

TITLE 14-5 GROUNDWATER QUALITY CODE

CHAPTER 14-5-1 INTRODUCTION AND SCOPE

§ 14-5-1-1 Purpose and Legal Authority

The Treaties of 1855 and 1863 between the United States of America and the Nez Perce Tribe established and reserved the Nez Perce Reservation as a homeland for the Nez Perce Tribe and its members. The majority of the Tribe's members live on the Nez Perce Reservation, and many more are employed on the Nez Perce Reservation, but reside nearby. Most households and public water supply systems on the Nez Perce Reservation rely on groundwater to provide the water necessary for domestic, commercial, municipal and industrial uses. In addition, groundwater is used for agricultural uses for food crops, livestock watering and livestock pasture irrigation by tribal members and other residents of the Nez Perce Reservation.

Protection of the groundwater of the Nez Perce Reservation will also help protect surface waters on the Reservation. Current hydrologic investigations confirm that the waters of Lapwai Creek are intimately interconnected with the adjacent aquifers throughout its watershed. The Lapwai Creek watershed covers a large portion of the Nez Perce Reservation. The surface waters of Lapwai Creek and its tributaries are relied upon for additional consumptive uses, as well as for instream flow uses for anadromous and resident fish which are harvested and consumed pursuant to the Tribe's treaty reserved fishing rights. Protecting the quality of the creek from contamination by the interconnected aquifers is critical for the health of the fish, and for the health and welfare of tribal members.

Protection of the groundwater located partially or wholly within the Nez Perce Reservation, as well as those waters that are hydrologically connected with groundwater that is located wholly or partially within the Nez Perce Reservation is necessary to protect the health and welfare of tribal members, as well as to protect the economy of the Nez Perce Reservation which relies on clean, potable sources of groundwater.

The Lewiston Basin Aquifer, which underlies the northwestern portion of the Nez Perce Reservation, has been designated a sole or principal source aquifer by the United States Environmental Protection Agency under Section 1424(e) of the Safe Drinking Water Act. It provides drinking water to much of the Lewiston Orchards area within the city of Lewiston, as well as to many domestic and irrigation wells in Nez Perce County, Idaho and Asotin County, Washington. Protection of the quality of this aquifer, which extends over much of these two counties and crosses the Nez Perce Reservation boundary, is critical not only for those tribal members who rely on it, but also for thousands of non-members who rely on it for their domestic, municipal and agricultural water needs. (Support document for Designation of the Lewiston Aquifer as a Sole Source Aquifer, USEPA Region 10, Office of Groundwater, EPA 910/9-88-194, September 1988).

Federal statutes governing water pollution, solid and toxic wastes, agricultural chemicals, oil pollution, and abandoned hazardous materials do not provide comprehensive protection for the groundwater of the Nez Perce Reservation. Without the adoption of tribal law in this field,

the groundwater relied upon by the Tribe and its members will remain at risk of contamination, threatening the physical and economic health of tribal members.

The Nez Perce Tribal Executive Committee is authorized to enact this code by the powers entrusted to it under the tribal Constitution and Bylaws, Article VIII, delegating power to the Nez Perce Tribal Executive Committee to adopt laws to protect the property of the Tribe and to further the health and welfare of the Tribe.

§ 14-5-1-2 Title and Scope

(a) Title. This code shall be cited as the "Nez Perce Tribe Groundwater Quality Code."

(b) Scope. This code establishes minimum requirements for protection of groundwater quality of aquifers located wholly or partially within the Nez Perce Reservation, through standards and an aquifer categorization process. The requirements of this code shall serve as a basis for the administration of programs which address groundwater quality.

(c) Administrative Appeals. Persons may be entitled to appeal actions authorized under this chapter pursuant to tribal law.

§ 14-5-1-3 Policies. It is the intent of the Tribe to implement, through this code, policies similar to those found in the Protection and Prevention Sections of the Idaho Groundwater Quality Plan, adopted by the Idaho legislature, 1992 Session Law, Chapter 310. These policies are:

(a) Groundwater Quality Protection. It is the policy of the Nez Perce Tribe to maintain and protect the existing high quality of the groundwater which is located on or passes through or onto the Nez Perce Reservation, or which is interconnected with ground or surface water on any portion of the Nez Perce Reservation.

(b) Existing and Projected Future Beneficial Uses. The policy of the Nez Perce Tribe is that existing and projected future beneficial uses of groundwater shall be maintained and protected, and degradation that would impair existing and projected future beneficial uses of groundwater and interconnected surface water shall not be allowed.

(c) Categorization of Groundwater. The policy of the Nez Perce Tribe is to provide differential protection for groundwater resources. A groundwater categorization system is established for aquifers or portions of aquifers. The categorization system is based on vulnerability of the groundwater, existing and projected future beneficial uses of the groundwater, existing quality of the groundwater, and social and economic considerations.

(d) Groundwater Quality Standards. The policy of the Nez Perce Tribe is to establish groundwater quality standards for biological, radiological, and chemical constituents.

(e) Prevention of Groundwater Contamination. The policy of the Nez Perce Tribe is to prevent contamination of groundwater from all regulated and nonregulated sources of contamination to the maximum extent practical.

(f) Intergovernmental Agreements. The policy of the Nez Perce Tribe is that when aquifers cross jurisdictional boundaries or when aquifers are interconnected with surface waters that cross jurisdictional boundaries, the Tribe should participate in intergovernmental agreements on groundwater quality protection that address monitoring, prevention and remediation issues.

§ 14-5-1-4 Definitions

(a) Agricultural Chemical. Any pesticide, nutrient or fertilizer used for the benefit of agricultural production or pest management.

(b) Aquifer. A geological unit of permeable saturated material capable of yielding water to wells and springs.

(c) Beneficial Uses. Various uses of groundwater including, but not limited to, cultural uses, domestic water supplies, commercial water supplies, municipal water supplies, industrial water supplies, agricultural water supplies, aquacultural water supplies, and mining. A beneficial use is defined as actual, current, or projected future uses of groundwater.

(d) Best Available Method. The most effective system, process, or method which is available to the public for commercial or private use to minimize the impact of point or nonpoint sources of contamination on groundwater quality.

(e) Best Management Practice. A practice or combination of practices determined to be the most effective and practical means of preventing or reducing contamination to groundwater and interconnected surface water from nonpoint and point sources to achieve water quality goals and protect the beneficial uses of the water.

(f) Best Practical Method. Any system, process, or method that is established and in routine use which could be used to minimize the impact of point or nonpoint sources of contamination on groundwater quality.

(g) Cleanup. The removal, treatment or isolation of a contaminant from groundwater through the directed efforts of humans or the removal or treatment of a contaminant in groundwater through management practice or the construction of barriers, trenches and other similar facilities for prevention of contamination, as well as the use of natural processes such as groundwater recharge, natural decay and chemical or biological decomposition.

(h) Constituent. Any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance naturally occurring in groundwater.

(i) Contaminant. Any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance which does not occur naturally in groundwater or which naturally occurs at a lower concentration.

(j) Contamination. The direct or indirect introduction into groundwater of any contaminant caused in whole or in part by human activities.

(k) Crop Root Zone. The zone that extends from the surface of the soil to the depth of the deepest crop root and is specific to a species of plant, group of plants, or crop.

(l) Degradation. The lowering of groundwater quality as measured in a statistically significant and reproducible manner.

(m) Division. The Water Resources Division of the Nez Perce Tribe.

(n) Groundwater. Any water which occurs beneath the surface of the earth in a saturated geological formation of rock or soil.

(o) Groundwater Quality Standard. Values, either numeric or narrative, assigned to any constituent for the purpose of establishing minimum levels of protection.

(p) Highly Vulnerable Groundwater. Groundwater characterized by a relatively high potential for contaminants to enter and/or be transported within the flow system. Determinations of groundwater vulnerability will include consideration of land use practices and aquifer characteristics.

(q) Irreplaceable Source. A groundwater source serving a beneficial use(s) where the reliable delivery of comparable quality and quantity of water from an alternative source in the region would be economically infeasible or precluded by institutional constraints.

(r) Natural Background Level. The level of any constituent in the groundwater within a specified area as determined by representative measurements of the groundwater quality unaffected by human activities.

(s) Person. Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state, tribal or federal governmental department, agency or instrumentality, or any legal entity which is recognized by law as the subject of rights and duties.

(t) Practical Quantitation Level. The lowest concentration of a constituent that can be reliably quantified among laboratories within specified limits of precision and accuracy during routine laboratory operating conditions. Specified limits of precision and accuracy are the criteria listed in the calibration specifications or quality control specifications of an analytical method.

(u) Projected Future Beneficial Uses. Various uses of groundwater, such as drinking water, aquaculture, industrial, mining or agriculture, that are practical and achievable in the future based on hydrogeologic conditions, water quality, future land use activities and social/economic considerations.

(v) Recharge Area. An area in which water infiltrates into the soil or geological formation from, including but not limited to, precipitation, irrigation practices and seepage from creeks, streams, and lakes, and percolates to one (1) or more aquifers.

(w) Remediation. Any action taken (1) to control the source of contamination, (2) to reduce the level of contamination, (3) to mitigate the effects of contaminants, and/or (4) to minimize contaminant movement. Remediation includes providing alternate drinking water sources when needed.

(x) Site Background Level. The groundwater quality at the hydraulically upgradient site boundary.

§ 14-5-1-5 Incorporation By Reference. Codes, standards, rules and regulations may be incorporated by reference in this code. Such incorporation by reference shall constitute full adoption by reference, including any notes or appendices therein, unless expressly provided otherwise in this code.

CHAPTER 14-5-2 GROUNDWATER QUALITY

§ 14-5-2-1 Implementation. This code establishes minimum requirements to maintain and protect groundwater quality. This code applies to all activities with the potential to degrade groundwater quality.

(a) Groundwater Quality Standards. The numerical and narrative standards in § 14-5-2-2 identify minimum levels of protection for groundwater quality and shall be used as a basis for:

- (1) Evaluating or comparing groundwater quality when developing or modifying best available methods, best management practices, or best practical methods;
- (2) Identifying permit conditions;
- (3) Establishing cleanup levels; and
- (4) Determining appropriate actions when groundwater quality standards are exceeded.

(b) Aquifer Categorization. Aquifers shall be categorized based on vulnerability of the groundwater, existing and projected future beneficial uses of the groundwater, existing water quality, and social and economic considerations. There shall be three aquifer categories, Sensitive Resource, General Resource, and Other Resource, to provide different levels of protection. The level of protection required for each category and application of standards to these categories are shown in Table I.

(1) All aquifers where there are activities with the potential to degrade groundwater quality are categorized in § 14-5-3-1. Those aquifers where no activities with the potential to degrade groundwater quality are occurring will remain uncategorized until such activities are commenced. If no action is taken to categorize an aquifer when an activity(s) with the potential

to degrade groundwater quality is initiated, the aquifer will automatically be categorized as General Resource.

(2) Categorization should be considered when an activity with the potential to degrade groundwater quality is proposed over an aquifer or portion of an aquifer which presently has no such activities and, based on the criteria in § 14-5-3-3, the aquifer may be most appropriately categorized as Sensitive Resource or Other Resource.

TABLE 1. LEVEL OF PROTECTION AND APPLICATION OF STANDARDS TO AQUIFER CATEGORIES		
CATEGORY	LEVEL OF PROTECTION	APPLICATION OF STANDARDS
Sensitive Resource	Apply best management practices and best available methods. This category provides the highest level of groundwater protection.	May apply stricter standards than in § 3-2-200.
General Resource	Apply best management practices and best practical methods.	Apply numerical and narrative standards in § 3-2-200.
Other Resource	Apply best management practices and best practical methods	May apply less strict standards than in § 3-2-200.

(3) Recategorization should be considered when information on vulnerability of the groundwater, existing and projected future beneficial uses of the groundwater, existing quality of the groundwater, and social and economic considerations, in conjunction with one or more of the criteria in § 14-5-3-3, demonstrates that an aquifer or portion of an aquifer may be more appropriate in another category.

(c) Groundwater-Surface Water Interconnection. The beneficial uses of interconnected surface water shall be recognized when evaluating groundwater quality protection. The implementation of water quality programs shall ensure that the quality of groundwater that discharges to surface water does not impair the identified beneficial uses of the surface water and that surface water infiltration does not impair beneficial uses of groundwater.

(d) Interagency Coordination. The Tribe will coordinate with other federal, state, and local agencies to pursue intergovernmental agreements when necessary to ensure implementation of this code for activities which have the potential to degrade groundwater quality.

(e) Administrative Implementation. The Water Resources Division of the Nez Perce Tribe is authorized to: gather information relating to aquifers that are wholly or partially located within the Nez Perce Reservation or which are connected with ground or surface water which flows onto or through the Nez Perce Reservation; monitor aquifer quality; identify beneficial uses of

aquifers; identify ground/surface water interconnections; maintain and distribute all monitoring and water quality data to other appropriate governmental agencies; participate in intergovernmental committees relating to groundwater protection on the Nez Perce Reservation; consider, review and recommend adoption by the Nez Perce Tribal Executive Committee of best management practices, best available methods and best practical methods for any activity that may threaten the quality of the aquifers wholly or partially located within the Nez Perce Reservation, or which are connected with ground or surface water which flows onto or through the Nez Perce Reservation, and recommend categorization and recategorization of any aquifer located partially or wholly within the Nez Perce Reservation, or which is hydrologically connected with and ground or surface water which flows onto or through the Nez Perce Reservation; investigate instances of groundwater contamination, or soil contamination which threatens to reach groundwater; recommend remediation methods and other enforcement actions to the Nez Perce Tribal Executive Committee, and otherwise provide technical advice and information to the Nez Perce Tribal Executive Committee in implementation of this code.

§ 14-5-2-2 Groundwater Quality Standards. The following numerical and narrative standards apply to all groundwater and shall not be exceeded unless otherwise allowed in this code.

(a) Numerical Groundwater Quality Standards.

(1) The Primary Constituent Standards are based on protection of human health and are identified in Table II.

Table II - Primary Constituent Standards

Chemical Abstract Service Number	Constituent	Standard (mg/l unless otherwise specified)
7440-36-0	Antimony	0.006
7440-38-2	Arsenic	0.05
1332-21-4	Asbestos	7 million fibers/l longer than 10 um
7440-39-3	Barium	2
7440-41-7	Beryllium	0.004
7440-43-9	Cadmium	0.005
7440-47-3	Chromium	0.1
7440-50-8	Copper	1.3
57-12-5	Cyanide	0.2
16984-48-8	Fluoride	4
7439-92-1	Lead	0.015
7439-97-6	Mercury	0.002
*	Nitrate (as N)10*Nitrite (as N)	1

*	Nitrate and Nitrite (both as N)	10
7782-49-2	Selenium	0.05
7440-28-0	Thallium	0.002
15972-60-8	Alachlor	0.002
1912-24-9	Atrazine	0.003
71-43-2	Benzene	0.005
50-32-8	Benzo(a)pyrene (PAH)	0.0002
75-27-4	Bromodichloromethane (THM)	0.1
75-25-2	Bromoform (THM)	0.1
1563-66-2	Carbofuran	0.04
56-23-5	Carbon Tetrachloride	0.005
57-74-9	Chlordane	0.002
124-48-1	Chlorodibromomethane (THM)	0.1
67-66-3	Chloroform (THM)	0.002
94-75-7	2,4-D	0.07
75-99-0	Dalapon	0.2
103-23-1	Di(2-ethylhexyl) adipate	0.4
96-12-8	Dibromochloropropane	0.0002
541-73-1	Dichlorobenzene m-	0.6
95-50-1	Dichlorobenzene o-	0.6
106-46-7	1,4(para)-Dichlorobenzene or Dichlorobenzene p-	0.075
107-06-2	1,2-Dichloroethane	0.005
75-35-4	1,1-Dichloroethylene	0.007
156-59-2	cis-1, 2-Dichloroethylene	0.07
156-60-5	trans-1, 2-Dichloroethylene	0.1
75-09-2	Dichloromethane	0.005
78-87-5	1,2-Dichloropropane	0.005
117-81-7	Di(2-ethylhexyl)phthalate	0.006
88-85-7	Dinoseb	0.007
85-00-7	Diquat	0.02
145-73-3	Endothall	0.1
72-20-8	Endrin	0.002

100-41-4	Ethylbenzene	0.1
106-93-4	Ethylene dibromide	0.00005
1071-83-6	Glyphosate	0.7
76-44-8	Heptachlor	0.0004
1024-57-3	Heptachlor epoxide	0.0002
118-74-1	Hexachlorobenzene	0.001
77-47-4	Hexachlorocyclopentadiene	0.05
58-89-9	Lindane	0.0002
72-43-5	Methoxychlor	0.04
108-90-7	Monochlorobenzene	0.1
23135-22-0	Oxamyl (Vydate)	0.2
87-86-5	Pentachlorophenol	0.001
1918-02-1	Picloram	0.5
1336-36-3	Polychlorinated biphenyls (PCBs)	0.0005
122-34-9	Simazine	0.004
100-42-5	Styrene	0.1
1746-01-6	2,3,7,8-TCDD (Dioxin)	3.0 x 10 ⁻⁸
127-18-4	Tetrachloroethylene	0.005
108-88-3	Toluene	1
1336-36-3	Polychlorinated biphenyls (PCBs)	0.0005
*	Gross alpha particle activity (including radium -226, but excluding radon and uranium)	15 pCi/l
*	Total Trihalomethanes [the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform), and trichloromethane (chloroform)]	0.1
*	Combined beta/photon emitters	4 millirems/year effective dose equivalent
*	Combined Radium - 226 and radium 228	5 pCi/l
*	Strontium 90	8 pCi/l
*	Tritium	20,000 pCi/l
*	Total Coliform	1 colony forming unit/100 ml

*No Chemical Abstract Service Number exists for this constituent.

(2) The Secondary Constituent Standards are generally based on aesthetic qualities and are identified in Table III.

Table III- Secondary Constituent Standards

Constituent	Standard (mg/l unless otherwise specified)
Aluminum	0.2
Chloride	250
Color	15 Color Units
Foaming Agents	0.5
Iron	0.3
Manganese	0.05
Odor	3.0 Threshold Odor Number
pH	6.5 to 8.5 (no units apply)
Silver	0.1
Sulfate	250
Total Dissolved Solids	500
Zinc	5

(3) Sample preservation and analytical procedures to determine compliance with the standards identified in subsection shall be in accordance with the following, except that cyanide shall be analyzed as weak acid dissociable cyanide using a method approved by the Tribe:

(i) Environmental Protection Agency, Code of Federal Regulations, Title 40, Parts 141 and 143, revised as of July 2001;

(ii) Another method approved by the Tribe.

(b) Narrative Groundwater Quality Standards. Contaminant concentrations, alone or in combination with other contaminants or properties, shall not cause the groundwater to be hazardous, deleterious, carcinogenic, mutagenic, teratogenic, or toxic. Determinations of specific numerical levels when applying this standard shall be based on:

(1) Best scientific information currently available on adverse effects of the contaminant(s);

(2) Protection of a beneficial use; or

(3) Practical quantitation levels for the contaminant(s), if they exceed the levels identified in paragraph (1) or (2).

(c) Natural Background Level. If the natural background level of a constituent exceeds the standard in this section, the natural background level shall be used as the standard.

CHAPTER 14-5-3 AQUIFER PROTECTION

§ 14-5-3-1 Categorized Aquifers. Aquifers or portions of aquifers located on the Nez Perce Reservation, or the waters of which are interconnected with ground or surface water located on or passing through any part of the Nez Perce Reservation are categorized as follows:

(a) Sensitive Resource. In addition to the groundwater quality standards in § 14-5-2-2, the following narrative standard applies: the aquifer shall not be degraded, as it relates to beneficial uses, as a result of point source or non-point source activity unless it is demonstrated by the person proposing the activity that such change is justifiable as a result of necessary economic or social development.

(b) General Resource. All aquifers or portions of aquifers where there are activities with the potential to degrade groundwater quality of the aquifer, unless otherwise listed in subsection (a) or (c). Once an activity with the potential to degrade the groundwater quality of an uncategorized aquifer or portion of an aquifer is initiated, the uncategorized aquifer shall automatically become General Resource unless petitioned into the Sensitive Resource or Other Resource category.

(c) Other Resource. Any aquifer or portion of an aquifer that is not categorized as a Sensitive Resource or a General Resource.

§ 14-5-3-2 Management of Activities with the Potential to Degrade Aquifers.

(a) Sensitive Resource Category Aquifers.

(1) Activities with the potential to degrade Sensitive Resource aquifers shall be managed in a manner which maintains or improves existing groundwater quality through the use of best management practices and best available methods.

(2) Numerical and narrative standards identified in § 14-5-2-2 shall apply to aquifers or portions of aquifers categorized as Sensitive Resource. In addition, stricter numerical and narrative standards, for specified constituents, may be adopted pursuant to § 14-5-3-3 on a case-by-case basis and listed in §14-5-3-1.

(b) General Resource Category Aquifers.

(1) Activities with the potential to degrade General Resource aquifers shall be managed in a manner which maintains or improves existing groundwater quality through the use of best management practices and best practical methods to the maximum extent practical.

(2) Numerical and narrative standards identified in § 14-5-2-2 shall apply to aquifers or portions of aquifers categorized as General Resource.

(c) Other Resource Category Aquifers.

(1) Activities with the potential to degrade Other Resource aquifers shall be managed in a manner which maintains existing groundwater quality, except for those identified constituents which may have a less stringent standard, through the use of best management practices and best practical methods to the maximum extent practical.

(2) Numerical and narrative standards as identified in § 3-2-200 shall apply to aquifers or portions of aquifers categorized as Other Resource. In addition, less strict numerical and narrative standards, for specified constituents, may be adopted pursuant to § 3-2-350 on a case by case basis and listed in § 3-2-300.

§ 14-5-3-3 PROCEDURES FOR CATEGORIZING OR RECATEGORIZING AN AQUIFER. The following process shall be used for categorizing or recategorizing an aquifer:

(a) **Criteria for Aquifer Categories.** The following criteria shall be considered when a petition to categorize or recategorize aquifers or portions of aquifers is submitted to the Tribe:

(1) For Sensitive Resource aquifers:

(A) The groundwater in an aquifer or portion of an aquifer is of a better quality than the groundwater quality standards in § 3-2-200 and maintenance of this quality is needed to protect an identified beneficial use(s);

(B) The groundwater in an aquifer or portion of an aquifer is considered highly vulnerable;

(C) The groundwater in an aquifer or portion of an aquifer represents an irreplaceable source for the identified beneficial use(s);

(D) The groundwater quality in an aquifer or portion of an aquifer has been degraded and there is a need for additional protection measures to maintain or improve the water quality or prevent impairment of a beneficial use;

(E) The groundwater within an aquifer or portion of an aquifer is shown to be hydrologically interconnected with surface water and additional protection is needed to maintain the quality of either surface or groundwater. Hydrologic interconnections can include either natural or induced groundwater recharge or discharge areas; or

(F) The groundwater within an aquifer or portion of an aquifer demonstrates other criteria which justify the need for additional protection.

(2) For General Resource aquifers:

(A) An activity with the potential to degrade groundwater quality is initiated over an aquifer or portion of an aquifer which presently has no such activities;

(B) The groundwater in an aquifer or portion of an aquifer is currently being used for drinking water or another beneficial use which requires similar protection; or

(C) The groundwater in an aquifer or portion of an aquifer has a projected future beneficial use of drinking water or another beneficial use which requires similar protection.

(3) For Other Resource aquifers:

(A) The groundwater quality within an aquifer or portion of an aquifer does not meet one or more of the groundwater quality standards in § 3-2-200; and allowing the groundwater quality to remain at this level does not impair existing or projected future beneficial uses within the aquifer or portion of an aquifer;

(B) The projected groundwater quality within an aquifer or portion of an aquifer will not meet one or more of the groundwater quality standards in § 3-2-200 as a result of activities over or within the aquifer or portion of an aquifer; and allowing the proposed degradation will not impair existing or projected future beneficial uses;

(C) Human caused conditions or sources of contamination have resulted in groundwater quality standards in § 3-2-200 being exceeded, and the contamination cannot be remedied for economical or technical reasons, or remediation would cause more environmental damage to correct than to leave in place; or

(D) The groundwater within an aquifer or portion of an aquifer demonstrates other criteria which justify the need for categorization as an Other Resource.

(b) Petition Process. Any person may petition the Tribe to initiate rulemaking to categorize or recategorize an aquifer or portion of an aquifer pursuant to the Administrative Procedures Code (Chapter 2-5). The following information shall be submitted in writing by the Petitioner for the identified aquifer or portion of an aquifer:

(1) Current category, if applicable;

(2) Proposed category and an explanation of how one or more of the criteria in § 3-2-350 (a) are met;

(3) An explanation of why the categorization or recategorization is being proposed;

(4) Location, description and areal extent;

- (5) General location and description of existing and projected future groundwater beneficial uses;
- (6) Documentation of the existing groundwater quality;
- (7) Documentation of aquifer characteristics, where available, including, but not limited to:
 - (A) Depth to groundwater;
 - (B) Thickness of the water bearing section;
 - (C) Direction and rate of groundwater flow;
 - (D) Known recharge and discharge areas; and
 - (E) Geology of the area;
- (8) Identification of any proposed standards, for specified constituents, which would be stricter or less strict than the groundwater quality standards in § 3-2-200, or any standards to be applied in addition to those in § 3-2-200, and a rationale for the proposed standards.

(c) **Preliminary Division Review.** Prior to submission of a petition to the Nez Perce Tribal Executive Committee to categorize or re-categorize an aquifer, any petitioner shall seek a preliminary review of the petition from the Water Resources Division. The Division shall review the petition and provide a staff recommendation to the Nez Perce Tribal Executive Committee within 45 days of the submission of the petition to the Division. The Division may also seek categorization or re-categorization without the submission of a petition from another person.

CHAPTER 14-5-4 GROUNDWATER CONTAMINATION

§ 14-5-4-1 GROUNDWATER CONTAMINATION.

(a) **Releases Degrading Groundwater Quality.** No person shall cause or allow the release, spilling, leaking, emission, discharge, escape, leaching, or disposal of a contaminant into the environment in a manner that:

- (1) Causes a groundwater quality standard to be exceeded;
- (2) Injures a beneficial use of groundwater; or
- (3) Is not in accordance with a permit, consent order or applicable best management practice, best available method or best practical method.

(b) Prevention Measures.

(1) When a numerical standard is not exceeded, but degradation of ground water quality is detected and deemed significant by the Tribe, the Tribe shall take one (1) or more of the following actions:

(A) Require a modification of activities to prevent continued degradation;

(B) Coordinate with the appropriate agencies and responsible persons to develop and implement prevention measures for activities not regulated by the Tribe;

(C) Allow limited degradation of groundwater quality for the constituents identified in § 3-2-200 (a) (1) and § 3-2-200 (a) (3), if it can be demonstrated that:

(i) Best management practices, best available methods or best practical methods, as appropriate for the aquifer category, are being applied; and

(ii) The degradation is justifiable based on necessary and widespread social and economic considerations; or

(iii) Allow degradation of groundwater quality up to the standards in § 3-2-200 (a) (2), if it can be demonstrated that:

a. Best management practices are being applied; and

b. The degradation will not adversely impact a beneficial use.

(2) The following criteria shall be considered when determining the significance of degradation:

(A) Site-specific hydrogeologic conditions;

(B) Water quality, including seasonal variations;

(C) Existing and projected future beneficial uses;

(D) Related public health issues; and

(E) Whether the degradation involves a primary or secondary constituent in § 3-2-200.

(c) Contamination Exceeding a Groundwater Quality Standard. The discovery of any contamination exceeding a groundwater standard that poses a threat to existing or projected future beneficial uses of groundwater shall require appropriate actions, as determined

by the Tribe, to prevent further contamination. These actions may consist of investigation and evaluation, or enforcement actions if necessary to stop further contamination or clean up existing contamination.

(d) Agricultural Chemicals. Agricultural chemicals found in intermittently saturated soils within the crop root zone will not be considered groundwater contaminants as long as the chemicals remain within the crop root zone, and have been applied in a manner consistent with all appropriate regulatory requirements.

(e) Site-Specific Groundwater Quality Levels. The Tribe may allow site-specific groundwater quality levels, for any aquifer category, that vary from a standard(s) in § 3-2-200 or § 3-2-300, based on consideration of effects to human health and the environment, for:

- (1) Remediation conducted under the Tribe's oversight;
- (2) Permits issued by or concurred in by the Tribe;
- (3) Situations where the site background level varies from the groundwater quality standard; or
- (4) Other situations authorized by the Tribe in writing.

(f) Mineral Extraction. Naturally occurring constituents found in groundwater within a specified area surrounding an active mineral extraction area, as determined by the Tribe will not be considered contaminants as long as all applicable best management practices, best available methods or best practical methods, as approved by the Tribe, are applied.

§3-2-401 - § 3-2-999 (RESERVED FOR ADOPTION OF PRACTICES AND METHODS TO PROTECT GROUNDWATER AND ENFORCEMENT PROCEDURES).