

**NAVAJO NATION
SOLID WASTE ACT**

TITLE ____, NAVAJO NATION CODE
CHAPTER ____, THE NAVAJO NATION SOLID WASTE ACT

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SUBCHAPTER 1. GENERAL PROVISIONS.

101. Title

This chapter may be cited as the Navajo Nation Solid Waste Act.

102. Definitions

A. For purposes of this chapter --

1. “Attorney General” means the Attorney General of the Navajo Nation.
2. “Director” means the Director of the Navajo Nation Environmental Protection Agency or his/her designee.
3. “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water.
4. “Health Advisor” means the Director of the Navajo Area Indian Health Service or his or her designee.
5. “Navajo Nation” when used in terms of territorial jurisdiction, means the area defined in 7 N.N.C. § 254.
6. “Navajo Nation Council” means the official legislative body of the Navajo Nation empowered to adopt policies and enact laws governing the Navajo Nation, as set forth in 2 N.N.C. § 102 et seq..
7. “Navajo Nation Solid Waste Program” or “Navajo Nation SWP” means the program, including any successor program, regardless of name, within the Navajo Nation Environmental Protection Agency that is responsible for implementing and enforcing this chapter.
8. “Open burning” means the combustion of solid waste without: control of combustion air to maintain adequate temperature for efficient combustion; containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and control of the emission of the combustion products.
9. “Open dump” means any facility or site where solid waste is disposed of and which does not comply with the requirements established for solid waste landfill facilities pursuant to this chapter and the regulations

promulgated hereunder.

10. “Open dumping” means the act of depositing solid waste in a non-complying manner or management practice.
11. “Operator” means any person who operates, controls or otherwise supervises a solid waste management facility.
12. “Owner” means any person who owns all or part of or leases (in the case of trust land) a solid waste management facility.
13. “Person” means any 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.
14. “Resource Conservation and Recovery Act” or “RCRA” means the federal Resource Conservation and Recovery Act, as amended, that is set forth at 42 U.S.C. § 6941 et seq..
15. “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 Navajo Nation Council Resolution No. CAP-47-95.
16. “Solid waste” means any garbage, refuse or sludge from a wastewater treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from residential, industrial, commercial, mining, and agricultural operations and from community activities, but does not include:
 - a. drilling fluids, produced waters and other non-domestic wastes associated with the exploration, development or production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy;
 - b. fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels and wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that traditionally have been and actually

are mixed with and are disposed of or treated at the same time with fly ash, bottom ash, boiler slag or flue gas emission control wastes from coal combustion;

- c. waste from extraction, beneficiation and proccession of ores and minerals, including phosphate rock and overburden from the mining of uranium ore, coal, copper, molybdenum and other ores and minerals;
- d. agricultural waste, including, but not limited to, manures and crop residues returned to the soil as fertilizer or soil conditioner;
- e. cement kiln dust waste;
- f. sand and gravel;
- g. solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq.;
- h. densified-refuse-derived fuel; or
- i. any material regulated by Subtitle C or Subtitle I, 42 U.S.C. § 6901 et seq., petroleum contaminated soils, of the Resource Conservation and Recovery Act of 1976, or substances regulated by the Toxic Substances Control Act, 7 U.S.C. § 136 et seq. or low-level radioactive waste.

- 17. “Solid waste landfill” or “SWLF” unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 C.F.R. § 257.2. A SWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, waste tires, construction/demolition debris, nonhazardous sludge, conditionally exempt small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A SWLF unit may be a new SWLF unit, an existing SWLF unit or a lateral expansion.
- 18. “Solid waste management facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

19. “Storage” means the accumulation of solid waste after generation and prior to and following collection, processing, composting, recycling, transportation and/or disposal.
20. “Transfer station” means a permanent, fixed, supplemental collection and transportation facility, used by persons and/or route collection vehicles to deposit collected solid waste from offsite into a larger transfer vehicle for transport to a solid waste handling or disposal facility. It does not include solid waste storage containers placed for individual or clusters of residences and institutional, commercial, recreational or industrial establishments that service exclusively those establishments.
21. “Variance” means an acceptable alternative that meets or exceeds the standards required by this chapter and the regulations hereunder.

103. Declaration of Policy

A. Legislative Purposes

1. The Navajo Nation Council finds and declares that disposal of solid waste in or on the land without careful planning and management can present a danger to public health and the environment; that open dumping is particularly harmful to public health, potentially contaminates drinking water from underground and surface sources, and pollutes the air and the land; and that potentially recoverable material that could be recycled is needlessly buried each year, using scarce land resources, even though methods are available to separate usable materials from solid waste. The Navajo Nation Council is hereby creating a coordinated program for management of solid waste within the Navajo Nation.
2. The Navajo Nation Council, by enacting this chapter, intends to protect the health, safety, welfare and environment of the Navajo Nation; to manage, protect and preserve the resources of the Navajo Nation; and to maintain and improve the aesthetic appearance of the Navajo Nation, by:
 - a. assuring that solid waste management practices are conducted in a manner which protects human health and the environment and minimizes the need for corrective action at a future date;
 - b. prohibiting open dumping and requiring the closure of existing open dumps;
 - c. prohibiting open burning at SWLFs;

- d. minimizing the generation of solid waste by encouraging recycling and reuse; and
 - e. providing for the promulgation of guidelines for solid waste collection, transport, separation, recovery and disposal practices and systems.
3. The Navajo Nation Council places primary responsibility for the enforcement of this chapter with the Navajo Nation Environmental Protection Agency.

104. Applicability; Exemptions

- A. Except as otherwise provided in this section, the provisions of this Act and regulations promulgated hereunder shall apply to all persons and all property within the Navajo Nation.
- B. Except as otherwise provided in subsections (C) and (D) of this section, the provisions of this Act and/or regulation promulgated thereunder, 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 valid covenant not to regulate or otherwise exercise jurisdiction over such person or property.
- C. Notwithstanding the provisions of subsection (B) 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.
- D. If not otherwise applicable in accordance with subsection (C) of this section, the provisions of this Act and/or regulations promulgated thereunder, 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 pursuant to section 105 of this Act.
- E. 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.

105. 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 which 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 (1) year, and may be subject to renewal for successive terms of not less than one (1) year. A voluntary compliance agreement may not vary the requirements of this Act or of any regulations promulgated pursuant to this Act, except that the consent required to be given in accordance with section 403(B) 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 final approval of the agreement is given 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 interests of the Navajo Nation. Entering into an agreement pursuant to this subsection shall not constitute a determination or admission by the Navajo Nation that such claim of exemption is valid.

106. Governmental Cooperation

The provisions of this chapter may be carried out by agreements between the Navajo Nation and federal, state or county agencies, including but not limited to the Indian Health Service and the Bureau of Indian Affairs.

107. General Authorities of the Director

A. Powers and Duties

In carrying out this chapter, the Director is authorized to --

1. prescribe such regulations as are necessary to carry out his/her functions under this chapter (including but not limited to regulating the open burning of solid waste), pursuant to the provisions of section 601 of this chapter;
2. enforce the provisions of this chapter and the regulations promulgated hereunder, pursuant to the provisions of subchapter 5 of this chapter;
3. require monitoring, sampling or other studies, as provided in section 501 of this chapter;
4. issue permits, exemptions and variances pursuant to the provisions of subchapter 3 and 4 of this chapter;
5. assess fees on persons involved with the collection, disposal, transportation, processing or storage of solid waste;
6. issue compliance orders, civil penalties and citations to carry out the intent of this chapter and regulations promulgated hereunder;
7. conduct investigations, inspections and tests to carry out the duties of this chapter pursuant to the provisions of subchapter 5 of this chapter;
8. hold hearings related to any aspect of or matter within the authority of this section and, in connection therewith, compel the attendance of witnesses and the production of records;
9. provide to the public pertinent educational materials and information regarding solid waste management issues;
10. issue guidelines and encourage voluntary cooperation with the provisions of this chapter and the regulations promulgated hereunder;
11. consistent with Title 11, 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 chapter, provided that all monies resulting therefrom shall be deposited in the Navajo Nation Treasury to the account of the Solid Waste Program, as authorized under Navajo law; and
12. perform such other activities as the Director may find necessary to carry out his/her functions under this chapter.

In prescribing regulations under this chapter, the Director shall consider but shall not be limited to the relevant factors prescribed by Subtitle D of the Resource Conservation and Recovery Act and the regulations thereunder, except that the regulations prescribed by the Director shall be at least as stringent as those promulgated under RCRA. All regulations promulgated under this chapter shall be subject to approval by the Resources Committee of the Navajo Nation Council.

B. Delegation of Authority

The Director may delegate to any officer or employee of the Navajo Nation Environmental Protection Agency such powers and duties under this chapter, except the making of regulations, as he/she may deem necessary or expedient.

C. Use of Funds

Monies derived from fees and penalties imposed under this chapter shall be available solely for the administration and implementation of this chapter and the regulations promulgated hereunder. Such funds shall be deposited into a duly established Special Revenue Fund and expended by the Director for the use of the Solid Waste Program in accordance with the Special Revenue Fund plan of operation pursuant to an approved budget. Any monies contained in said Fund 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.

108. Construction

This chapter shall be liberally construed to carry out its purpose. The effectiveness and enforceability of this chapter shall not be dependent upon the adoption of any regulations unless otherwise required by law. Nothing contained in this chapter or regulations promulgated hereunder shall be construed to diminish, limit or otherwise adversely affect any right or remedy held or available to the Navajo Nation.

109. Compliance with other Laws and Regulations

Compliance with this chapter and regulations promulgated hereunder does not relieve a person of the obligation to comply with other applicable laws and regulations.

110. Contractual Compliance

Contracting for the storage, collection, transportation, processing or disposal of solid waste shall not relieve the contractor or contractee from responsibility for compliance with the provisions of this chapter and the regulations promulgated hereunder.

111. Severability

If any provision of this chapter, or the application of this chapter to any person or circumstance, is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall remain unaffected.

SUBCHAPTER 2. PROHIBITED ACTS

201. Disposal, Collection, Transporting, Processing

- A. It shall be unlawful for any person to:
1. dispose of any solid waste in a manner that will harm the environment, endanger the public health, safety and welfare or create a public nuisance;
 2. dispose of any solid waste in a place other than a facility which is in compliance with these regulations and other applicable laws;
 3. dispose of any waste not defined as solid waste in a solid waste disposal facility;
 4. dispose of bulk or non-containerized liquids in a solid waste facility;
 5. collect, dispose of, transport, process or store solid waste in any manner or at any facility that is not in compliance with the provisions of this chapter or the regulations promulgated hereunder;
 6. interfere/prohibit with inspections, entry or monitoring, activities; and
 7. violate any other provision, requirement or prohibition of this chapter, including but not limited to a regulation or plan adopted pursuant to this chapter, a permit or order issued pursuant to this chapter, a filing, reporting or notice requirement under this chapter or a fee assessed under this chapter.
- B. The on-site disposal of on-site generated solid waste from a family ranch, camp or farm is not prohibited where said disposal does not, according to the Director, create a public health or environmental hazard or public nuisance.

202. Permits Required

Unless otherwise specified by this chapter or regulations promulgated hereunder, no person shall construct, operate or modify a solid waste landfill facility unless the facility has obtained a permit or permit modification from the Director for the described action.

A permit is not required, however, for facilities that qualify under section 201.B.

203. Open Burning

No open burning shall be allowed at any solid waste landfill facility.

204. Open Dumping

All open dumping shall be prohibited.

SUBCHAPTER 3. SOLID WASTE MANAGEMENT PLANNING AND CRITERIA

301. Solid Waste Management Criteria

A. Regulations

The Director is authorized to promulgate regulations establishing requirements for solid waste landfills, transfer stations, composting facilities, collection and transportation of solid waste and recycling. Such regulations may include but are not limited to:

1. siting criteria;
2. design requirements, including requirements regarding liners, leachate collection, and methane gas monitoring and control; operating requirements; recordkeeping and reporting requirements; and requirements for the preparation of contingency plans in the event of release of contaminants or hazardous waste to the environment;
3. ground water monitoring, sampling and analysis and corrective action requirements;
4. closure criteria and post-closure care requirements, including requirements for the installation of final cover; and
5. financial responsibility requirements, including financial assurance requirements for damage claims, closure, post-closure care and corrective actions relating to SWLFs. The Director shall specify the various financial assurance mechanisms which will be deemed to satisfy these financial responsibility requirements.

B. Transportation Inspection Fees

The Director shall have the authority to inspect solid waste transportation vehicles, by regulation and charge reasonable fees for such service.

302. Variances

A. Issuance

The Director shall adopt regulations providing for the issuance of variances to owners or operators of solid waste management facilities, which would allow such facilities to vary from provisions of this chapter and regulations and plans adopted and permits issued pursuant to this chapter. Such regulations shall allow owners and operators of solid waste management facilities to petition the Director in writing for variances, and shall specify the minimum requirements for such petitions and for public participation. The Director shall also consider issuing variances for hardships caused by, but not limited to, isolation and extreme weather conditions. In all cases, the Director shall grant a petition for a variance only if the Director finds that issuance of the variance will not endanger public health, safety, welfare or the environment and does not violate 40 C.F.R. Parts 257 or 258.

B. Terms and Conditions of Variances

The requirements imposed as a basis for granting or renewing a variance shall include, but not be limited to:

1. a detailed plan for the completion of corrective steps needed to conform to the provisions of this chapter and the regulations adopted and permits issued hereunder, wherever practicable;
2. a fixed term for the variance;
3. the right of the Director to make periodic inspections of the facilities for which the variance is granted.

Subject to the provisions of subsection (C), variances shall be valid for no longer than the term specified in the variance. The Director may impose fees with the approval of the Resources Committee, on a facility for the issuance of a variance.

C. Renewals

A holder of a variance may petition the Director for a renewal of such variance. A petition for renewal may be filed not more than 60 days nor fewer than 30 days prior to the expiration of the variance. The Director, within 30 days of receipt of the petition, shall issue a decision to grant or deny the request for a renewal of the

variance.

D. Suspension and Revocation

If the terms of a variance are being or have been violated, the Director may seek to revoke or suspend the variance. In such event, the Director shall serve notice of such violation on the holder of the variance, specifying the nature of the violation and the date on which a hearing will be held to determine whether the violation occurred and whether the variance should be suspended or revoked.

SUBCHAPTER 4. PERMITTING

401. Requirement to Obtain Permit

Any person owning or operating any SWLF or any composting facility, and any person planning to construct a new SWLF or composting facility or to expand or modify such facility, shall not construct, expand, create a lateral expansion of a unit modify or operate such facility without first obtaining a permit or permit modifications from the Director, unless specifically exempt from such requirement by regulation promulgated by the Director pursuant to this chapter. In the case of a SWLF, or composting facility that is already in existence at the time of enactment of this chapter or of promulgation of permit regulations under this chapter, the owner or operator shall submit a permit application to the Director within 90 days of the promulgation of permit regulations under this chapter. Such owner or operator shall be treated as having been issued a permit until a final administrative disposition is made on the permit application, unless the Director finds that a final administrative disposition has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. A permit shall not be required to undertake a corrective action pursuant to the regulations promulgated under this chapter. The Director also may by regulation require permits for the collection and transportation of solid waste within the Navajo Nation.

402. Permit Applications

A. Content of Permit Application

The applicant shall submit to the Director for approval a completed permit application, on a form prescribed by the Director, together with all other information, as required by the regulations promulgated under this chapter.

B. Application Fees

A filing fee as prescribed by the Director by regulation shall accompany the application for a permit. In addition, the Director may charge a review fee at an hourly rate for the review of a permit application.

403. Permit Determinations

A. Issuance of Permit

The Director shall issue a permit, for a fixed term not to exceed thirty (30) years, for construction, expansion, modification or operation of a facility that complies with all the requirements of this chapter and the regulations promulgated hereunder. In the event that the applicant proposes modification of the facility in question, or the Director determines that modifications are necessary to comply with the requirements of this chapter and the regulations hereunder, the permit shall specify the time allowed to complete the modifications. The Director also may allow the applicant an opportunity to revise a permit application to remedy deficiencies. The approval of a permit application does not relieve the applicant from the responsibility of compliance with all applicable provisions of this chapter and the regulations promulgated hereunder and applicable federal regulations.

B. Conditions to Permits

As a condition of obtaining a permit and/or constructing, expanding, modifying or operating, a SWLF or composting facility,

1. the Director or Health Advisor shall have the right to enter the facility to conduct inspections, take samples and conduct monitoring, as provided under this chapter or the regulations promulgated hereunder;
2. the Director shall have the right to enter any premises where records relevant to determining compliance with this chapter, the regulations promulgated hereunder or the requirements of the permit are kept;

3. the permittee, his agents, employees, lessees, sublessees, successors and assigns shall consent to the jurisdiction of the Navajo Nation and shall agree to abide by all laws of the Navajo Nation. Each issued permit shall contain the following statement to which the permittee must agree and subscribe for the permit to be complete and as a condition precedent to the final issuance of any permit:

“Permittee consents to the jurisdiction of the Navajo Nation with respect to those activities conducted pursuant to this permit issued by the Director pursuant to the provisions of the Navajo Nation Solid Waste Act. 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, assignees, employees and agents, including contractors and subcontractors of permittee whose activities fall within the scope of the issued permit”; and

4. Permittee shall include the statement in paragraph 3 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 by the Director, and each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for “permittee” as appropriate.

C. Permit Fees

The initial fee for a permit shall be in accordance with the fee schedule established by the Director in the regulations promulgated pursuant to this chapter. A permit may be renewed following, administrative review and payment of the renewal fee prescribed by regulation of the Director.

D. Permit Transfers

A permit may not be transferred, from one location, facility or person to another, without approval from the Director pursuant to the regulations promulgated under this chapter.

E. Judicial Review of Final Permit Determinations

An applicant may seek judicial review of any final permit determination (including revocation) in Navajo Nation Court, pursuant to the provisions of section 602 of this chapter.

404. Permit Revocation

The Director may revoke a permit for failure to comply with the terms or conditions of the permit; fraud, deceit or submission of inaccurate information to the Director; or failure to comply with the provisions of this chapter or the regulations promulgated hereunder.

405. Public Participation

A. Availability of Documents

The Director shall maintain a file of all permit applications, documents accompanying such applications and permits issued under this chapter. This file shall be available for public inspection and comment. If any applicant or permittee is required to submit information entitled to protection from disclosure under section 501(D) of this chapter, the applicant or permittee may submit such information separately. The requirements of section 501(D) shall apply to such information. The contents of a permit shall not be entitled to protection under section 501(D).

B. Notice of Final Permit Determination

Before making a final determination regarding any permit under this chapter, including before issuing, transferring, renewing, revising, revoking or denying a permit, the Director shall publish in local newspapers and broadcast over local radio stations the Director's intent regarding such permit. If the Director receives a written request for a public hearing on such permit within 15 days of publication of such notice, the Director shall schedule a public hearing on such permit, and shall give notice of the date, time, place and subject matter of such hearing in the aforementioned manner.

SUBCHAPTER 5. ENFORCEMENT

501. Record-keeping, Inspections, Monitoring and Entry

A. Requirements in Orders or Permits

The Director may require, by order or permit, any owner or operator of a solid waste management facility, or any other person who is subject to any requirement of this chapter, to:

1. establish and maintain records;

2. prepare and submit reports;
3. install, use and maintain monitoring equipment, and use audit procedures or methods;
4. monitor and sample emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Director shall prescribe);
5. submit compliance certifications in accordance with subsection (B) of this section; and
6. provide such other information as the Director may reasonably require.

B. Production of Records

Whenever the Director has reasonable cause to believe that any person has violated or is in violation of any requirement of this chapter or of any regulation hereunder or any requirement of a permit or order issued pursuant to this chapter, he/she may request in writing that such person produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with such requirements.

C. Public Availability of Information

Any records, reports or information obtained under subsections (A) or (B) of this section shall be available to the public, except that upon a showing satisfactory to the Director by any person that records, reports or information, or any portion thereof would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Director shall consider such record, report, information or portion thereof confidential, except that such material may be disclosed to other officers, employees or authorized representatives of the Navajo Nation and of the United States concerned with carrying out this chapter or when relevant to any proceeding under this chapter.

502. General Enforcement Authority

A. In General

Whenever, on the basis of any information available to the Director, the Director finds that any person conducting an activity that threatens human health or the environment and/or has violated, or is in violation of, any requirement or prohibition of this chapter, the regulations promulgated under this chapter, or permits, orders, plans, variances or fees issued or approved pursuant to this

chapter, the Director may:

1. issue and serve on such person an order requiring, the person to comply with each requirement or prohibition, pursuant to the provisions of this section;
2. issue and serve on such person an administrative penalty order in accordance with section 504 of this chapter;
3. bring a civil action in accordance with section 503(A) of this chapter; and/or
4. bring a criminal action in accordance with section 503(B) of this chapter.

In addition, when a person has consistently violated any requirements or prohibitions of this chapter, the regulations promulgated under this chapter, or permits, orders, variances or fees issued or approved pursuant to this chapter, or refused to comply with any such requirements or prohibitions, the Director may issue an order prohibiting such person from continuing to operate a solid waste management facility within the Navajo Nation, and/or prohibiting such person from entering into any new contracts (including leases) that would permit such person to operate a solid waste management facility within the Navajo Nation.

B. Requirements for Orders to Comply

An order to comply issued under 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 regulations promulgated by the Director under section 601 of this chapter, 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 seriousness of the violation and any good faith efforts to comply with applicable requirements. The order shall become effective 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. If the order is issued to a corporation, it shall be issued to the appropriate corporate officers. No order to comply issued under this section shall prevent the Director from assessing any penalties nor otherwise affect or limit the Director's authority to enforce under other provisions of this chapter, nor affect any person's obligations to comply with any section of this chapter or with a term or condition of any permit or implementation plan promulgated or approved under this chapter.

C. Emergency Compliance Orders

Notwithstanding any other provision of this section, the Director (after consultation with the Attorney General where feasible) may issue a compliance order that is effective immediately where there is an imminent and substantial threat to the public health, welfare or environment. Any person issued an order that is effective immediately may file a written request with the Director for a stay pending the outcome of any appeal taken under this section in accordance with the procedures provided for in section 502(B). The Director shall, by written notice, grant or deny the request for a stay within five days receipt of a request for a stay. If the Director denies the request for a stay, the affected party has 30 days to appeal the denial to the Window Rock District Court. Any person subject to an emergency compliance order may seek judicial review of a final agency determination as provided for in section 504(D) of this chapter.

D. Enforcement of Compliance Orders

Orders of the Director shall be enforced by the NNSWMP, the Navajo Department of Justice, Resources Enforcement and the Division of Public Safety. Those authorized to enforce the orders may take reasonable steps to assure compliance, including but not limited to:

1. entering upon any property or establishment believed to be violating the order and demanding compliance; and
2. terminating part or all operations at the solid waste management facility.

E. Injunctive Relief

Notwithstanding any other provision of this section, the Director may seek injunctive relief pursuant to section 503(A) to restrain any activity which may endanger or cause damage to human health or the environment.

503. Judicial Enforcement

A. Civil Judicial Enforcement

The Director shall 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 the assessment and recovery of civil penalties in a maximum amount per day per violation of not less than \$500.00 but not to exceed \$25,000, in any of the following instances:

1. whenever a person has violated, or is in violation of, any provision,

requirement or prohibition of this chapter, including, but not limited to, a regulation adopted pursuant to this chapter, a permit or order issued pursuant to this chapter;

2. whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities; and
3. whenever an activity exists which may endanger or cause damage to human health or the environment, in which case the Director shall request the Attorney General to pursue injunctive relief, but not the assessment of penalties, unless the endangerment to the public health is caused by a violation, as specified in paragraphs (1) and (2).

B. Criminal Penalties

Any person who intentionally:

1. violates any provision, requirement or prohibition of this chapter, including but not limited to a regulation adopted pursuant to this chapter, a permit or order issued pursuant to this chapter, a filing, reporting or notice requirement under this chapter;
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, application, record, report, plan or other document required pursuant to this chapter to be filed or maintained, including required by a permit issued pursuant to this chapter; or
3. falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this chapter;

shall, upon conviction, be punished by a fine in a maximum amount of not less \$500 but not to exceed \$5,000 per day per violation or imprisonment for not more than one hundred and eighty (180) days per day per violation or both or be subject to any other penalty imposed by the Court available under Navajo law. For the purpose of this subsection, the term “person” includes, in addition to the entities referred to in section 102(A)(13) of this chapter, any responsible corporate officer.

C. Suits for Costs

In addition to the above proceedings, the Director is authorized to initiate proceedings, separately or in connection with either a civil, criminal or exclusion

proceeding brought under this chapter, for any damages caused to the lands or other resources of the Navajo Nation as the result of any violation of this chapter, including for payment of costs of all associated remedial actions taken, for any expenses incurred in investigating and evaluating such damages, for any administrative costs incurred as a result of this matter and for the reasonable value of the attorney time and expenses associated with such proceedings.

D. Jurisdiction and Venue

Any action under this subsection may 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 penalties, collect any fees or noncompliance penalties owed the Nation under this chapter, and award any other appropriate relief.

E. Calculation of Penalties; Notice

1. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this section, section 504 or section 505, if the Director has notified the source in writing of the violation and a prima facie showing can be made that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice, each day of violation prior to such notice 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 civil penalty assessed under this section, the court shall consider the history, seriousness 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 violation; and any other factors that the court deems relevant. The court may assess penalties for noncompliance with administrative subpoenas under section 601 of this chapter or actions under subchapter 2 of this chapter where the violator does not have sufficient cause to violate or fail or refuse to comply with such subpoena

or action.

3. All penalties collected pursuant to this section shall be deposited in a special fund in the Navajo Treasury for use by the Director to finance solid waste management compliance and enforcement activities. The Director shall report annually to the Navajo Nation Council about the sums deposited into the fund, including the sources and the actual and proposed uses thereof.
4. In lieu of or in addition to a monetary penalty, the Director may impose or may request the Attorney General to seek from the court a requirement to remediate the damage caused or to perform community service, or both.

F. Security

The court may, if a temporary restraining order or preliminary injunction is sought under this section or section 505 of this chapter, require the filing of a bond or equivalent security.

504. 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 \$10,000 per day per violation whenever the Director finds that a person has violated, or is in violation of, any provision, requirement or prohibition of this chapter, including, but not limited to, a regulation adopted pursuant to this chapter, a permit or order issued pursuant to this chapter. The Director's authority under this subsection shall be limited to matters where the total penalty sought does not exceed \$100,000 and the first alleged date of violation occurred no more than one (1) 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) used 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. The Director shall promulgate rules for discovery and other procedures for hearings under this section. 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 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 \$5,000 per day per violation may be issued by officers or employees designated by the Director, to the extent permissible under applicable law. 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. If a timely request for a hearing is not made, the penalty shall be final. 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 chapter if the violation continues.

D. Judicial Review

Any person subject to a civil penalty under subsections (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. 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 pay an assessment of a civil penalty or 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, 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 10% of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter.

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 section 503(E) of this chapter.

505. Citizen Suits

A. Authority to Bring Civil Action; Jurisdiction

1. Except as provided in subsection (B) of this section, a person may commence a civil action in the Navajo Nation District Court in Window Rock on his own behalf
 - a. against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises) who is alleged to be in violation of any provision, requirement or prohibition of this chapter, including but not limited to a regulation adopted pursuant to this chapter, an order or permit issued pursuant to this chapter or a requirement to have a permit issued under this chapter; or
 - b. against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises) who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid waste which may present an imminent and substantial endangerment to health or the environment.
2. The Navajo Nation courts shall have jurisdiction to enforce such provision, requirement, prohibition, regulation, order or permit requirement, to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid waste, to order such person to take such other action as may be necessary and to apply any appropriate civil penalties.

B. Notice

1. An action may not be commenced under subsection (A)(1)(a) of this section fewer than 60 days after the plaintiff has given notice of the alleged violation to the Director, the Navajo Nation and the alleged violator. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting an administrative or a civil action in court to require compliance with this chapter, except that any person may intervene as a matter of right in an action filed with the Window Rock District Court.
2. An action may not be commenced under subsection (A)(1)(b) of this section fewer than 90 days after the plaintiff has given notice of the endangerment to the Director, the Navajo Nation and any person alleged to have contributed or to be contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid waste. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting an administrative or a civil action in court to restrain or abate conditions which may have contributed or are contributing to the activities which may present the alleged endangerment, except that any person may intervene as a matter of right in an action before the Window Rock District Court if such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless the Director or the Navajo Nation shows that the person's interest is adequately represented by existing parties.

C. Venue; Intervention; Service of Complaint

1. Any action respecting a violation by a solid waste management facility of any requirement of this chapter or the regulations promulgated hereunder may be brought only in the Navajo Nation District Court in Window Rock.
2. The Director, if not already a party, may intervene as a matter of right in any action brought under this section.
3. Whenever any action is brought under this section the plaintiff shall serve a copy of the complaint on the Attorney General and on the Director. No consent judgment may be entered in an action brought under this section in which the Director is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Director, during which time the Attorney General and the Director may submit, on behalf of the Nation, their comments on the proposed

consent judgment to the court and parties or the Director may intervene as a matter of right.

D. Award of Costs

The court, in issuing a final order in an action brought under this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

E. Penalty Fund

Penalties received under this section shall be deposited in a Special Revenue Fund in the Navajo Nation Treasury for use by the Director to finance solid waste management compliance and enforcement activities. The Director shall report annually to the Tribal Council about the sums deposited into the fund, including the sources and the actual and proposed uses thereof.

506. Administrative Hearings

The Director shall, by regulation, establish a formal hearing review process which meets due process standards, to hear appeals taken under section 504(A) and (B) (administrative penalties), section 504(C) (field citations) and section 502(C) (emergency compliance orders). The Director may establish an informal review process to hear all other administrative appeals provided for under this chapter. Until the Director establishes a formal hearing review process, appoints a qualified presiding officer and certifies this in writing, the Navajo Office of Hearings and Appeals is authorized to hear appeals taken under sections 504(A) and (B), section 504(C) and section 502(C); provided, however, the Director may, at his/her discretion, transfer other appeals allowed under this chapter and regulations promulgated hereunder to the Navajo Office of Hearings and Appeals where the need arises.

SUBCHAPTER 6. RULEMAKING AND JUDICIAL REVIEW

601. Rulemaking and Other Administrative Procedures

A. Rulemaking

1. Notice of any proposed regulation shall be published in a newspaper of general circulation for the areas of the Nation that are concerned. 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 of at least thirty (30) calendar days; allow any person to submit written comments, data or documentary information; shall in addition give interested persons an opportunity to present orally their views, in the Navajo or English languages, data or arguments; and shall keep the docket open for twenty (20) calendar days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.

2. 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.

B. Administrative Subpoenas

1. In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative enforcement proceeding under this chapter, 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. Upon a showing satisfactory to the Director by the owner or operator of a source that it would divulge trade secrets or secret processes to make public such papers, books, documents or information or any portion thereof, the Director shall consider this information confidential, except that such information may be disclosed to other officers, employees or authorized representatives of the Nation concerned with carrying out this chapter or when relevant in any proceeding under this chapter.
3. Witnesses summoned shall be paid the same fees and mileage that are paid in the Nation's courts. In case of contumacy or refusal to obey a subpoena, the 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 Window Rock District Court in his or her official capacity and not in any other manner; in any such action, relief shall be limited to

declaratory relief.

602. Review in Navajo Nation Supreme Court

A. Petitions for Review

A petition for review of any final action taken by the Director under this chapter, including but not limited to promulgation of regulations and standards, issuance of orders and issuance and denial of permits (but not including imposition of administrative penalties under section 504 which are subject to review under section 504.D., or challenge of an administrative subpoena which are subject to review under section 601.B.3.) shall be brought in the Navajo Nation Supreme Court. The petition shall be filed within 60 days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or such other person required to be served under this chapter, except that if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within 60 days after such grounds arise.

B. Limitations on Review

1. If judicial review of a final action of the Director could have been obtained under subsection (A) of this section, that action shall not be subject to judicial review in judicial proceedings for enforcement.
2. With respect to any regulations promulgated under this chapter, only an objection that was raised with reasonable specificity the public comment period may be raised during judicial review. If the person raising an objection can demonstrate to the Director that it was impracticable to raise the objection within such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation, the Director shall convene a proceeding for reconsideration of the regulation and provide the same procedural rights as would have been afforded had the information been available at the time the regulation was proposed. If the Director refuses to convene such a proceeding, the person may seek review of such refusal in the Navajo Nation Supreme Court. Such reconsideration shall not postpone the effectiveness of the regulation, although it may be stayed by the Director or the court for up to 3 months.
3. Except as otherwise expressly allowed by Navajo law, no interlocutory appeals shall be permitted with regard to determinations made by the Director under this chapter. In reviewing alleged procedural errors, the court may invalidate the regulation only if the errors were so serious and

related to matters of such central relevance to the regulation that there is a substantial likelihood that the regulation would have been significantly changed if such errors had not been made.

C. Standards for Review

In reviewing any final action of the Director undertaken pursuant to this chapter, the court may reverse any such action that it finds to be:

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

D. Challenge to Provisions

Any challenge to the lawfulness of any provision of this chapter must be filed in accordance with Navajo law within 90 calendar days after the date of enactment of this chapter in the Window Rock District Court, naming as defendant the Navajo Nation, and not thereafter or in any other manner. Any challenge to regulations promulgated under this chapter must be filed within 90 calendar days of their adoption. In any such action, relief shall be limited to declaratory relief. The Window Rock District Court shall have exclusive jurisdiction and venue over any action challenging any provision of this chapter.