

These Model Ordinances were prepared for NARF under a grant from the Administration for Native Americans (ANA) and much of the work was done by a consultant, Duane T. Bird Bear.

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MODEL TRIBAL ENVIRONMENTAL CODE
(MTEC)

NATIVE AMERICAN RIGHTS FUND
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NATIVE AMERICAN RIGHTS FUND

MEMORANDUM

TO: Tribal Chairpersons, Attorneys, Friends

RE: Model Tribal Environmental Code (MTEC)

FROM: John E. Echohawk

DATE: September 1980

In response to tribal interest in energy resource development and environmental management, we are pleased to provide you a set of Model Tribal Ordinances for environmental regulation. Included are models for Water Pollution Control, Waste Management, Underground Injection Control, Air Pollution Control, Radiation, and Noise Control.

These Model Ordinances were prepared for NARF under a grant from the Administration for Native Americans (ANA) and much of the work was done by a consultant, Duane T. Bird Bear. Mr. Bird Bear works with the U. S. Environmental Protection Agency (EPA) in Denver, and his contribution to this project is in his private capacity and his work should not be interpreted as reflecting agency policy nor that of ANA.

The Ordinances that follow are only models to be used in drafting

reservation-specific legislation. Tribal leaders will need to make basic policy decisions about environmental management; applicable statutes and treaties must be researched; existing tribal environmental protection Ordinances must be examined, as well as tribal constitutions and by-laws before draft Ordinances can be adopted as final tribal laws.

We are encouraged by the growing interest of tribes to maintain and enhance reservation environmental quality. We hope that the following Model Ordinances will assist this process.

INTRODUCTION

On June 16, 1980, the Native American Rights Fund, Inc., of Boulder, Colorado sent tribal chairpersons, tribal attorneys, and other interested persons draft copies of the "Model Tribal Environmental Ordinances" for comment. The draft ordinances were prepared for NARF by its consultant, Duane T. Bird Bear, as part of a larger program administered by NARF through a grant from the Administration for Native Americans (ANA). Recommended changes have been made in this, the final draft.

Methodology. The decade of the 1980s may well be a period of extensive development of natural resources on many Indian reservations. Economic benefits for Indian tribes, employment opportunities for individual tribal members, and other incentives must be weighed against the attendant costs of the disruption of often-fragile eco-systems within reservation areas. Without proper management, dramatic increases in the number of pollution sources within reservations both in terms of the direct impact from mining, drilling and electrical generation as well as from the secondary impacts associated with sudden population growth and shifts, will outstrip the capacity of the earth, the air, and the water to mitigate the effects of artificially induced pollution.

Decisions whether to develop reservation resources of coal, oil and gas, uranium, etc. and at what pace are rightfully, we believe, decisions for the tribes, and the people comprising the tribes, to make. Written history of the western tradition of using technologically-advanced processes to maximize energy development is replete with instances of large-scale devastation of natural resources. Only in recent times has attention focused on building in safeguards into the development process designed primarily to protect human health. Debate continues about whether various standards set for specific pollutants are too lax and only minimally protect human health, or, conversely whether such standards are overly stringent so as to discourage industrial development in a nation where gross energy consumption is ever-increasing.

Drafting legislation is never easy. Drafting uniform environmental legislation for tribes with differing economic philosophies is probably impossible, for the reason that quantifiable limits for pollutants will vary. A tribe interested in protecting the pristine quality of air will probably establish strict standards for sulphur dioxides, particulates, nitrogen oxides, and visibility. Another tribe interested in mine-mouth electrical generation will adopt standards for the same pollutants which will allow for some air quality degradation.

Water Quality. In the June 16, 1980, draft of the Model Tribal Environmental Ordinance package, there appeared a water quality ordinance which established specific limitation for temperature, turbidity, pH, alkalinity, and fecal coliform, among other things. This Model Ordinance was primarily geared toward preserving a certain standard of in-stream water quality for fish production and propagation.

Since that time the drafter has received several comments from tribes where salmonid fish production is not feasible or where water scarcity requires almost total diversion for other beneficial uses. Acknowledging that wide geographical disparity between reservation areas dictates differing tribal uses of water, the Water Pollution Control Ordinance has been re-drafted to allow tribal-specific decisions about appropriate standards for reservation waters. Ultimately, it is for the tribal governments, and the people, to decide policy questions associated with water quality. The present Model Ordinance allows tribes to establish, through rule-making powers, reservation-specific standards for specified pollutants.

This change makes the Water Quality Ordinance consistent with provisions of other Ordinances, especially the one dealing with air quality. One common characteristic of both ordinances is the attempt to build in minimum due process safeguards in order to effectuate the mandate of the Indian Civil Rights Act of 1968.

Other changes included revising the numbering of the sections comprising the Water Quality Ordinance, correcting numerous typographical errors, and adding a "severability" section to all ordinances.

Summary. Over the past several decades, there have been established national standards for various pollutants. Organic legislation directing the U.S. Environmental Protection Agency and other federal agencies to work with states to achieve effective pollution control under these standards often mentioned Indian tribes and reservations only in passing, if at all. Without legislative clarification, questions will doubtlessly arise as to the extent of the applicability of federal environmental laws to Indian tribes and on-reservation energy-resource development.

Yet it is clear that major policy decisions concerning reservation environments will be made not in Washington, Denver, or San Francisco, but in places like Window Rock, Browning and Lame Deer. It is our hope that the following Model Tribal Environmental Ordinances will be of assistance to the tribes in implementing these policy decisions.

Duane T. Bird Bear
September 12, 1980

WATER POLLUTION CONTROL ORDINANCE

WATER POLLUTION CONTROL

Section 1000. Pollution of Waters - Public Policy of the Tribe.

(a) Whereas the pollution of the waters of this reservation