

Title 4. Environment and Natural Resources – Chapter 409
WATER RESOURCES
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409.1. Policy and Purpose

409.1-1. Pollution of the waters of the Oneida Reservation has aroused widespread public concern. It endangers the health and general welfare of both members and residents of the Oneida Nation. A comprehensive program directed at all present and potential sources of water pollution whether residential, farm, recreational, municipal, industrial or commercial is needed to protect human life and health, fish and aquatic life, scenic, and ecological values and domestic, municipal, recreational, industrial, agricultural, cultural, religious, and other uses of Reservation water resources.

409.1-2. The Oneida Environmental Department (“Department”) shall serve as the central unit of tribal government to protect, maintain and improve the quality and management of the waters of the Oneida Reservation, ground and surface, public and private. The purpose of this law is to grant necessary powers and to organize a comprehensive program under a single tribal department for the enhancement of the quality management and protection of all waters of the Reservation, ground and surface, public and private. To the end that these vital purposes may be accomplished, this law and all rules and orders promulgated under this law shall be liberally construed in favor of the policy objectives set forth in this law.

409.1-3. The Oneida Environmental Resource Board (“Board”) shall serve in an advisory capacity to the Department in the development and administration of the programs contemplated by this law.

409.2. Adoption, Amendment and Repeal

409.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-08-96-B and amended by resolution BC-07-26-17-G.

409.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

409.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

409.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

409.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

409.3. Definitions

409.3-1.

(a) “Board” shall mean the Oneida Environmental Resource Board.

- (b) "Department" shall mean the Oneida Environmental Department.
- (c) "Environmental Pollution" shall mean the contaminating or rendering unclean or impure the air, land or waters of the Reservation, or making the same injurious to public health, harmful for commercial, recreational, cultural or religious use, or deleterious to fish, bird, animal or plant life.
- (d) "Garbage" means discarded materials resulting from the handling, processing, storage and consumption of food.
- (e) "Hazardous Substance" shall mean any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration, or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives, as determined by the Department.
- (f) "Industrial Waste" shall mean liquid or other wastes resulting from any process of industry, manufacture, trade or business or the development of any natural resource.
- (g) "Nonpoint Source" means a land management activity which contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of the Reservation and which is not a point source as defined in Section 409.3-10.
- (h) "Other Waste" shall include all other substances, except industrial wastes, which pollute any of the waters of the Reservation. The term also includes siltation resulting from operations such as stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion.
- (i) "Person" means an individual, owner, operator, corporation chartered under federal, state or tribal law, limited liability company, partnership, association, municipality, township, interstate agency, tribal agency, county agency, state agency, or federal agency.
- (j) "Point Source" means a discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants may be discharged into waters of the Reservation. "Point Source" specifically includes any discernible, confined and discrete conveyance of storm water.
- (k) "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewerage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954 as amended (42 U.S.C 2011 et. seq.)) heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into the waters of the Reservation, including discharges of storm water that result in deleterious alterations of the hydrology and morphology of waters of the Reservation.
- (l) "Pollution" means contaminating or rendering unclean or impure the waters of the Reservation by the introduction to those waters of one or more pollutants as defined in Section 409.3-11, or otherwise making the waters of the Reservation injurious to public health, harmful for any of the uses described in Section 409.1-1, or deleterious to fish, bird, animal or plant life. The term "Pollution" shall include deleterious alterations to the hydrologic or morphologic characteristics of the waters of the Reservation.

- (m) "Refuse" means all matters produced from industrial or community life, subject to decomposition, not defined as sewage.
- (n) "Reservation" shall mean the Oneida Indian Reservation as established by the Treaty of 1838, 7 Stat. 566.
- (o) "Solid Waste" shall mean any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under the Federal Water Pollution Control Act, 33 U.S.C. 1251 et. seq.
- (p) "State" shall mean the State of Wisconsin.
- (q) "Storm Water" means any discharge, whether discreet or from sheet flow resulting from the movement of water across the surface of land including storm water runoff, snow melt runoff, surface runoff, and drainage.
- (r) "Nation" shall mean the Oneida Nation.
- (s) "Water Supply" means the sources and their surroundings from which water is supplied for drinking and domestic purposes.
- (t) "Waters of the Reservation" means any accumulation of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, flow through, or border upon the Oneida Reservation. "Waters of the Reservation" includes wetlands, as that term is defined in Section 409.3-21, below.
- (u) "Wetlands" means land that has a predominance of hydric soils, is inundated or saturated by surface or ground water at a frequency and duration to support, and under normal circumstances does support, a prevalence or hydrophytic vegetation typically adapted for life in saturated soil conditions. "Normal circumstances" refers to the soil and hydrologic conditions that are normally present, without regard to whether the vegetation has been removed.

409.4. Powers and Duties

409.4-1. The Department shall have general supervisory authority over the waters of the Reservation. It shall carry out and coordinate the planning, management and regulatory programs necessary for implementing the policy and purpose of this chapter. The Department also shall formulate plans and programs for the prevention and abatement of water pollution and for the maintenance and improvement of water quality.

409.4-2. Water Quality Standards

(a) The Department shall set standards of water quality to be applicable to the waters of the Reservation, recognizing that different standards may be required for different waters or portions thereof. Water quality standards shall consist of the designated uses of the waters or portions thereof, antidegradation standards, and the water quality criteria for those waters based upon their designated uses. Water quality standards shall protect the public interest, which includes the protection of:

- (1) the public health and welfare;
- (2) the present and prospective future use of such waters for public and private

water supplies;

(3) the propagation of fish, aquatic life and wildlife;

(4) domestic and recreational purposes; and

(5) agricultural, cultural, religious, commercial, industrial and other legitimate uses.

(b) In adopting or revising any water quality criteria for the waters of the Reservation or any designated portion thereof, the Department shall do all the following:

(1) From time to time, but at least once every three (3) years, review water quality standards, and publish and provide public notice of water quality criteria to be adopted, revised or reviewed in the following three year(s).

(2) Establish criteria sufficient to protect any and all applicable designated uses. Such criteria must contain sufficient parameters or constituents to protect each designated use. For waters with multiple designations, the criteria shall support the most sensitive use.

(3) Employ reasonable statistical techniques, where appropriate, in interpreting the relevant water quality data.

(c) Form of Criteria: In establishing criteria, the Department shall

(1) Establish numeric values based on:

(A) 40 C.F.R. 132, Water Quality Guidance for the Great Lakes System;
and

(B) Other scientifically defensible methods.

(2) Establish narrative criteria or criteria based upon biomonitoring methods and/or hydrologic or morphologic assessments where numerical criteria cannot be established, or to supplement numerical criteria.

409.4-3. The Department shall be responsible for the application, processing, and review of tribal water quality certifications required by Section 401 of the Federal Water Pollution Control Act, 33 USC § 1341.

409.4-4. The Department may issue general orders applicable throughout the Reservation for the construction, installation, use and operation of practicable and available systems, methods and means for preventing and abating pollution of the waters of the Oneida Reservation. Such general orders and rules shall be issued only after an opportunity to be heard thereon has been afforded to interested parties by means of a public hearing. The Department shall, when appropriate, consult with other tribal departments and entities having particular expertise in the subject matter of the order.

409.4-5. Special/Emergency Orders

(a) The Department may issue special orders directing particular persons to secure such operating results toward the control of pollution of the waters of the Reservation as the Department prescribes, within a specified time. Pending efforts to comply with any order, the Department may permit continuance of operations on such conditions as it prescribes. If any person cannot comply with an order within the time specified, the person may, before the date set in the order, petition the Department to modify the order. The Department may modify the order, specifying in writing the reasons therefor. If any order is not complied with within the time period specified, the Department shall forthwith commence an action to enforce compliance with said order.

(b) The Department may issue temporary emergency orders without prior public hearing

when the Department determines that the protection of the waters of the Reservation necessitates such immediate action. Such emergency orders shall take effect at such time as the Department determines. As soon as is practicable, the Department shall schedule a public hearing after which it may modify or rescind the temporary emergency order or issue a special order under Section 409.4-5(a).

409.4-6. The Department shall make investigations and inspections to insure compliance with any general or special order or rule which it issues.

409.4-7. The Department may enter into agreements with the responsible authorities of the state or any of its political subdivisions, subject to approval by the Board and the Oneida Business Committee, relative to methods, means and measures to be employed to control pollution of any inter-jurisdiction streams and other waters and to carry out such agreement by appropriate general and special orders. This power shall not be deemed to extend to the modification of any agreement with the state or any political subdivision thereof concluded by direct legislative act of the Oneida Business Committee or the Oneida General Tribal Council.

409.4-8. The Department may order or cause the abatement of any nuisance affecting the waters of the Oneida Reservation.

409.4-9. In cases of noncompliance with any order issued by the Department, the Department may take the action directed by the order, and collect the costs thereof from the person to whom the order was directed by seeking a judgment for money from the Oneida Judiciary. The Department shall have all the necessary powers needed to carry out this paragraph including powers granted by the Constitution of the Oneida Nation, and any and all delegations of authority under federal environmental laws.

409.4-10. The Department may, upon receipt of the appropriate delegation of federal authority, establish, administer and maintain a safe drinking water program no less stringent than the requirements of the Safe Drinking Water Act of 1974, P.L. 93-523, 88 Stat. 1660. (42 USC 300f et. seq).

409.4-11. The Department, subject to the approval of the Oneida Business Committee, may designate priority watersheds and priority lakes where the need for non-point source water pollution abatement and/or hydrologic or morphologic restoration is the most critical. The Duck-Apple-Ashwaubenon Creeks watershed is hereby designated by the Nation as a priority watershed.

409.4-12. The Department may order or cause the abatement of pollution of waters of the Reservation which the Department has determined to be significant and caused by a nonpoint source, as defined in Section 409.3-7, including pollution which causes the violation of a water quality standard, pollution which generally impairs the aquatic habitat or organisms, pollution which restricts navigation due to sedimentation, pollution which is deleterious to human health, pollution which interferes with cultural or religious uses of waters of the Reservation, or pollution which otherwise significantly impairs water quality. Any and all orders of the Department issued under this Section shall be consistent with the goals and objectives of the Duck-Apple-Ashwaubenon Creeks Priority Watershed Project or such other priority watershed projects as may be designated under Section 409.4-11. Participation by a person in a designated priority watershed project and the compliance by that person with any and all criteria established by said priority watershed project shall entitle the person to a rebuttable presumption of compliance with the requirements of this Section.

409.5. Review

409.5-1. Any person in interest may secure a review of the necessity for and reasonableness of any order of the Department under this law in the following manner:

(a) They shall first file with the Department a verified petition setting forth specifically the modification or change desired in such order. Such petition must be filed within 60 days of the issuance of the orders sought to be reviewed. Upon receipt of such a petition the Department shall schedule a public hearing before the Board thereon and make such further investigations as it shall deem advisable. Pending such review and hearing, the Board may suspend such orders under terms and conditions to be fixed by the Department on application of any such petitioner. The Board shall affirm, repeal or change the order in question within 60 days after the close of the hearing on the petition.

(b) The determination of the Board shall be subject to review as provided in the Oneida Administrative Procedure Act.

409.6. Enforcement; Reporting; Penalties

409.6-1.

(a) The Department shall require that all persons discharging any substance to waters of the Reservation requiring a permit under the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., report the manner used, amount used and amount discharged to the waters of the Reservation for each substance. The Department may verify reports received by field monitoring of any discharge.

(b) The Department may establish minimum effluent volumes for which reports are required under this Section.

(c) Wastewater Discharge Environmental Fee: Beginning in 1997, there is established a Wastewater Discharge Environmental Fee. This fee shall be paid by each person required by Section 409.6-1 to report a discharge. In 1997, the fee under this Section shall be based on an administrative fee of \$_____ plus an additional fee, to be set by the Department by rule and to be based on the concentration or quantity or both of pollutants discharged.

(d) Violators of the reporting requirement established under Section 409.6-1 shall forfeit not less than \$100 nor more than \$5,000 for each offense. Each day of continued violation is a separate offense.

409.6-2. Environmental Pollution: Hearings; Procedure; Review. The Board shall hold a public hearing relating to alleged or potential environmental pollution upon the filing of a complaint by the Department. The Department shall serve a copy of the complaint and notice of the hearing upon the alleged or potential polluter either personally or by registered mail directed to the last-known post office address at least twenty (20) days prior to the time set for the hearing. The hearing shall be held not later than ninety (90) days after the filing of the complaint. The respondent shall file a verified answer to the complaint with the Department not later than five (5) days prior to the date set for the hearing, unless the time for answering is extended by the Board for cause shown. For purposes of any hearing under this Section, the Board may issue subpoenas and administer oaths. Within ninety (90) days after the closing of the hearing, the Board shall make and file its findings of fact and conclusions of law and order, which shall be subject to review under the Oneida Administrative Procedures Act. If the Board determines that any complaint was filed maliciously or in bad faith it shall issue a finding to that effect and the person complained against shall be entitled to recover from the Department the reasonable

expenses of the hearing, including attorney's fees. Any situation, project or activity which upon continuance or implementation would cause, by a preponderance of the evidence, a degree of pollution that normally would require clean-up action if it already existed, shall be considered potential environmental pollution.

409.6-3. Enforcement. The Oneida Conservation Department shall enforce this law, and all rules and orders issued by the Department.

409.6-4. Penalties. Any person who violates this law, or any rule promulgated or any regular, special or emergency order issued under this law, shall forfeit not less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000) for each violation. Each day of continued violation is a separate offense.

409.6-5. Contested Action Hearings. All citations, penalties, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) Community Service. Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) Allocation of Citation Revenue. All fines and penalties issued by citations are payable to ERB or its designee, the proceeds of which ERB shall contribute to the Nation's general fund.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

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