jurisdiction and venue over any action challenging any provision of this Act. Any action brought pursuant to the provisions of this section shall be brought in compliance with the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.* and not in any other manner.

History

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Title 23

Conservation and Wildlife

Chapter 1. Generally

§ 1. Study of fish and wildlife matters; authority

The Resources Committee is authorized to study fish and wildlife matters with particular reference to hunting and fishing regulations.

History

CM-24-51, May 9, 1951.

Revision note. Reference to the "Advisory Committee" changed to the "Resources Committee" pursuant to 2 N.N.C. § 695(B)(6) and (11).

§ 2. Rules and regulations; authority

The Resources Committee shall make rules and regulations for hunting and fishing, set season dates, determine who shall be permitted to hunt and fish, set permit fees, set fines for violators, and have power to use collected fees and fines for improving hunting and fishing.

History

CM-24-51, May 9, 1951.

Revision note. Reference to the "Advisory Committee" changed to the "Resources Committee" pursuant to 2 N.N.C. § 695(B)(6).

§ 3. Redelegation of authority