

CHAPTER 4-2
TIRE DUMPS (12/04/1993)

TRIBAL TIRE DUMP

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TRIBAL TIRE DUMP

§ 1. Declaration of Policy

1.1. The Forest County Potawatomi Community hereby declares that it is the tribal policy to protect and conserve its environment and common resources for the health, benefit and welfare of the Potawatomi people, their children, and their unborn children. It is the Potawatomi people's belief embodied in their culture to respect the earth and to allow no one to degrade or threaten the integrity of their lands and resources. To that end the Forest County Potawatomi Community hereby enacts this Tribal Tire Dump Ordinance for the health, safety, and welfare of the Potawatomi people.

1.2. This Ordinance shall extend to all persons and subjects, to all lands and other property including natural resources, and to all waters and air space within the exterior boundaries of the Forest County Potawatomi Community, including any land which may hereafter be added to the reservation under any law of the United States, except as otherwise provided by law.

1.3. It is the policy of the Forest County Potawatomi Community to prohibit tire dumps on any Tribal lands. Any person who violates this Ordinance shall be prosecuted under Sections 3, 4 and 5 of this Ordinance. Under the Tribal Constitution the Tribe is vested with the power to enact and enforce ordinances governing the conduct of any persons within the exterior boundaries of the Forest County Potawatomi reservation.

§ 2. Definitions

“Tribal lands” are all lands held in trust by the United States for the Forest County Potawatomi Community or otherwise owned by the Tribe including all lands subject to past, present and future leasehold interests or land assignments made by the Tribe and/or the Bureau of Indian Affairs.

“Tribe” means the Forest County Potawatomi Community organized according to the Constitution and Bylaws amended and adopted by the Tribe on June 5, 1982, and approved by the Assistant Secretary of Interior on July 14, 1982, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

“Waste tire” means a tire that is no longer suitable for its original purpose because of wear, damage or defect.

“Tire dump” means any location that is used for storing or disposing of waste tires except those locations where waste tires generated by individual Tribal members residing on the reservation are stored within 100 yards of their own residence.

“Nuisance” means a danger to public health, safety or welfare, a fire hazard, or a danger to the environment.

“Physical injury” includes unprivileged intrusions and encroachments; the injury may be surface, subsurface or suprasurface; the injury may arise from activities on Tribal lands, or from activities outside Tribal lands which affect Tribal lands.

“Interference with an interest” is any activity other than physical injury which lessens the possibility of use or enjoyment of the interest.

§ 3. Tire Dumps Declared a Nuisance

3.1. Tire dumps are hereby declared to be a public nuisance as that term is used in Chapter 823 of the Wisconsin Statutes.

3.2. The Tribe, on behalf of its members, will bring legal actions to recover damages, abate public nuisances and to obtain injunctions to prevent same.

3.3. These actions will be brought pursuant to Chapter 823 of the Wisconsin Statutes:

3.4. The Tribe will seek damages which the Tribe finds to be as follows:

(A) For each tire stored in any tire dump as defined in this Ordinance the sum of \$1.00 per day until removed from Tribal lands.

(B) Each day from the date of the deposit of each tire until it is removed shall be deemed to be a separate item of damages.

3.5. In addition, the Tribe will seek the expense of abating any public nuisance as permitted by Chapter 623 of the Wisconsin Statutes.

§ 4. Tire Dumps Declared to Constitute Physical Injury to, or Interference With, Real Property

4.1. Creation of a tire dump on Tribal lands is hereby declared to constitute physical injury to or interference with the property or interest of the Tribe therein.

4.2. Physical injury includes unprivileged intrusions and encroachments; the injury may be surface, subsurface or suprasurface; the injury may arise from activities on Tribal lands, or from activities outside Tribal lands which affect Tribal lands.

4.3. Interference with an interest is any activity other than physical injury which lessens the possibility of use or enjoyment of the interest.

4.4. The Tribe, on behalf of its members, will bring legal action to recover damages for physical injury to, or interference with, Tribal lands or interests therein as well as to restrain further physical injury or interference, abate present physical injury or interference and for other appropriate relief.

4.5. These actions will be brought pursuant to Chapter 844 of the Wisconsin Statutes.

§ 5. Trespass

Any person who enters upon Tribal land for purposes of creating or adding to a tire dump will be prosecuted for criminal trespass in State court pursuant to §943.13(1)(b) of the Wisconsin Statutes after personal or written notification of their trespass.

§ 6. No Waiver of Sovereign Immunity

Nothing contained in this Ordinance and no action taken pursuant hereto shall be deemed to constitute a waiver of the sovereign immunity of the Tribe or to constitute an agreement to consent to any suit for counterclaims, offsets, injunction or any other form of relief against the Tribe of any nature whatsoever.

§ 7. Decision to Bring Action

The Executive Council is hereby given the authority to start actions under this Ordinance, including retaining legal counsel and/or consultation with the Department of Natural Resources, the United States government and its agencies and State and local law enforcement officials at any general or special meeting of the Executive Council called for that purpose.

§ 8. Severability

If any part of this Ordinance is found unlawful or invalid by any court of competent jurisdiction, such finding shall not invalidate any other parts of this Ordinance or affect any actions pending or thereafter brought pursuant to such other parts. The invalid parts shall be deemed severable without thereby invalidating the remaining parts of the Ordinance.

Legislative History:

5/14/1988 Adopted by General Council Resolution No. GC-007-88
12/4/1993 This Ordinance is largely superseded by Tribal Solid Waste Ordinance, 4-1 FCPC Code, enacted by General Council Resolution No. GC-009-93

References in text:

Wis.Stat. §943.13(1)(b) is now § 943.13(1m), which provides: “Whoever does any of the following is subject to a Class B forfeiture: ... (b) Enters or remains on any land of another after having been notified by the owner or occupant not to enter or remain on the premises.”