

Title XXX - Solid Waste Code

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Chapter 1. General Provisions

Sec. 101. Purpose.

The purpose of this Title is to provide for the establishment of a comprehensive solid waste collection and disposal system, and to regulate the storage, collection, disposal, treatment, and management of solid waste on the Fort Peck Reservation (hereafter referred to as the Reservation) in order to protect the environment, public health, safety, and well being of the members of the Tribes and the residents of the Reservation.

Sec. 102. Findings.

The Tribal Executive Board makes the following findings and declarations:

(a) the Executive Board, has the authority to protect the general welfare of members of the Tribes, the residents of the Reservation and the environment of the Reservation;

(b) the increasing volume and variety of solid waste and hazardous waste being generated on the Reservation and often inadequate existing methods of managing solid waste and hazardous waste contribute to land, air and water pollution and thereby threaten the economy, public health, safety, welfare and well being of the Reservation and its residents;

(c) the adoption of this Title by the Executive Board is in the best interest of ensuring, promoting, and protecting members of the Tribes, residents of the Reservation and the character of the Reservation and is consistent with policy and is enacted for the protection of the Reservation's natural environment.

Sec. 103. This Solid Waste Code will supercede any conflicting laws or codes found in the Tribe's Code or laws; and.

(a) Authority.

This Title is adopted pursuant to authority vested in the Executive Board in the Constitution and By-Laws of the Tribes, Article VII sec. 5, (c), to protect and preserve the wildlife and Natural Resources of the Reservation, and Article VII sec. 4, to promote public health, education, security, charity, and other services as may contribute to the social advancement of the members of the Tribes. -2-

(b) Severability.

If any provision of this Code or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provisions or applications of this Code that can be given effect without the invalid provision or application thereof, and to this end the provisions of this Code are severable.

(c) Citation or Use of Language from Other Laws.

Citation to statutory or administrative language, definitions, procedure, or provisions of Federal or State law in this Code does not establish jurisdiction, which otherwise does not exist, in such Federal or State government. Nothing in this Code may be deemed a waiver of the Fort Peck Tribes sovereign immunity, and if any Court of competent jurisdiction construes this provision as conflicting with any other provision in this Code, then this express retention of sovereign immunity shall control and prevail.

(d) Sovereignty

The Fort Peck Tribes possess the inherent sovereign authority to enact this Code and no part of this Code constitutes a waiver of the sovereign immunity of the Tribes.

Sec. 104. Scope.

This Title shall apply to all persons and entities, including but not limited to households, commercial businesses, schools, governmental facilities, farmers, ranchers, private contractors, and any entities or facilities engaged in the storage, collection, disposal, and treatment of solid waste within the Reservation.

Sec. 105. Jurisdiction.

The Tribes have inherent authority to exercise civil authority and jurisdiction under this Title over the conduct of Tribal members and all other persons on all lands within the exterior boundaries of the Reservation to maintain the environment, natural resources, public health, safety, welfare, political integrity and economic well being of the Tribes. Because any violation of this Title or any rules or regulations adopted hereunder will have a demonstrable and serious impact on the environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Tribes, this Title, and any rules and regulations adopted hereunder, shall apply to:

(a) all persons within the exterior boundaries of the Reservation, without exception, including but not limited to, all tribal members, and all other persons on the Reservation, including any Indians who are members of other Indian tribes, all non-Indians, and any other person as defined under this Title; and -3-

(b) all places and lands located anywhere within the exterior boundaries of the Reservation, including all trust and non-trust land, notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, or any real property interest of any kind, held by any person.

Sec. 106. Definitions.

As used in this Title and any regulations adopted pursuant to or in accordance with this Title, the words and terms below shall have the following meanings:

(a) "Agency" means Any board, bureau, commission, department, or officer of the Tribes, whether or not the agency or person is subject to review of another Tribal agency, which is authorized by the law to confer or deny a benefit, to exact a penalty or sanction, to determine contested cases, or to enter into contracts, provided that the provisions of this ordinance do not apply to the Executive Board, the Fort Peck Tribal Court, the Fort Peck Court of Appeals, the supervision and administration of the custody, care, control, or treatment of youths, patients, or prisoners, the Tribes' Personnel or Human Resources Department or Tribal personnel matters, any school, college, or training institution authorized, operated, managed, regulated, funded, or chartered by the Tribal government or any agency thereof, or any function of the Tribal government exercised in connection with the enforcement and regulation of conservation of fish and wildlife.

(b) "Agent" means an employee or duly authorized representative of the Tribes.

(c) "Agricultural waste" means waste generated from agricultural activities.

(d) "Approved site" means a disposal site or solid waste facility within the Reservation which has met all the requirements of this Title and any other applicable regulations and is approved by the Office of Environmental Protection and the Executive Board as the place for final depositing of solid waste.

(e) "Bulky wastes" means large items of solid waste, such as car bodies, appliances, furniture, trees, stumps and other oversized wastes.

(f) "Carcass" means any deceased animal or portion of any deceased animal.

(g) "Closure" means the termination of the receiving, handling, recycling, treatment or disposal of solid waste at an approved site, and includes all operations necessary to prepare the solid waste facility for post-closure maintenance. Any closure that occurs on the Reservation shall adhere to the regulations set forth under 40 CFR, Ch.1, Part 264.

(h) "Collection" means the gathering of solid waste at the place of generation by an approved collection agent, and transfer to a solid waste facility, roll-off site or other approved site. -4-

(i) "Collection agent" means any person or entity engaged in collection of solid waste.

(j) "Collection vehicle" means a solid waste commercial compactor or other conveyance that is easily cleanable and capable of transporting solid waste without spillage or littering.

(k) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, businesses, warehouses and other entities engaged in non-manufacturing, commercial activities on the Reservation. Commercial solid waste does not include household waste and industrial solid waste.

(l) "Construction and demolition wastes" means solid waste associated with the construction or dismantling of such objects as roads, buildings or similar structures, including private homes, and individual dwellings.

(m) "Container" means any receptacle intended for the temporary storage of waste, that is durable, leak proof, nonabsorbent, water tight, corrosion resistant, rodent and insect resistant, easily cleanable, has

close-fitting covers and adequate handles to facilitate handling, and is in good condition. Containers are further limited to the following:

(1) Individual household containers must be at least 95-gallon capacity.

(2) Business and drop box containers must be compatible with the collection vehicle used by Operation and Maintenance, or any collection agent or contractor thereof.

(n) "Disposal" means the approved or unapproved discharge, abandonment, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any soil, air, water, or determined Tribal natural resource whether intentional or otherwise.

(o) "Franchised service" means any solid waste collection service operating within the Reservation pursuant to a contract or other consensual relationship with the Tribes, or any entity of agency thereof.

(p) "Garbage" means putrescible material, including but not limited to, animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

(q) "Hazardous Substance" means:

(1) any substance designated pursuant to section 311(b)(2)(A) of the CWA; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA;

(2) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(3) any toxic pollutant listed under section 307(a) of the CWA; -5-

(4) any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. 7521 et seq.);

(5) and any imminently hazardous chemical substance or mixture with respect to which the U. S. EPA Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

(r) "Hazardous Wastes" Shall mean solid waste or combination of solid wastes which, because of its quantity, concentration or physical, chemical or infectious characteristics may:

(1) Pose a substantial present or future hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise mismanaged; or

(2) Meet the specifications, description or listing as a hazardous waste in 40 CFR Parts 260 and 261 pursuant to 3001 of the Solid Waste Disposal Act (U.S.C. 6901 et seq.), as amended by the Resource Conservation and Recovery Act (RCRA) of 1980 and any subsequent amendments.

(s) "Hearings examiner" means the person designated by the Executive Board to hear appeals from the Office of Environmental Protection or the Public Works Board arising under this Title.

(t) "Household waste" means any solid waste derived from households, including single and multiple residences, hotels, motels, campgrounds and other recreation and land management facilities.

(u) "Incineration" means to reduce to ashes through combustion using a containment device that provides for control of combustion parameters.

(v) "Industrial solid waste" means any solid waste generated by industrial processes or manufacturing.

(w) "Infectious waste" means any equipment, instruments, utensils, and formites of a disposable nature from the rooms of patients who are suspected to have or have been diagnosed as having a communicable disease and must, therefore, be isolated as required by the any health agency; any laboratory wastes, such as pathological specimens (e.g., all tissues, specimens of blood elements, excreta, and secretions obtained from patients or laboratory animals) and disposable formites (any substance that may harbor or transmit pathogenic organisms) attended thereto; or any surgical operating room pathologic specimens and disposable formites attendant thereto, and similar disposable materials from outpatient areas and emergency rooms.

(x) "Landfill" 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 CFR, Ch. 1, § 257.2. A landfill also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, non-hazardous sludge, conditionally exempt small quantity generator waste and industrial solid waste. A landfill may be -6-

publicly or privately owned or operated. A landfill may be a new landfill, an existing landfill or a lateral expansion.

(y) "Leachate" means a liquid which has contacted, passed through, or emerged from solid waste and contains soluble, suspended, or miscible materials removed from the waste.

(z) "Liquid" means a substance in a condition in which it flows, that is a fluid at room temperature and atmospheric pressure, and whose shape but not volume can be changed.

(aa) "Litter" means solid waste that is scattered intentionally or in a careless or negligent manner.

(bb) "Nuisance" means any act or condition created by any person or persons, which results in an inconvenience to or affects the health of the public.

(cc) "Occupant" means a person having possessory rights, who can control what goes upon the premises.

(dd) "Office of Environmental Protection" means the Tribes' Office of Environmental Protection.

(ee) "Operation and Maintenance" means the Tribes' Office of Operation and Maintenance.

(ff) "Open Burning" means the burning of solid waste in an open area, pile, barrel or in any other uncontrolled manner.

(gg) "Permit" means an entitlement to commence and continue operation of a solid waste facility as long as both procedural and performance standards are met. The term "permit" includes any functional equivalent such as a registration or license.

(hh) "Person" means any individual person, firm, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever, whether one or more.

(ii) "Pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly

by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term pollutant or contaminant shall also include a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) and petroleum or petroleum product. -7-

(jj) "Pollution" means the condition caused by the presence of or on soil, air, or water

of any solid waste, hazardous waste, or substance derived therefrom in such quantity, of such nature and duration, or under such condition that the quality appearance or usefulness of the soil, air, or water is significantly degraded or adversely altered.

(kk) "Premise" means a tract or parcel of land with or without habitable buildings.

(ll) "Property damage" means any physical injury to tangible property, including loss of use of that property caused by the injury, or any loss of use of tangible property that is not physically injured.

(mm) "Putrescible" means any organic matter capable of being decomposed by micro-organisms and that can result in the formation of foul smelling products.

(nn) "Public Works Board" means the Tribes' Public Works Board.

(oo) "Public Works System" means the component of Tribal government, operated by the Office of Operation and Maintenance, subject to the authority of the Executive Board and the Public Works Board, which provides services to the public such as water delivery, and sewage and solid waste collection and disposal.

(pp) "Petroleum" or "petroleum product" includes gasoline, crude oil, fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute), or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

(qq) "Regulated substance" means any hazardous substance, petroleum or petroleum product.

(rr) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of all hazardous substances, pollutants and contaminants or petroleum or petroleum products into air, ground water, surface water, surface soils, or subsurface soils.

(ss) "Roll-off site" means a solid waste management facility that is generally open to the public for the collection of solid waste that is generated by more than one household or firm that is collected in a refuse container with a total capacity of not more than 50 cubic yards; or

(1) receives waste from waste collection vehicles and:

(a) receives no more than 3,000 tons of waste each year; -8-

(b) has control measures in place, including on-site staffing, to adequately contain solid waste and blowing litter in the site and to minimize spills and leakage of liquid wastes; and

(c) is a site at which a local government unit requires commercial waste haulers to deposit wastes

at the site only during the hours that the site is staffed.

(tt) "Rubbish" means non-putrescible solid waste, including ashes, consisting of both combustible and non-combustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, tires, or litter of any kind.

(uu) "Sanitary landfill" means a land disposal facility, at which solid waste is spread in thin layers, compacted to the smallest practical volume, and covered with soil at the end of each operating day in a manner that minimizes environmental hazards and is approved and permitted pursuant to this Code and meets the requirements of 40 CFR Part 258.

(vv) "Scavenging" means the uncontrolled removal of solid waste materials from any solid waste container, solid waste collection vehicle, or approved disposal site.

(ww) "Solid waste" means all putrescible and non-putrescible solid, semisolid, and liquid waste, including but not limited to garbage, trash refuse, paper, rubbish, ashes, abandoned vehicles and parts thereof, discarded mobile homes and trailers, appliances, manure, vegetable and animal solid and semi-solid waste, septic pumpings and other discarded solid materials, materials, including solid waste materials resulting from industrial, commercial, construction, demolition and agricultural operations, and from community activities, but, unless disposed of at a solid waste management facility, does not include:

(1) Solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants;

(2) Liquids, solids, sludges or dissolved constituents which are collected or separated in process units for recycling, recovery or reuse including the recovery of energy, within a continuous or batch manufacturing or refining process; or

(3) Agricultural materials which are recycled in the production of agricultural commodities;

(4) Industrial discharges that are point sources subject to permits under 33 U.S.C. § 1342;

(5) Source, special nuclear, or byproducts material as defined by the Atomic Energy Act of 1954 as amended, 42 U.S.C. § 2011 et Seq.; -9-

(xx) "Solid waste facility" means any system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a roll-off site is a component of a solid waste facility.

(yy) "Solid waste facility permit" means the permit required for any person or entity engaged in the commercial transport, collection or storage of solid waste or otherwise engaged in the operation of a solid waste facility, issued by the Office of Environmental Protection.

(zz) "Solid waste fee" means a monthly fee for solid waste transport as set by the Fort Peck Tribes Public Works Board.

(aaa) "Solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste, commercial waste, non-hazardous sludge, or solid waste.

(bbb) "Solid waste plan" means a document prepared by the Office of Environmental Protection and approved by the Executive Board which defines the objectives, procedures, responsibilities and management of solid waste on the Reservation.

(ccc) "Solid waste transportation permit" means the permit issued by the Office of Environmental Protection authorizing the transportation of solid waste.

(ddd) "Storage" means the confining, containing or stockpiling of solid waste for a limited period of time prior to collection, transportation, utilization, processing or final disposal

(eee) "Transfer station" means a site at which solid waste is concentrated for transport to a solid waste facility. A transfer station may be fixed or mobile.

(fff) "Transportation" means the movement of solid waste from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(ggg) "Transporter" means a person engaged in the transportation of solid waste by air, rail, highway, or water on or off the Reservation.

(hhh) "Treatment" means the modification of solid waste in such a manner as to cause it to be safe to dispose of in a solid waste facility.

Chapter 2. Responsibilities of Persons owning or occupying dwellings, businesses or other property.

Sec. 201 Owner.

Any person who owns or occupies any dwelling, residence, premises, or business establishment shall be responsible for the sanitary condition of said dwelling, residence, -10- premises, or business establishment. No person shall place, deposit or allow to be placed or deposited on his premises or on any public street, road, alley, streams, springs, bodies of surface or ground water or wetlands any solid waste except in a manner described in this Title.

(a) Any person who owns or occupies any dwelling, residence, premises, or business

establishment shall be responsible for the storage and stockpiling of all refuse accumulated for proper collection and disposal.

(b) It is the responsibility of each person owning or occupying any dwelling,

residence, premises or business establishment to properly store hazardous waste.

(c) All dangerous materials and substances shall be rendered harmless prior to

collection and disposal in accordance with all Tribal, state, and federal regulations.

(d) Any such person shall act in such a manner as to not permit his property or other private property to become dangerous or hazardous, or impair the safety, health or comfort of the public by the discarding of solid waste.

(e) It shall be unlawful for any such person to store within the communities any wrecked,

junked or unserviceable vehicle or tires or any other unserviceable appliances or implements such as stoves, refrigerators, washing machines, or any other items discarded which disfigure the appearance of the premises, leak hazardous substances or present a health or safety hazard.

Chapter 3. Office of Environmental Protection

Sec. 301. Office of Environmental Protection.

The Office of Environmental Protection is hereby designated as the responsible party to ensure compliance with the provisions of this Title, to develop and establish a permitting system, to set fee provisions and set policy.

Sec. 302. Compliance Officer.

The Compliance Officer shall be housed within the Office of Environmental Protection.

Sec. 303. Perform Inspections.

The Office of Environmental Protection may perform inspections to establish that any person, solid waste facility, vehicle, transfer station, approved container, roll-off site or approved site is in compliance with the Title. -

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Sec. 304. Issue Permits.

The Office of Environmental Protection shall issue all permits under this Title pertaining to:

- (a) the establishment of a solid waste facility within the Reservation;
- (b) the commercial storage and disposal of solid waste within the Reservation;
- (c) the treatment of solid waste within the Reservation; and
- (d) the commercial transportation of solid waste within the Reservation.

Sec. 305. Procedures for Permitting and Inspection Program.

The Office of Environmental Protection shall develop procedures for carrying out a permit and inspection program, including but not limited to requiring operators to file reports with the Compliance Officer in order to monitor the storage of solid waste, solid waste handling, treatment or disposal within the Reservation.

Sec. 306. Adopt and Enforce Regulations.

The Office of Environmental Protection shall adopt and enforce such regulations as are reasonably necessary to implement and carry out the policies, requirements, and duties described in this Title.

Sec. 307. Non-compliance Fines.

The Office of Environmental Protection may impose reasonable fines for permit violations, any wrongful dumping of solid waste, littering and any violations of this Title or any regulations adopted thereunder. The non-compliance fees collected shall be deposited in the Tribes General Fund.

Sec. 308. Coordination and Cooperation with other Agencies.

The Office of Environmental Protection may:

(a) assist or receive assistance from other Tribal, state, and federal agencies in the development and maintenance of inspection, enforcement, training, and regulatory programs; and

(b) request, as necessary, any Tribal, or federal, agency having jurisdiction to investigate and report on any questions or matters involving solid waste handling, treatment and disposal affecting the Reservation.

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Sec. 309 Public Information Program

Office of Environmental Protection may implement a public information program to provide information to other governments, private industry, and the general public concerning environmental protection, effective reuse of solid waste, and other management matters as it deems appropriate.

Chapter 4. Public Works Board

Sec. 401. Responsibility.

The Public Works Board shall:

(a) develop and maintain the Public Works System;

(b) implement the policy of this Title in its oversight of the Public Works System.

(c) act as an initial Appeals Board according to the Public Works System Handbook for decisions made by Operations and Maintenance.

(d) develop and maintain a permitting system for non-commercial dumping at solid waste facilities.

(e) determine appropriate fees for services of the Public Works System and Operation and Maintenance;

(f) Annual Report. The Public Works Board shall prepare and file an annual report with the Executive Board no later than September 1 of each year, commencing September 1, 2004, describing progress achieved under the program as described herein and containing recommended additional administrative and legislative actions necessary to implement such policies and programs.

Chapter 5. Operation and Maintenance

Sec. 501. Powers and Duties.

Operation and Maintenance is hereby designated to:

(a) operate the Public Works System subject to the authority of the Public Works Board and the Executive

Board.

- (b) implement solid waste handling, treatment, and disposal within the Reservation; -13-
- (c) provide for adequate solid waste handling services, including but not limited to the collection, treatment, and disposal within the Reservation,
- (d) prepare and recommend to the Public Works Board polices for the management of solid waste;
- (e) perform its duties in accordance with Solid Waste Plan;
- (f) implement management activities regarding solid waste handling, collection, treatment, and disposal within the Reservation; and
- (g) provide for off-Reservation disposal of solid waste under a plan approved by the Public Works Board and the Executive Board.

Sec. 502. Contracts.

The Office of Operation and Maintenance may recommend to the Public Works Board such contracts as deemed necessary, for the accomplishment of essential services and for the planning, design and construction of solid waste projects, provided that the Public Works Board monitors all such contracts for the Tribes.

Sec. 503. Studies, Investigations and Information Systems.

The Office of Operation and Maintenance may conduct studies and investigations regarding new or improved methods of solid waste handling, treatment, and disposal and prepare and implement a solid waste management information storage and retrieval system coordinated with other information systems.

Sec. 504. Studies of Municipal Solid Waste Stream.

Operation and Maintenance may conduct studies of the nature, extent, and methods of reducing and controlling litter problems on the Reservation including, but not limited to, methods of improving public education and incentives to reduce waste generation and littering, necessary additional legislation, and improved methods of implementing existing laws.

Sec. 505. Coordination and Cooperation with other Agencies.

Operation and Maintenance may coordinate solid waste handling, treatment, and disposal with federal, state and local agencies and with persons in the solid waste industry. Operation and Maintenance may render or receive technical assistance to or from tribal, state, and local agencies and officials thereof and others involved in the planning and operation of a solid waste program and facilities. -14-

Chapter 6. Solid Waste Plan

Sec. 601. Solid Waste Plan.

- (a) Office of Environmental Protection shall adopt a Tribal plan for the management of solid waste within the Reservation including, but not limited to, requirements and practices consistent with federal standards

for solid waste handling, treatment, recycling, reuse and disposal for the protection of land, air, and water from pollution. During the process of formulating or revising the Tribal policy for the management of solid waste, Office of Environmental shall consult with and carefully evaluate the recommendations of all concerned public.

(b) Office of Environmental Protection may specify classifications of solid waste that may not be addressed by the Solid Waste Plan at this time provided that the nature of the exempt waste poses no significant threat to the public health, the public safety or the environment.

Sec. 602. Approval of Plan.

The Solid Waste Plan, describing the location, design, operation, maintenance and ultimate use of solid waste facilities within the Reservation, shall be submitted for approval to the Executive Board.

Sec. 603. Contents of Plan.

(a) The Solid Waste Plan shall, at a minimum:

- (1) Include an implementation schedule of recommended management actions;
- (2) Estimate the volume and composition of solid waste generated on or illegally imported to the Reservation and explain the basis of the estimate;
- (3) Identify the responsibilities of other Tribal agencies and entities in the implementation of the Solid Waste Plan, the distribution of funds to the authorities responsible for development and implementation of the Solid Waste Plan, and the means for coordinating all planning and implementation under the Solid Waste Plan;
- (4) Prohibit the disposal of solid waste in open dumps within the Reservation;
- (5) Provide for the closing of all existing open dumps within the Reservation pursuant to this Title and federal law;
- (6) Provide that the Operation and Maintenance may negotiate and recommend to the Executive Board long term contracts for the removal of solid waste to solid waste facilities, the -15- construction and operation of solid waste facilities, securing long-term markets for material and energy recovered from solid waste facilities, and conserving material or energy by reducing the volume of solid waste;
- (7) Provide for resource conservation or recovery, for the disposal of solid waste in solid waste facilities, and for any combination of practices as may be necessary for the handling, treatment, or disposal of solid waste in a manner that is environmentally sound and in compliance with the Office of Environmental Protection, the Tribal Title and federal law;
- (8) Establish and specify a goal of recycling the solid waste accepted by any recycling facility within the Reservation to the maximum extent possible;
- (9) Adhere to the federal guidelines for the disposal of solid waste and incorporate the recommended procedures, design, and operations described in Title of Federal Regulations, Title 40 CFR §§ 257, 258 as amended;

(10) Identify and recommend to the Executive Board areas for the establishment or expansion of solid waste facilities.

(b) The Solid Waste Plan may recommend:

(1) Prohibition of open burning of solid waste within the Reservation;

(2) Prohibition of incineration within the Reservation;

Sec. 604. Solid Waste Facility.

In identifying and reserving areas for the establishment or expansion of solid waste facilities, the Office of Environmental Protection, to ensure that the land uses within a solid waste facility, adjacent to or near a solid waste facility meet the requirements set forth in this Title, shall consider the following:

(a) 40 CFR §§ 257 and 258, as appropriate to the type of facility, is adopted into this Title by reference and all solid waste facilities shall be established and maintained according to the regulations set forth under 40 CFR §§ 257 and 258. 40 CFR § 258 does not apply to roll-off sites.

(b) The varying geographic, geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to prevent Leachate contamination of ground and surface waters, the protection of surface waters from surface runoff contamination, and the protection of ambient air quality;

(c) Characteristics and conditions of solid waste handling, treatment, and disposal methods, techniques, and practices, and locations of solid waste facilities where such methods, -16-

techniques, and practices are conducted, taking into account the nature of the material to be handled;

(d) Site Specific Flexibility Requests pursuant to 40 CFR § 258, for purposes of eliminating potential health hazards;

(e) Population density, distribution, and projected growth;

(f) The types and locations of solid waste collection facilities;

(g) The profiles of industries;

(h) The constituents and general rates of solid waste;

(i) The political, economic, organizational, financial, and management problems affecting comprehensive solid waste management on the Reservation;

(j) Types of resource recovery facilities and resource conservation system that are appropriate; and

(k) Available new and additional markets for recovered material and energy resources recovered from solid waste as well as methods for conserving such material and energy.

Sec. 605. Guideline.

The Solid Waste Plan shall serve as a guideline in the interpretation of this Title as it relates to the operation of solid waste facilities, solid waste collection, handling, treatment and disposal.

Sec. 606. Periodic Review of Plan.

Operation and Maintenance shall review and evaluate the Solid Waste Plan at least every five (5) years to obtain maximum consistency with Tribal and federal policy. After such review and evaluation, Operation Management shall propose appropriate amendments to the Solid Waste Program for consideration by the Public Works Board. OEP is to adopt and implement the amended Plan, upon amendment by the PWB.

Chapter 7. Storage

Sec. 701. Containers.

(a) Every dwelling, business establishment or other premises where solid waste accumulates: -17-

(1) within the Public Works System, shall be provided a sufficient number of

suitable and approved containers for receiving and storing solid waste and shall keep all solid waste therein; or

(2) that is "NOT" a part of the Public Works System, "shall provide" a sufficient

number of suitable and approved Containers for receiving and storing of solid waste and shall keep all solid waste therein.

(b) The Owner, Agent or Occupant of every dwelling, business establishment or other premises where solid waste accumulates, shall be responsible for the safe and sanitary storage of all solid waste accumulated at that premise until it is removed.

(c) Approved containers shall be maintained in a manner consistent with this Title and acceptable to the Solid Waste Plan. Containers that are broken or otherwise fail to meet the requirements of the Title, shall be replaced.

(d) Drop-box containers shall be periodically disinfected, and shall be steam cleaned and painted as deemed necessary by the Solid Waste Plan.

(e) Approved individual containers shall be stored off the ground on racks or stands and easily accessible for collection by Operation and Maintenance or authorized representatives.

Sec. 702. Storage of Solid Waste.

Solid waste shall be stored as follows:

(a) Rubbish shall be stored in an approved container or in a manner that will

confine the waste in one area, and not create a public nuisance. Bulky Rubbish such as tree trimming, newspaper, weeds and large cardboard boxes shall be handled as directed by the Operations and Maintenance. Where Garbage separation is not required, containers for the storage of mixed rubbish and garbage shall meet the requirements specified by this Chapter.

(b) Garbage shall be stored in an approved container.

(c) Hazardous Waste shall be appropriately labeled and stored in a

manner not accessible to the public and in an area where the waste is not harmful to the public or the environment.

(d) Waste from medical and dental clinics, including infectious waste

shall be stored in containers with disposable plastic liners with special identification and stored in a manner not accessible to the public and in an area not harmful to the environment.

(e) Agricultural waste and products shall be stored as to minimize nuisance, -18-

flies, rodents and odor, and shall not result in the contamination of ground or surface water sources and in accordance with this Title.

(f) Waste shall be stored as to minimize or eliminate the production of

Leachate.

(g) Bulky waste shall not be allowed to accumulate on any premise.

Chapter 8. Collection, Transport and Disposal

Sec. 801. Collection Schedule.

Operation and Maintenance shall establish a schedule and arrange for the collection of solid waste within the service area of the Public Works System on a timely basis but no less than once every seven days.

Sec. 802. Collection Service.

All Reservation residents may subscribe to solid waste collection service operated by Operation and Maintenance or its franchisee if available. Reservation residents may take their own trash to a solid waste facility.

Sec. 803. Collection Vehicles.

Only vehicles approved by the Compliance Officer shall be used for the collection and transport of solid waste. Vehicles used for the collection and transport of solid waste shall be kept cleaned and maintained.

Sec. 804. Collection Standards.

Solid waste shall be disposed, stored and collected in a manner that prevents spillage and littering. Should spillage or littering occur, the solid waste shall be immediately collected by the person responsible for such spillage or littering and returned to the vehicle or appropriate solid waste facility.

Sec. 805. Pets and Animals.

The owner of any pet or other animal shall control such pet or animal to provide for the safety of the collector of solid waste and prevent interference with collection services.

Sec. 806. Access.

Access to storage containers should be kept clear to prevent interference with collection services. -19-

Sec. 807. Permitted Vehicles.

Permitted vehicles used for the collection and transport of solid waste shall have covered, watertight, metal bodies of easily cleanable construction shall be cleaned frequently to prevent a nuisance, and shall be maintained in good repair.

Sec. 808. Private Vehicles.

Private vehicles used for collection and transport of solid waste shall be loaded and moved in such a manner that the contents, including ashes, will not fall, leak or spill from the vehicles. Where spillage does occur, it shall be collected immediately by the transporter and returned to the vehicle or container.

Sec. 809. Service Fees.

Service Fees for transfer, recycling, or other special services shall be collected as prescribed by Public Works Board. Fees will be set by the Public Works Board based upon the cost of services supplied by Operation and Maintenance or from a competitive bid process for franchise.

Sec. 810. Non payment of Fees.

Non-payment of transfer fees, after 30 thirty days, shall, be a violation of this Title and result in action being taken by the Public Works Board or other collection entity. Action may include the discontinuation of other utilities provided by the Public Works Board where appropriate.

Sec. 811. Load Rejection.

Operation and Maintenance reserves the right to refuse any and all materials at a solid waste facility, Roll-off Site, or any other Collection site.

Sec. 812. Material Separation.

Operation and Maintenance reserves the right to require separation of any materials deemed necessary prior to Collection or acceptance.

Sec. 813. Open Burning.

There shall be no Open Burning of residential, commercial, institutional or industrial solid waste on the Reservation without a Permit from the Office of Environmental Protection. The Office of Environmental Protection will coordinate the approval of burning permits with the Bureau of Indian Affairs, fire department, and county governments. This requirement does -20-

not apply to infrequent burning of agricultural wastes in the field, silvicultural wastes for forest management purposes, land-clearing debris, diseased trees, debris from emergency clean-up operations and ordinance."

Sec. 814. Hazardous Waste.

Hazardous waste generators, transporters, or treatment, storage or disposal facilities must comply with the applicable requirements of 40 CFR Parts 262 thru 279, as applicable, pursuant to 3001 of the Solid Waste Disposal Act (U.S.C. 6901 et seq.), as amended by the Resource Conservation and Recovery Act (RCRA) of 1980 and any subsequent amendments. Any violation of these regulations will be considered a violation of this Code and

subject to enforcement under this Code. Hazardous waste shall be treated, stored or managed only at a site approved and permitted by the Office of Environmental Protection and federally approved and permitted by the Environmental Protection Agency where a permit is required pursuant to the above regulations.

Sec. 815. Agricultural Waste.

Agricultural waste may be disposed of at an approved site by prior arrangement with Operation and Maintenance.

Sec. 816. Septic Tank Waste Disposal.

Septic tank waste disposal shall not be made at solid waste facilities. Septic tank waste disposal shall only be allowed at Tribal controlled sewage lagoons or in accordance with 40 CFR § 503.

Sec. 817. Liquids.

Bulk or non-containerized liquid waste may not be placed in a roll-off or other approved solid waste containers for disposal in a municipal solid waste landfill. Liquids may be deposited within approved containers or Roll-off Sites if the waste is a household waste, other than septic waste, and the container is a small container similar in size to that normally found in household waste and the container is designed to hold liquids for use other than storage.

Sec. 818. Scavenging.

Scavenging wastes disposed of in approved solid waste containers, roll-offs or at approved collection sites, storage sites or transfer stations is prohibited on the Reservation.

Sec. 819. Construction and Demolition Wastes.

The Public Works Board will arrange for development of an appropriate site for the final -21- disposal of construction and demolition wastes.

Sec. 820. Carcasses.

Private commercial animal removal companies shall be used for all livestock; pets and livestock may be buried on owner's land; no animal shall be disposed of at a solid waste facility or in a container without specific authorization from the owner of the solid waste facility.

Sec. 821. Prohibition of Disposal in Open Dumps.

In order to protect the limited land, air, and water resources of the Reservation from permanent damage due to hazardous pollution and to protect the health, safety, and welfare of all residents of the Reservation and surrounding communities, disposal or dumping of solid waste by any Person in any location, building or container that is not specifically designated by the Office of Environmental Protection for the collection, storage, transfer or disposal of solid wastes is expressly prohibited within the boundaries of the Reservation and such Person may be subject to a fine.

Sec. 901. Existing Solid Waste Facilities.

Existing solid waste facilities on the Reservation must apply for and obtain a permit within 90 days of the effective date of these codes to continue in operation. All conditions required for a new solid waste facility shall apply to an existing one. Where an existing solid waste management or disposal facility is not in full compliance with these codes or applicable requirements of 40 CFR Parts 257 or 258, compliance with the law will be required or the solid waste facility must cease operation and be closed within 90 days of the effective date of these codes.

Sec. 902. Permits for Solid Waste Management and Disposal Facilities

No person shall construct or operate a solid waste facility within the jurisdiction of the Reservation except as authorized by an OEP issued Solid Waste Facility Permit.

Sec. 903. Permits for Transport of Solid Waste.

No Person shall engage in the business of the transportation of solid waste originating or terminating at a location within the jurisdiction of the Reservation except as authorized by an OEP issued solid waste transportation permit. Existing solid waste transporters on the Reservation must apply for and obtain a permit within 30 days of the effective date of these codes to continue in operation. -22-

Sec. 904. Application for Permit.

Any Person who proposes to become an Operator of a solid waste facility or a transporter of solid waste shall file with the Office of Environmental Protection for a solid waste facility or Transportation Permit an application for a solid waste facility or Transportation Permit at least 120 days in advance of the date on which such person desires to commence construction of a solid waste facility or transportation of solid waste. The decision to issue or not issue the Permit shall be made by the Office of Environmental Protection within 120 days of the time the application is filed, unless, in the Office of Environmental Protection's best judgment, additional time is necessary to gather additional information on the application, to conduct environmental studies related to the application, or to require further analysis related to the application.

Sec. 905. Contents of the Permit Application.

Permit applications filed pursuant to this Chapter shall:

- (a) Indicate the mechanical and other equipment, holding tanks, vehicles, Roll-off Sites and place of temporary storage used or to be used by the applicant;
- (b) A site evaluation report describing the geographic, geologic, climatic, and hydrologic characteristics of the place or places where and the manner in which the applicant will handle, treat, or dispose of solid waste;
- (c) The practices, technologies and procedures that will be employed to ensure adequate protection of the quality of groundwater and surface waters from surface runoff contamination, and adequate protection of ambient air quality, including groundwater monitoring, leachate collection and air monitoring for gases;
- (d) All Owners and Operators of a Landfill within the Reservation shall meet the financial assurance standards set forth under 40 CFR Part 258. All commercial transporters of solid waste shall have a minimum of \$250,000 insurance to cover the costs of spills and clean up and shall provide evidence of such insurance.

(e) A training program for employees of the solid waste facility to educate employees on environmental concerns in managing solid waste and to provide such employees with needed skills for the safe operation of the solid waste facility or transportation equipment, and

(f) A closure and post-closure maintenance plan for the solid waste facility, and

(g) Such other information as the Office of Environmental Protection deems necessary.

Sec. 906. Application for Revision of a Permit.

If a permittee wishes to modify his operation, he shall file an application for revision of -23-

his existing permit at least 120 days in advance of the date when the proposed modification is to take place. Under circumstances that present an immediate danger to public health, as determined by the Office of Environmental Protection, the 120-day filing period may be waived by the Office of Environmental Protection. No Operator of a permitted solid waste facility or Transportation service shall make any significant change in the design or operation of any solid waste facility or Transportation service except in conformity with the terms and conditions of the Permit issued to such Operator.

Sec. 907. Application Submittal: Filing Fee.

Each report and application filed hereunder shall be submitted in a form approved by the Office of Environmental Protection. Each application shall be accompanied by a reasonable filing fee established by Office of Environmental Protection according to a fee schedule to reflect the cost of processing such applications, including but not limited to the cost of technical and legal consultants, office staff, and overhead. All application fees shall be deposited in the Tribal General Fund. This fee is in addition to the fees authorized for operation and enforcement. The Office of Environmental Protection may waive filing fees for local governments.

Sec. 908. Issuance of Permit: Contents.

The Office of Environmental Protection may issue, modify, or revise a Permit that shall contain all terms and conditions for the construction and/or operation of a solid waste facility or for the transportation of solid waste. A permittee must comply with all terms and conditions of the Permit and any modifications or revisions.

Sec. 909. Conditions for Permit Issuance or Modification.

The Office of Environmental Protection shall not issue, modify, or revise a facility or transportation permit unless the Office of Environmental Protection is convinced that primary consideration is given by the permittee to preventing environmental damage and that the long-term protection of the environment is the guiding criterion. To achieve these purposes, the Office of Environmental Protection may prohibit or condition the Collection, Handling, Treatment, or Disposal of solid waste to protect, rehabilitate, or enhance the environmental quality of the Reservation or to mitigate adverse environmental impacts. A permit will be issued only if:

(a) The proposed solid waste facility or transportation operation will be in full compliance with the applicable rules and regulations in effect on the date of Permit issuance;

(b) Feasible mitigation measures identified in any Environmental Assessment or Environmental Impact Statement prepared pursuant to the National Environmental Policy Act (NEPA 1505.2c, 42 USC 4321-370a), have been incorporated as Permit conditions; and

(c) There has been opportunity for public review and comment pursuant to Section 913 of this Code. -24-

Sec. 910. Additional Conditions for a Solid Waste Facility Permit.

The Office of Environmental Protection shall not issue, modify, or revise a Solid Waste Facility Permit unless it is accompanied by a Tribal building, special use, or other applicable permit(s) or lease authorizing the establishment of the solid waste facility, and such permit or lease has been approved by the Executive Board and, if appropriate, the Bureau of Indian Affairs. The decision to issue, modify, or revise a Solid Waste Facility Permit requires a finding by the Office of Environmental Protection that the proposed Permit is consistent with the OEP Solid Waste Plan and any applicable standards.

Sec. 911. Additional Conditions for Solid Waste Transportation Permit.

As a condition for the issuance of a Solid Waste Transportation Permit, the Office of Environmental Protection shall require:

- (a) every vehicle operated by the transporter to be conspicuously marked or placarded to identify the solid waste transported and its principal hazard. Any such Vehicle shall be specifically marked with the full name or legally registered trade names or names of the Transporter and the number of the Solid Waste Transportation Permit issued pursuant to this Section;
- (b) that a Permit shall be kept within the Vehicle for inspection; and
- (c) the Transporter to make an annual (or as otherwise conditioned in the permit) report to the Office of Environmental Protection, indicating the number and type of installations emptied or cleaned, the volume and nature of solid waste disposed of, the place and manner in which such solid waste was finally disposed, and such other information as the Office of Environmental Protection may require.

Sec. 912. Statement of Applicability or Denial.

To determine whether a permit should be issued a written statement shall be public noticed and delivered by the Office of Environmental Protection to the applicant which shall specify the laws, rules and regulations with which the applicant shall show compliance. This statement shall also specify any particular facts or matters that the Office of Environmental Protection determines would justify a denial of the permit.

Sec. 913. Public Review and Comment

No permit shall be issued, modified or denied except after a public notice of the Statement of Applicability or Denial and a minimum of 20 days opportunity for public review and comment of the proposed permit decision is provided during the permitting process. In addition:

- (a) Based upon requests, the Office of Environmental Protection may hold a public -25- hearing at which the applicant and all interested parties have an opportunity to present evidence on whether the application should be granted or denied and the conditions to be included in the permit.
- (b) The notice of a hearing shall be in the form approved by the Office of Environmental Protection.
- (c) The Office of Environmental Protection shall hold the hearing no earlier than twenty days and no later than forty-five days from applicant's receipt of the Statement of Applicability or Denial.
- (d) All written requests for a hearing, and statements or comments on the permit decision, shall be

delivered personally or by certified or registered mail, return receipt requested to the Office of Environmental Protection.

Sec. 914. Permit Denial on any Permit.

The Office of Environmental Protection may deny a Permit or may impose conditions that will adequately protect against unreasonable degradation of the environment and Natural Resources of the Reservation, if the Office of Environmental Protection determines that:

- (a) the proposed method of Transport, the place or manner in which the solid waste is to be collected, handled, treated or disposed of, or the method or location of temporary storage will be detrimental to or damage or pollute the environment or Natural Resources of the Reservation; or
- (b) the Permit applicant has an incidence or history of failing to comply or is reasonably deemed not likely to comply with Permit conditions.

Sec. 915. Renewal Denied.

The Office of Environmental Protection may deny renewal of a permit for failure of the permittee to properly report or otherwise comply with this Title.

Sec. 916. Reconsideration.

If the Office of Environmental Protection denies a Permit or if the applicant deems the terms and conditions of the Permit inappropriate the applicant may request reconsideration in writing within fifteen days after the applicant receives notice of the denial or of the terms and conditions of the Permit. The Office of Environmental Protection shall thereupon reconsider the denial of the permit and issue and mail its decision by certified mail to the applicant within fifteen days of receipt of the request for reconsideration. -26-

Sec. 917. Appeals.

In the event that the permit is denied after reconsideration, the applicant may file a written request for a hearing on contested cases before the Hearings Examiner. The request shall be filed within thirty (30) days after the receipt of the decision on the Permit has been issued by the Office of Environmental Protection. Copies of the request shall be served upon the Office of Environmental Protection and all parties of record by certified mail, return receipt requested.

The Hearings Examiner shall conduct a hearing within thirty (30) days of receipt of the request for appeal, unless an extension is agreed upon by the appealing party. The Hearings Examiner may affirm or reverse the decision of the Office of Environmental Protection, but shall only reverse such decision if the Hearings Examiner states with particularity the grounds thereof and finds that the decision of the Office of Environmental Protection is arbitrary, capricious or otherwise unsupported by substantial credible evidence. Hearings Examiner shall issue a decision in writing within 30 days of the close of the hearing on appeal. Such decision shall set forth the grounds thereof. Such decision shall be mailed to the parties by certified mail, return receipt requested.

The decision of the Hearings Examiner shall be final and shall not be appealable to the Fort Peck Tribal Court . Nothing in this Section shall be deemed a waiver of the Tribes' immunity from suit or any agency, employee or entity thereof.

Sec. 918. Compliance with Applicable Law.

Receipt of a Permit shall not relieve any Person of the responsibility to construct and operate all solid waste facilities and collection systems in a manner that complies with any and applicable Tribal and federal laws, rules, or regulations.

Sec. 919. Periodic Review.

Any Permit issued, modified, or revised hereunder shall be reviewed and, if necessary, be revised by the Office of Environmental Protection at least every year. Solid Waste Transportation Permits may be issued for a period of up to twelve (12) months and must be renewed annually and approved by the Office of Environmental Protection.

Sec. 920. Investigations, Reports, Inspections.

The Office of Environmental Protection shall make periodic inspections of any premises, container, equipment, or vehicle used for collection, storage, transportation or disposal of solid waste to ensure compliance with this Title.

(a) The Office of Environmental Protection, in issuing or reviewing any Solid Waste Transportation Permit or in connection with any action relating to or authorized by this Title, may authorize the Compliance Officer to investigate the construction, maintenance, and -27-

operation of any solid waste facility or transportation service owned or operated by the permittee or applicant.

(b) In such an investigation, the Office of Environmental Protection may require the permittee or applicant furnish such technical or monitoring program reports or other reports the Office of Environmental Protection may specify.

(c) In such an investigation, the Compliance Officer may enter and inspect any solid waste facility, equipment, or vehicle used for, and any records relating to, the collection, storage, handling, treatment, or disposal of solid waste to ensure compliance herewith and to determine that operators are complying with applicable permit requirements.

Sec. 921. Protection of Proprietary Information.

(a) Upon the Tribes' approval of the written request of any person furnishing any report, notice, application, or other document required hereby, the Tribe shall not make available for inspection by the public those portions of such report, notice, application, or other document that contains proprietary information.

(b) However such report, notice, application, or other document or portions thereof, shall be made available to the Tribes or its agencies and to any other government agency or agencies, provided that, the information is at all times kept confidential, and/or used for enforcement or investigative purposes.

Chapter 10. Fees

Sec. 1001. Solid Waste Facility and Transportation Permit Fees.

In order to recover operating costs, Operation and Maintenance shall impose reasonable Permit fees on each Operator of a solid waste facility and solid waste transportation service. The Permit fee may be based on the weight, volume, or type of solid waste received, Handled, Treated, or Disposed of by any such Operator, or on any other appropriate basis or combination thereof. All fees shall be deposited in the Tribal General Fund.

Sec. 1002. Individual Collection Fees and Roll-off Transfer Station Fees.

A fee for the collection of individual Household Waste shall be imposed to defray costs of the service. This fee will be determined and approved by the Public Works Board. Before the fee is imposed, there will be a public hearing for all affected households.

Sec. 1003. Non-commercial and Household Waste Disposal Fees.

In order to recover operating costs, the Public Works Board may authorize Operations -28- and Maintenance to impose reasonable fees for non-commercial disposal of non-commercial and household solid waste at any Tribal or Tribal contracted solid waste collection or management facility or container.

Chapter 11. Enforcement

Sec. 1101. Enforcement Agency.

The Office of Environmental Protection, is hereby designated as the enforcement agency entrusted with the duty and responsibility of ensuring the proper handling, treatment and disposal of solid waste on the Reservation and of ensuring compliance by all Persons with this Title. The Compliance Officer, housed within the Office of Environmental Protection, shall be party responsible for carrying out the enforcement and compliance duties and responsibilities of the Office of Environmental Protection. Decisions of the Compliance Officer may be appealed under the procedures set forth under the Administrative Procedures Act.

Sec. 1102. Duties.

The Compliance Officer shall:

- (a) Enforce all provisions of this Title and regulations adopted hereunder that pertain to the minimum standards for solid waste collection, storage, handling, treatment and disposal, all for the protection of the public health and safety and of land, air and water.
- (b) Enforce compliance with feasible mitigation measures identified within Environmental Assessment/Environmental Impact Statement prepared pursuant to the National Environmental Protection Act (NEPA).
- (c) Request enforcement by federal agencies of their respective laws governing solid or hazardous waste handling, treatment, and disposal where those laws do not conflict with this Title.
- (d) Provide information to the affected public, the Office of Environmental Protection and the Public Works Board, as requested, where such requests do not conflict with other provisions of this Title.

(e) The Compliance Officer may issue Warning Letters, Notice of Violations and/or impose a fine upon any person who violates any provision of this Title.

(f) Develop, implement, and maintain inspection, enforcement and training programs.

(g) Keep and maintain accurate records of inspections, enforcement actions and training programs. -29-

(h) Consult with appropriate health agencies concerning all actions involving solid waste collection, storage, handling, treatment and disposal or remediation.

Sec. 1103. Periodic Review.

The Office of Environmental Protection shall periodically review the Compliance Officer and its implementation of the enforcement program. This review may include an inspection by the Office of Environmental Protection, or any person authorized by the Office of Environmental Protection, of all books, records, accounts and other documents of the Compliance Office. If the Office of Environmental Protection finds that the Compliance Officer is not adequately fulfilling its enforcement responsibilities, the Office of Environmental Protection shall notify the Compliance Officer and the Executive Board of its intention to take remedial action if the Compliance Officer does not correct the problems specified by the Office of Environmental Protection.

Sec. 1104. Enforcement Actions.

(a) Ten (10) days before issuing an enforcement order that is not for an emergency, within five (5) days after issuing an enforcement order for emergency, and within fifteen (15) days after discovering a violation of a Tribal law, regulation, or Permit that is likely to result in an enforcement action, the Compliance Officer shall provide a written statement providing an explanation and justification for the enforcement order and a description of the violation to the Office of Environmental Protection.

(b) If the Compliance Officer receives a complaint concerning the violation of applicable Tribal or federal environmental laws, Tribal solid waste laws, Tribal regulations or Tribal permit conditions, the Compliance Officer shall investigate to ensure proper consideration of the complaint. The Compliance Officer's investigation may include the inspection of the solid waste facility or vehicle to determine whether any applicable tribal or federal law, regulation, or permit has been or is being violated.

(c) If the Compliance Officer receives a complaint by a person or another agency concerning a solid waste facility, transportation service, or other activity, and the Compliance Officer does not refer it to another agency, the Compliance Officer shall either take enforcement action concerning that solid waste facility, transportation service or Transporter or provide the Person or Agency who filed the complaint with a written statement within thirty (30) days explaining why an enforcement action would not be appropriate.

(d) If the Public Works Board or Operations and Management receive a complaint concerning a solid waste facility, transportation service, or other activity, the Public Works Board or Operations and Management shall refer the complaint within ten days of receipt to the Compliance Officer or other appropriate state or federal agency. -30-

Sec. 1105. Cease and Desist Orders: Remedial Actions.

(a) Any Person who constructs or operates a solid waste facility in violation of his Solid Waste Facility

Permit; constructs or operates a solid waste facility without a Solid Waste Facility Permit, transports solid waste in violation of his Solid Waste Transportation Permit; transports solid waste without a Solid Waste Transportation Permit; violates any requirements found in this Title, or violates any standard adopted by the Office of Environmental Protection or Operation and Maintenance for the collection, storage, handling, treatment, or disposal of solid waste shall, upon order of the Compliance Officer, cease and desist any improper action, clean up any solid waste, and any other remedial action ordered, abate the effects thereof, and take any other remedial action directed by the Compliance Officer. Whenever the Compliance Officer determines that the construction or operation of a solid waste facility or the transport of solid waste is causing or threatening to cause a condition of hazard, pollution, or nuisance due to the migration or release of hazardous waste, substance, pollutant or contaminant or solid waste or for any other reason, the Compliance Officer may require the operator of the solid waste facility or the solid waste transporter to take corrective action necessary to abate any hazard, pollution, or nuisance or to protect public health, safety and the environment.

(b) If any of the circumstances set forth herein above pose an imminent threat to life or health, the Office of Environmental Protection may expend any available monies to perform any cleanup, abatement, and remedial work required.

(c) If any of the circumstances set forth herein above do not pose an imminent threat to life or health, but the Office of Environmental Protection deems it necessary for the public health and safety to perform cleanup, abatement work or remedial work, the Office of Environmental Protection may perform such work and expend monies thereon.

(d) Any action taken may be taken in the absence of, or in addition to, cleanup, abatement, or remedial work by the Operator or other persons. The Office of Environmental Protection may perform the work or the work may be performed by or in cooperation with any other Tribal or Federal agency or private contractor. The Office of Environmental Protection may request that the Executive Board enter into written contracts for such work, and the contracts, whether written or oral, may include provisions for equipment rental and the furnishing of labor and materials necessary to accomplish the work.

(e) If solid waste or hazardous waste, substance, pollutant or contaminant is cleaned up, the effects thereof abated, or other necessary remedial action is taken as described above, the Person or Person(s) who committed or allowed the improper action or release shall be liable to the Tribes for the reasonable costs actually incurred in cleaning up any solid waste or hazardous waste, substance, pollutant or contaminant, abating the effects thereof, or taking other remedial action. The amount of such costs shall be recoverable in a civil action, taken by the Tribes in the Fort Peck Tribal Court , together with the costs of suit incurred by the Tribes in recovering such monies. A judgment ordering the payment of these costs to the Tribes will bear interest at the maximum rate of interest allowable on judgments under Tribal law. -

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Sec. 1106. Compliance Schedule.

The Compliance Officer shall develop a compliance schedule for any permitted solid waste facility or solid waste transporter that violates the Office of Environmental Protection's minimum standards. The compliance schedule shall assure that diligent progress shall be made to bring the solid waste facility or solid waste transporter into compliance with the Office of Environmental Protection's minimum standards within a specific period of time determined by the Office of Environmental Protection or the Compliance Officer. If the solid waste

facility or solid waste transporter is not in compliance within the period specified, the Office of Environmental Protection or Public Works Board may recommend to the Executive Board that they revoke, suspend, or modify the Permit until such time as violations of the minimum standards are remedied.

Sec. 1107 Revocation, Suspension or Modification of Permit.

(a) After a hearing, the Office of Environmental Protection may suspend, modify, or revoke a Permit issued by the Office of Environmental Protection for cause, including but not limited to:

(1) Any violation of any term or condition contained in the Permit, this Title or regulations promulgated hereunder, or the underlying lease, Tribal land use permit or other agreement for the use of, or granting an interest in tribal property.

(2) Obtaining the permit by misrepresentation or failing to disclose fully all-relevant facts;

(3) A change in any condition that requires a temporary or permanent modification, a reduction, or elimination of the permitted operation to bring it into compliance with the terms or conditions of the Permit, this Title or regulations promulgated hereunder, the underlying lease or Tribal land use permit.

(4) The revocation or suspension of a Permit shall not relieve the owner or operator of the solid waste facility from any legal liability.

(b) The hearing under this section shall be initiated by the Compliance Officer by filing a written Statement of Charges that sets forth the acts or omissions with which the permittee is charged and specifies the terms, laws, conditions, rules, or regulations that the permittee is alleged to have violated. The Statement of Charges and all accompanying documents shall be delivered personally or by certified or registered mail, return receipt requested to the permittee.

(c) The Statement of Charges shall be accompanied by a notice advising the permittee of

a date for a hearing, which hearing shall be held no earlier than twenty (20) days and no later than forty-five (45) days from the Compliance Officer's mailing or personal delivery of the Statement of Charges. The notice shall inform the permittee that the permittee has the right to -32- inspect and copy documents relative to the Statement of Charges.

(c) Within fifteen (15) days after service of the Statement of Charges upon the permittee, the permittee may deliver to the Office of Environmental Protection and the Compliance Officer a notice of defense in which the permittee may object to the Statement of Charges upon the grounds that it does not state acts or omissions upon which the Compliance Officer may proceed or to the form of the Statement of Charges on the ground that it is so indefinite or uncertain that the permittee cannot identify the acts or omissions or prepare the permittee's defense.

(1) The notice of defense shall be deemed a specific denial of all parts of the Statement of Charges not expressly admitted. Failure to file a notice of defense shall constitute a waiver of the right to a hearing. The Statement of Charges shall stand and legal action for remedy shall begin.

(2) The notice of defense shall be in writing signed by or on behalf of the permittee.

(3) A copy of any Statement of Charges and notice of defense shall be delivered to the Office of Environmental Protection.

(e) The hearing under this section shall be conducted by a Hearings Examiner, appointed by the Executive Board for such purpose. During such hearing, the Compliance Officer and the Permittee shall be allowed to present evidence, question witnesses and provide argument. At the conclusion of the hearing, the Hearings Examiner shall issue a decision within twenty (20) days. A true and correct copy of the decision shall be mailed to the parties thereto upon issuance. Decisions of the Hearings Examiner shall be final and may not be appealed to the Tribal Court , the Court of Appeals or any other Court.

(f) Discovery. Prior to the hearing, any party, upon written request made to any other party prior to the hearing is entitled to:

(1) Obtain the names and addresses of witnesses to the extent

known to the other party, including but not limited to, those intended to be called to testify at the hearing; and

(2) Inspect and make a copy of any relevant documents in the possession or custody or under the control of the other party, including but not limited to statements made by any person pertaining to the subject matter of the proceeding, all writings pertaining to the subject matter of the proceeding, and investigative reports pertaining to the subject matter of the proceeding. Nothing in this Section shall authorize the inspection or copying of any writing or thing that is privileged from disclosure by law, confidential, protected as attorney work product or otherwise.

(3) Before the hearing has commenced, the Hearings Examiner shall request the participation, at the request of any party, for attendance of witness or production of documents at the hearing. -33-

Sec. 1108. Law Enforcement Service.

The Fort Peck Department of Law & Justice and Game and Fish Departments are hereby given authority for citation of Persons found to be in violation of this Title. It shall be the duty of these departments to enforce the provisions of this Title fairly as to all Person(s) within the Reservation. The Office of Environmental Protection and the Compliance Officer shall be promptly notified in writing of any such citation or enforcement action.

Chapter 12. Violations, Criminal and Civil Penalties

Sec. 1201 Violations.

Any Person who violates any provision of this Title maybe subject to fines imposed by the Compliance Officer, or civil and criminal fines and penalties imposed by the Tribal Court in addition to remedies specifically provided for any violation.

(a) The Public Works Board shall have jurisdiction to impose fines for the non-payment of solid waste collection fees.

(b) The Office of Environmental Protection shall have jurisdiction to impose fines for Permit violations.

(c) Persons found to be responsible for illegal dumping or littering on or near any public grounds, or in or around any public waters of the Reservation, shall be required to remove all solid waste illegally

disposed of; be subject to fines and penalties according to this Chapter; be required to restore the site to a condition acceptable to the Office of Environmental Protection; and be required to dispose of the solid waste at a solid waste facility.

- (d) Any Person who shall act in such a manner as to permit his property or other private property to become dangerous or hazardous, or impair the safety, health or comfort of the public by the discarding of solid waste will be required to remove such nuisance.
- (e) It shall be unlawful for any Person to throw or discharge into any creek, river, ditch or other water conveyance system any solid waste or substance that is subject to decay.
- (f) It shall be unlawful for any Person to store within the communities any wrecked, junked or unserviceable vehicle or tires or any other unserviceable appliances or implements such as stoves, refrigerators, washing machines, or any other items discarded which disfigure the appearance of the premises, leak hazardous substances or present a health or safety hazard.
- (g) It shall be a violation of this Title for any Person to knowingly omit material information or make any false statement or representation in any label, record, report, or other document filed maintained or used for purposes or application or compliance with this Title or -34- regulations promulgated thereunder.

Sec. 1202. Penalties and Fines.

- (a) Any Person who engages in the unauthorized handling, treatment, or disposal of solid waste or hazardous waste within the Reservation; who constructs or operates a solid waste facility in violation of his Solid Waste Facility Permit; who constructs or operates a solid waste facility without a Solid Waste Facility Permit or a Solid Waste Transportation Permit; who transports solid waste in violation of his Solid Waste Transportation Permit; who violates any requirements found in this Title or any other Tribal Title; or who violates any standard adopted by the Office of Environmental Protection or Operations and Management for the handling, treatment or disposal of solid waste shall be liable for a civil penalty not to exceed fifteen thousand dollars (\$15,000.00) each day for each violation, to be assessed by the Office of Environmental Protection. Any Person who commits any of the above prohibited acts may be subject to criminal penalties, may be liable for any civil damages caused by the commission of such acts, and may be excluded from the Reservation in accordance with CCOJ. Any Person who commits any of the above prohibited acts, or whose employees or Agent(s) in the course of their employment or agency commit any of the above prohibited acts, may have its rights to engage in activities on the Reservation suspended or terminated.
- (b) Civil penalty funds collected shall be paid to the Office of Environmental Protection. Penalty funds paid to the Office of Environmental Protection shall be deposited in the Tribal General Fund.
- (c) Penalties under this section are in addition to and do not supersede or limit any other remedies, civil or criminal.
- (d) The Tribal Court shall have jurisdiction to enjoin violations of this Title, and grant such additional relief as it deems necessary or appropriate to secure compliance with the provisions of this Title or any order, license, Permit approval or regulation issued or adopted thereunder upon the petition of the Office of Environmental Protection, Operation and Maintenance or the Public Works Board.

(e) Any person over whom the Tribal Court can exercise criminal jurisdiction, and who violates any of the provisions under Section 12.01, shall, upon conviction in Tribal Court, be guilty of a criminal offense, and shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00), for each day each violation occurs, and in the discretion of the Tribal Court, may also be subject to imprisonment for not more than one year. As an alternative sentence, any person found guilty of violating any of the provisions under Section 12.01 may be placed on probation, and required by the Tribal Court to provide not less than for (40) hours, but not more than two hundred (200) hours of community service assisting the Solid Waste Program, Compliance Officer, or performing other kinds of community service. -35-

Chapter 13. Limitations

Sec. 1301. Appropriations.

Nothing in this Title shall cause the Tribe, Office of Environmental Protection, Operation and Maintenance, or Public Works Board to expend funds in excess of appropriations.

Sec. 1304. Statute of Limitations.

The Tribal Court shall have no jurisdiction over any action under this Title brought more than three years after the Office of Environmental Protection, Operation and Maintenance, Public Works Board, or injured person first knew, or reasonably could have known, of the injury or damage and the cause thereof.

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