

YUROK TRIBE AIR QUALITY ORDINANCE

Whereas the Yurok Tribal Council (Council) is the governing body of the Yurok Tribe (Tribe) pursuant to the Constitution of the Yurok Tribe as approved on November 19, 1993; and

Whereas the Council is authorized by Article VII of the Constitution of the Yurok Tribe to protect the health, safety, and welfare of the Yurok People living within the exterior boundaries of the Yurok Indian Reservation (YIR);

Now, therefore, be it resolved that the following ordinance governing air quality is hereby enacted and shall be effective upon the date of approval by the Council.

1. Findings And Declarations

The Tribe finds and declares that it wishes to reduce and control discharges of pollutants into the air of the YIR. Reduction and control of discharges of pollutants into the air of the YIR is necessary to maintain air quality for the health, safety and welfare of residents and the environment of the YIR.

Therefore, the Council adopts this Air Quality Ordinance (AQO) to protect and promote the political integrity, economic security, health, safety and welfare of the Tribe, its members, and all persons living on, or passing through, the YIR; and to protect and preserve the environment, lands, culture, religion, and natural resources of the Tribe.

Section 301 of the Clean Air Act, the Tribal Authority Rule, gives Tribes the authority to be treated in the same manner as states to carry out the provisions of the Clean Air Act.

Section 302 of the Clean Air Act identifies that Tribes, and the agencies of Tribes, within the United States have the authority to act as Air Pollution Control Agencies.

2. Definitions

For purposes of this AQO, the following words shall have the following meanings:

- 2.1. The term “air” means the ambient air, or atmosphere, external to buildings and contained within indoor areas, of the YIR.
- 2.2. The term “approved combustibles” means paper, cardboard, lawn clippings, yard waste, brush, trees, native vegetation, and other materials as approved by the Yurok Tribe Environmental Program (YTEP), but shall not include hazardous or toxic materials, or any other material that would imperil or endanger the quality of the air of the YIR.
- 2.3. The term “Burn permit” means a written approval, issued by YTEP, for open outdoor fires on the YIR in accordance with the provisions of this AQO.

- 2.4. The term “Tribal Council” means the Tribal Council of the Yurok Tribe.
- 2.5. The term “complainant” means any tribal member, Tribal Council member, YTEP staff, other staff of the Tribe, or residents of the YIR who submits a written complaint to YTEP, signed under penalty of perjury, of a violation of this AQO, any rules or regulations promulgated pursuant thereto, or any conditions of a Burn permit, in accordance with the procedures set out in section 10, below.
- 2.6. The term “energy efficient and low-emission wood burning stove or other heating system” means a wood burning stove or other heating system, including those powered by electricity or natural gas, which uses at least twenty-five (25) percent less energy, and generates at least twenty-five (25) percent less emissions than standard models.
- 2.7. The term “fire suppression equipment” means any substance (water, sand, fire retardant etc.) or equipment (shovel, fire extinguisher, etc.) in such quantity and quality to adequately suppress the outbreak of an open fire.
- 2.8. The term “hazardous material” means any material, or combination of materials, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:
 - 2.8.1. cause, or significantly contribute to, an increase in either mortality or serious, irreversible, or incapacitating reversible, illness; or
 - 2.8.2. pose either a substantial present, or potential, hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
 - 2.8.3. The term “hazardous material” shall include, but is not limited to, the following:
 - 2.8.3.1.all plastics, foam, and styrofoam, as those terms are commonly used, that is no longer being used or has been discarded;
 - 2.8.3.2.hazardous waste as defined in 40 C.F.R. section 261.3, as amended from time to time;
 - 2.8.3.3.any hazardous air pollutant listed under the Clean Air Act, as codified in part at 42 U.S.C. section 7412, as amended from time to time; and
 - 2.8.3.4.any hazardous substance contained in 49 C.F.R. section 172.101, Appendix A (List of Hazardous Substance and Reportable Quantities), as amended from time to time.
- 2.9. The term “imminent fire hazard” means a hazard which presents an immediate danger to the health and/or safety of a person(s), property, or wildlife.

- 2.10. The term “person” means any individual, corporation, firm, partnership, joint venture, association, social club, estate, trust, the United States, Tribe, State, county, city, district or other political subdivision of any state, or any other group or combination acting as a unit.
- 2.11. The term “pollutant” means any substance that will alter the quality of the air of the YIR, but shall not include:
 - 2.11.1. air emissions from outdoor fires ignited pursuant to a burn permit;
 - 2.11.2. air emissions from outdoor fires exempted from the burn permit requirements; and
 - 2.11.3. air emissions from indoor fires normally associated with residential/domestic or business practices, but not including the burning of hazardous materials or any other substances that could imperil or endanger the quality of the air of the YIR.
- 2.12. The term “air quality” means any chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of air.
- 2.13. The term “Reservation” means all land, air, and water located within the exterior boundaries of the YIR.
- 2.14. The term “Yurok Tribe Environmental Program” or “YTEP” means the Environmental Program Department of the Yurok Tribe.
- 2.15. The term “Tribe” means the Yurok Tribe, a federally recognized Indian tribe.
- 2.16. The term “violation” means any violation of this AQO, any orders of YTEP enforcing this AQO, or any conditions of a burn permit.
- 2.17. The term “violator” means any person who YTEP finds has committed a violation. The term “alleged violator” means any person alleged to have committed a violation.

3. Jurisdiction

The applicability of this AQO shall extend to all persons, whether Indian or non-Indian, who discharge any pollutant into the air of the YIR.

Any person who enters onto the YIR shall be subject to this AQO, and shall be deemed to have consented to the jurisdiction of the Tribe and to be bound by the lawful ordinances of the Tribe.

4. Burn permit

- 4.1. No person shall set, or allow to be set, any open outdoor fire(s) within the YIR without a valid burn permit issued by the YTEP.

- 4.2. Fires set to improve cultural or ceremonial resources of the Tribe will go through the Burn permit process, but fees will be waived.
- 4.3. The Tribe shall create a Tribal Smoke Management Plan (SMP), which will detail the functions of a Tribal Smoke Management Program, including the issuance of burn permits.
- 4.4. The Tribal Smoke Management Program, through a Smoke Management Coordinator (SMC), will be responsible for soliciting, reviewing, approving, and tracking burn permits for properties within the boundaries of the YIR.
- 4.5. The following are exempted from the permit requirements of subsection 4.1:
 - 4.5.1. Fires used only for the cooking of food for human consumption, including fires used for smoking or curing of foods.
 - 4.5.2. Fires used for cultural, ceremonial, religious, or camping purposes recognized by the Tribe, so long as those fires are attended to and fire suppression equipment is at hand. Exempted fires are limited to those of a non-spreading variety less than three feet in diameter.
 - 4.5.3. Fires set or permitted by any authorized public officer when such fire is necessary for any of the following purposes:
 - The prevention of an imminent fire hazard.
 - The setting of backfires necessary to save life or property.
- 4.6. Any Burn permit issued by YTEP must conform to the following requirements:
 - 4.6.1. Burn permits for open outdoor fires may be issued only for the disposal of approved combustibles.
 - 4.6.2. Burn permits shall only be issued to persons 18 years of age or older residing on, or owning, property within the YIR.
 - 4.6.3. The Burn permit shall be valid for no more than one year, and shall expire on the last day of the current calendar year.
 - 4.6.4. The Tribal Council has designated YTEP as the Tribal department charged with enforcing the terms of this ordinance. YTEP shall not issue a Burn permit to applicants:
 - 4.6.4.1. Who have been cited for violations of this AQO where YTEP determines that such violations indicate the applicant could pose a threat to the health and safety of the residents or environment of the YIR;

- 4.6.4.2. Who have been cited for violations of the air provisions of the tribal Nuisance Ordinance where YTEP determines that such violations indicate the applicant could pose a threat to the health and safety of the residents or environment of the YIR;
 - 4.6.4.3. Whose previous burning activities have imperiled or endangered the quality of the air of the YIR; and
 - 4.6.4.4. Where YTEP determines that, due to meteorological conditions, the burning proposed by the applicant could cause smoke to create or contribute to a violation of a Tribal or federal air quality standard, imperil or endanger the quality of the air of the YIR, or create a nuisance as defined in the tribal Nuisance Ordinance.
- 4.6.5. YTEP may include any condition(s) in the Burn permit it deems necessary to protect the quality of the air and the health and safety of the residents and/or environment of the YIR. YTEP may include in the Burn permit the following conditions, and any other conditions YTEP deems necessary:
- 4.6.5.1. Burning may only occur on permissive burn days, as determined by YTEP in coordination with the California Air Resources Board, North Coast Air Quality Management District, and local government agencies;
 - 4.6.5.2. The waste to be burned shall be reasonably free of dirt, soil and excess moisture and, whenever possible, shall be piled in such a manner as to burn with maximum possible heat intensity and minimum smoke.
 - 4.6.5.3. The waste to be burned shall be free of tires, tarpaper, garbage or other types of rubbish likely to cause excessive smoke or odor.
 - 4.6.5.4. The waste to be burned shall be allowed to dry for the following minimum time periods before burning:
 - 4.6.5.4.1. Trees and branches over six (6) inches in diameter - thirty (30) days;
 - 4.6.5.4.2. Brush, vines, bushes, prunings and small branches - fifteen (15) days;
 - 4.6.5.4.3. Field crops, lawn clippings and weeds - seven (7) days; and
 - 4.6.5.4.4. Other materials - drying times will be determined by YTEP on a case-by-case basis.

5. Energy Efficient and Low Emission Stove and Heating System Program

- 5.1. Any person installing or replacing a wood burning stove or other heating system in a residence, business, or tribally-owned facility within the YIR must install an energy efficient

and low emission stove or other heating system from a list of approved models prepared and maintained by YTEP. YTEP is authorized to grant waivers to persons for whom compliance with this requirement shall create a severe and undue economic hardship.

- 5.2. YTEP shall prepare and maintain a list of energy efficient and low emission stove and heating systems that are approved for compliance with subsection 5.1, above. YTEP shall strive to include affordable models of energy efficient and low emission stove and heating systems on the list of approved such appliances and systems. Such list shall be maintained for use by, and shall be made available upon request by, tribal members and residents of the YIR.
- 5.3. YTEP shall seek to secure grant funds, including low-interest loans, from outside sources to assist persons who must comply with the requirements set out in subsection 5.1 and 5.2, above,
 - 5.3.1. Who are low-income; or
 - 5.3.2. For whom compliance with this requirement will create an economic or financial hardship.

The lack of availability of such funds shall not excuse compliance with the requirements of subsection 5.1 and 5.2, above.

6. Notice to YTEP

- 6.1. Any person who discharges any pollutant into the air of the YIR shall immediately, but in any case not less than twenty-four (24) hours from the time of the discharge, notify YTEP or Yurok Tribe Public Safety of said discharge; and shall fully disclose to YTEP all information regarding the discharge, including, but not limited to, the type of pollutant discharged; the amount of pollutant discharged; the location of the discharge; and any other information required by YTEP. For those without telephone service for whom contacting YTEP or YTPS within 24 hours would create a hardship, notice must be made as soon as practicable.
 - 6.1.1. Notice to YTEP under this subsection is not required for:
 - 6.1.1.1. Air emissions from outdoor fires conducted pursuant to a Burn permit, unless notice is required as a condition of a Burn permit;
 - 6.1.1.2. Air emissions from outdoor fires exempted from the Burn permit requirements; and
 - 6.1.1.3. Air emissions from indoor fires normally associated with residential/domestic or business practices, but not including the burning of hazardous materials or any other substances that could unreasonably imperil or endanger the quality of the air of the YIR.

- 6.2. The initial notice of discharge or other prohibited activity required by subsection 6.1, may be delivered orally to YTEP in person or over the phone. However, within three (3) days of providing oral notice of a discharge, written notice of the discharge must be provided to YTEP. All other information required to be provided to YTEP under subsection 6.1 must be delivered to YTEP in writing or orally.

7. Clean-up and Abatement

Any person who discharges any pollutant into the air of the YIR shall be liable for all costs associated with, or necessary to clean up, abate, and/or mitigate effects to the air of the YIR; and restore the quality of the air of the YIR to the condition of the air as it existed immediately prior to the discharge.

8. Authorized Activities of YTEP and Yurok Tribe Department of Public Safety

YTEP, YTFP, and Public Safety staff are authorized and directed to conduct the following activities to enforce the provisions of this Ordinance:

- 8.1. Issue citations (Department of Public Safety) or notices of violation (YTEP, YTFP) under section 11 of this Ordinance.
- 8.2. Enter at reasonable times into, on, or through any public or private property to conduct routine inspections to monitor compliance with the provisions of this Ordinance, and any rules or regulations promulgated pursuant to this Ordinance.
- 8.3. Provide to the relevant fire control agencies information on burning activities within the YIR.
- 8.4. Coordinate with Tribal and local land management agencies, as needed, to enforce the provisions of this ordinance.
- 8.5. After providing for comment as necessary, promulgate rules and regulations as may be necessary to carry out the spirit and letter of this Ordinance, including:
 - 8.5.1. Imposing restrictions, requirements, controls, and prohibitions regarding regulated activities; and
 - 8.5.2. Defining and designating, by map, areas of the YIR where outdoor fires and burning of certain materials are limited, restricted or prohibited for the protection of human health, natural resources, cultural resources, and/or the environment.
- 8.6. Work cooperatively with other tribes and federal, state, county and municipal governments to:
 - 8.6.1. Coordinate activities and cooperate with such other governments as have similar or

related responsibilities within their respective jurisdictions;

- 8.6.2. Develop intergovernmental agreements as appropriate for optimal coordination, cooperation, enforcement and assistance in carrying out this Ordinance and protecting the health and safety of the residents and the environment of the YIR, provided that the Tribal Council shall have the ultimate authority to execute and enter into any such intergovernmental agreements.

9. Prohibited Activities

- 9.1. No person shall violate any provision of this Ordinance or any rule or regulation adopted pursuant to this Ordinance.
- 9.2. No person shall violate any condition of a burn permit, including:
 - 9.2.1. Burning on a designated no-burn day.
 - 9.2.2. Burning after approved hours.
 - 9.2.3. Failing to have certified staff on-site at a burn, when required by this Ordinance.
 - 9.2.4. Failing to mark roadways during a burn, when warranted.
 - 9.2.5. Inundating sensitive areas with smoke.
 - 9.2.6. Taking longer than two hours during a burn to correct a problem identified by SMP or other enforcement personnel.
 - 9.2.7. Failing to respond to directives given by enforcement personnel pursuant to this ordinance or the SMP.
- 9.3. Discharging any pollutant into the air of the YIR.
- 9.4. Burning or incinerating any hazardous material or pesticide anywhere within the YIR.
- 9.5. Knowingly making false statements during, or after, an inquiry by YTEP, or aid, abet or conspire with a person to evade the provisions of this Ordinance.
- 9.6. Engaging in a regulated activity in a faulty, careless or negligent manner.
- 9.7. Using fraud or misrepresentation in making an application for, or for renewal of, a Burn permit.

10. Enforcement Process

- 10.1. YTEP is charged with conducting investigations, including inspections of relevant properties, of violations of this Ordinance or any conditions of a Burn permit.
 - 10.1.1. Investigations of such violations by YTEP shall be initiated upon the filing of a written complaint, signed under penalty of perjury, by tribal members, Tribal Council members, Tribal Environmental Programs Office staff, Tribal Police Officers, other staff of the Tribe, or residents of the YIR.
 - 10.1.1.1. The written complaint shall be submitted on a form developed by YTEP and shall include, at a minimum, the following information:
 - name of the complainant;
 - date and time of the alleged violation;
 - location of the alleged violation; and
 - a brief description of the factual basis for the complaint.
 - 10.1.1.2. The written complaint must be submitted to YTEP, during normal business hours, within six (6) months of the alleged violation.
 - 10.1.1.3. YTEP shall initiate an investigation of the complaint within ten (10) days of receiving the complaint, upon a finding that the complaint sets forth a reasonable basis for believing that a violation has occurred.
- 10.2. Following an investigation, if YTEP determines that a violation has occurred, YTEP may take any one of the following actions which it deems most appropriate considering the gravity of the offense, any harm to human health or the environment resulting from the violation, and the circumstances of the person committing the violation:
 - 10.2.1. Informally contact any alleged violator about possible violations of this Ordinance, or practices which may result in violations of this Ordinance, to assist the alleged violator in adhering to practices which protect air quality and comply with this Ordinance;
 - 10.2.2. Issue a warning of violation, in the form of a letter from YTEP to the alleged violator, explaining the basis for the warning; possible measures which the alleged violator may take to mitigate the basis of the warning; and an explanation of the steps YTEP may take if the alleged violator does not take positive corrective action;
 - 10.2.3. Assess a civil fine or penalty as described in section 11, against the alleged violator, following the procedures set out in section 10.3, below; and/or
 - 10.2.4. Upon a finding that a violation is taking place or appears imminent, and that such activity if allowed to proceed will present an immediate hazard or cause irreparable damage, may issue an order to the person responsible for such activity to cease and desist from further commission of such violation, following the procedures set out in section 10.3, below.

- 10.3. The following procedures shall govern enforcement actions taken pursuant to sections 10.2.3 and 10.2.4, above:
 - 10.3.1. YTEP shall issue a notice of violation, describing with particularity; the violation and the proposed penalty, or other enforcement action, to the person who is charged with the violation.
 - 10.3.1.1. The notice of violation shall be served by personal service or U.S. certified mail, return receipt requested. Notice shall be considered received on the date of personal service or three (3) days after the date the notice is dispatched by U.S. mail.
 - 10.3.1.2. The notice shall include a warning that if the person does not respond within seven business (7) days of the date of receipt, the assessed civil penalty or other enforcement action will become permanent, and the person will lose all rights to appeal.
 - 10.3.2. Within seven (7) days of receipt of the notice of violation, the person who is charged with the violation may submit a written request for an administrative hearing before YTEP on the proposed enforcement action described in the notice of violation.
 - 10.3.2.1. If a hearing is requested, YTEP must hold an administrative hearing within thirty (30) days of receiving the request. If the person requesting the hearing makes a showing, supported by a declaration or other written documentation, in the request for hearing submitted to YTEP that the proposed enforcement action will result in great financial loss or harm to person or property before YTEP is required to hold a hearing, YTEP may hold a hearing immediately, or may delay or reverse any enforcement action until YTEP holds the requested hearing.
 - 10.3.2.2. If the alleged violator does not request a hearing within seven (7) days of receipt of the notice of violation, an assessed civil penalty or other enforcement action will become permanent and the person shall lose all rights to appeal.
 - 10.3.3. At any hearing before YTEP, the alleged violator must come forward with evidence, including declarations, written documents, and statements by witnesses, indicating that the finding of violation is erroneous as described in the notice of violation.
 - 10.3.4. Within fifteen (15) days of the hearing, YTEP shall issue a decision on whether to affirm the proposed penalty, or other enforcement action described in the notice of violation.
 - 10.3.4.1. YTEP shall serve a written notice of the decision on the violator. The notice of decision shall be served by personal service or U.S. certified mail, return receipt requested. Notice shall be considered received on the date of personal service or three (3) days after the date the notice is dispatched by U.S. mail.

10.3.5. The decision of YTEP on appeal may be appealed to the Tribal Court upon written request submitted to the Tribal Council within five (5) days of the receipt of the notice of decision after the initial hearing. The request for a hearing before the Tribal Court must state the grounds for overturning YTEP's decision.

10.3.5.1. The Tribal Court shall hold a hearing within thirty (30) days of receiving the notice of appeal.

10.3.5.2. The violator and YTEP shall have the opportunity to present oral arguments at the hearing.

10.3.5.3. The written record from the administrative hearing before YTEP, together with all papers and requests filed in the proceeding before YTEP, shall constitute the exclusive record for decision on appeal.

10.3.5.4. The Tribal Court shall set aside YTEP's decision only upon a finding that YTEP's decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

10.3.5.5. Within sixty (60) days of the hearing, the Tribal Court shall issue a written decision on the appeal.

10.3.5.6. The Tribal Court shall serve a notice of the decision on the violator. The notice of decision shall be served by personal service or U.S. certified mail, return receipt requested.

10.3.5.7. Decisions of the Tribal Court are final.

10.4. YTEP and/or the Tribal Court, or a representative authorized by either body, may institute proceedings in Tribal Court to enforce a penalty issued by YTEP and/or upheld by the Tribal Court on appeal.

10.5. This ordinance in no way restricts an individual's or the Tribe's right to file suit against a party in Tribal Court for damages incurred from the emission of air pollutants or the open burning of any materials.

11. Civil Penalties

11.1. Any person discharging any pollutant into the air of the YIR or engaging in any other activity prohibited under this Ordinance is subject to a civil fine in an amount not to exceed five thousand dollars (\$5,000.00) for each day in which the violation occurs, to be assessed by YTEP. In addition to any monetary fine, any person violating the provisions of this Ordinance regarding burn permits is subject to a civil penalty of suspension, revocation, non-renewal, or denial of a burn permit, to be assessed by YTEP.

- 11.2. In determining the type and amount of the penalty and/or fine, YTEP shall consider the appropriateness of such fine and/or penalty in light of the gravity of the violation, any effects on human health or the environment resulting from the violation, the size of the business of the person charged, and the effect on the person's ability to continue in business.

12. Civil Damages and/or Injunctive Actions

In the event that any person, as a result of his or her violations of this Ordinance, should proximately cause any physical damage to any other person(s) residing within, or to any real or personal property situated in, the YIR, YTEP or the person(s) adversely affected shall have the right to seek monetary and/or injunctive relief in any judicial forum of competent jurisdiction.

13. Environmental Protection Fund

- 13.1. Any monies collected by the Tribe as a result of violations of this Ordinance shall be deposited with the Tribe to be credited to the Environmental Protection Fund.
- 13.2. The Environmental Protection Fund shall be used for expenses related to protecting human health and the environment within the YIR, enforcing the provisions of the various environmental ordinances adopted by the Tribe, promoting environmental projects, and furthering environmental education for tribal members and residents of the YIR.

14. Effect of Ordinance on Other Tribal Ordinances

This Ordinance supercedes any conflicting or contrary superceding ordinances passed by the Tribe.

15. Severability

If any provision of this Ordinance, or the application thereof to any person or circumstance, is held invalid, its invalidity does not affect other provisions or applications of this Ordinance, and to this end the provisions of this Ordinance are severable.

16. Sovereign Immunity

The sovereign immunity of the Tribe is in no manner waived by this Ordinance or by any action by the Tribal Council, YTEP, or other staff of the Tribe acting pursuant to this Ordinance.

17. Amendments

This Ordinance may be amended at any time by the Tribal Council.

18. Effective Date

This Ordinance shall take effect immediately upon passage.

CERTIFICATION

Approved this ____ Day of _____, 2003.

Susan Masten, Council Chairperson

LaDeena Trimble, Recording Secretary