

DRAFT NORTHERN CHEYENNE LAW AND  
ORDER CODE

TITLE 14  
SOLID WASTE CODE

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TITLE 14

SOLID WASTE CODE

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## CHAPTER ONE—GENERAL PROVISIONS

### Section 14-1-1: Short Title.

This Code shall be known as the Northern Cheyenne Tribe's Solid Waste Management Code.

### Section 14-1-2: Definitions.

The following definitions shall apply to the terms used in this Code unless otherwise specified:

- a. "Active life" means the period of operation beginning with initial receipt of solid waste and ending at completion of closure activities in accordance with 40 C.F.R. § 258.60.
- b. "Active portion" means the part of a facility or unit that has received or is receiving solid waste and that has not been closed in accordance with 40 C.F.R. § 258.60.
- c. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.
- d. "Aquifer" means a geological formation, group of formations, or portion of a formation capable of yielding groundwater to wells or springs.
- e. "BIA" means the United States Bureau of Indian Affairs.
- f. "Closure" means the termination of the receiving, handling, recycling, treatment, composting, or disposal of solid waste at a solid waste facility and includes all operations necessary to prepare the facility for post-closure maintenance.
- g. "Code" means this Solid Waste Management Code, including any amendments hereof or supplements hereto adopted by the Tribal Council.
- h. "Collection" means the act of collecting solid waste or hazardous waste at the place of generation by an approved collection agent and does not mean "removal".
- i. "Collection vehicle or equipment" means any vehicle or equipment used in the collection of solid waste.
- j. "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.
- k. "Compliance Officer" means the Environmental Protection Department's Compliance Officer appointed pursuant to Section 2-2 of this Code and any person with authority to act on behalf of the Compliance Officer pursuant to this Code.
- l. "Construction" means the erection or building of new structures and the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures.
- m. "Construction and demolition debris" or "C&D debris" means uncontaminated solid waste resulting from the construction, remodeling, repair, and demolition of utilities, structures and roads; and uncontaminated solid waste resulting from land clearing. Such waste includes but is

not limited to bricks, concrete, other masonry materials, soil, rock, wood (including painted, treated, and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, non-asbestos insulation, roofing shingles and other roof coverings, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, empty buckets ten gallons or less in size and having no more than one inch of residue remaining on the bottom, electrical wiring and components containing no hazardous liquids, and pipe and metals that are incidental to any of the above. Solid waste that is not C&D debris (even if resulting from the construction, remodeling, repair and demolition of utilities, structures and roads and land clearing) includes, but is not limited to asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, fluorescent lights, carpeting, furniture, appliances, tires, drums, containers greater than ten gallons in size, any containers having more than one inch of residue remaining on the bottom, and fuel tanks. Specifically excluded from the definition of C&D debris is solid waste (including what otherwise would be C&D debris) resulting from any processing technique, other than that employed at a C&D debris processing facility approved pursuant to this Code, that renders individual waste components unrecognizable, such as pulverizing or shredding.

n. "Cover material" means soil or other material suitable for use in covering compacted solid waste in a sanitary landfill. A material is suitable for use as a cover material if, when properly used, it will prevent (1) the propagation, harborage, or attraction of vectors; (2) the progress of fires; (3) the escape of odor; (4) excess infiltration of surface water runoff; and (5) erosion.

o. "Daily cover" means cover material spread and compacted on the entire surface of the active face of a sanitary landfill at the end of each operating day. 40 CFR Sec. 258.21 requires that solid waste must be covered with six inches of earthen material at the end of each operating day.

p. "Director of the Environmental Protection Department" means the Director of the Tribe's Environmental Protection Department and any other person with authority to act on behalf of the Director of the Environmental Protection Department pursuant to this Code.

q. "Director of the Solid Waste Department" means the Director of the Tribe's Solid Waste Department and any other person with authority to act on behalf of the Director of the Solid Waste Department pursuant to this Code.

r. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any surface waters or groundwaters.

s. "EPA" means the United States Environmental Protection Agency.

t. "Existing MSWLF" means any municipal solid waste landfill that is receiving solid waste.

u. "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

v. "Fomite" means any substance that may harbor or transmit pathogenic organisms.

w. "Groundwater" means water below the land surface in a zone of saturation.

x. "Guidance document" means a document issued by the Director of the Environmental

Protection Department that supplements criteria under the Code. A guidance document may provide specific technical direction regarding the manner in which an owner or operator shall comply with the Part 258 Criteria. Guidance documents may be referred to or attached as conditions to permits. Such technical direction must either conform to the Part 258 Criteria or be more stringent. A guidance document may also provide direction as to how the Director of the Environmental Protection Department interprets the Tribe's solid waste permit program consistent with Tribal law and federal law.

y. "Hazardous waste" means any waste substance, material, smoke, gas, particulate matter, or combination thereof that:

(1) because of its quantity, concentration, or physical, chemical, or infectious characteristics, may either cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating illness or pose a substantial present or potential hazard to human health, living organisms, or the environment when improperly handled, treated, stored, transported, or disposed of;

(2) is specifically defined to be hazardous or toxic by the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Resource Conservation and Recovery Act of 1976, as either act may be amended from time to time, and by any regulations promulgated thereunder, including but not limited to any substance, material, smoke, gas, particulate matter, or combination thereof containing asbestos, petroleum or its byproducts, or polychlorinated biphenyls ("PCBs"); or

(3) is hazardous, toxic, ignitable, reactive, or corrosive and is defined and regulated as such by the Tribe or the United States of America.

z. "Household hazardous waste" means hazardous waste discarded by households.

aa. "Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

bb. "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a regulated hazardous waste under Subtitle C of RCRA including but not limited to the following processes: electric power generation; fertilizer/agricultural chemical production; food and related products/by-products production; inorganic chemical production; iron and steel production; leather and leather product production; nonferrous metal production; organic chemical production; plastics and resin production; pulp and paper production; rubber and miscellaneous plastic product production; stone, glass, clay and concrete products production; textile production; transportation equipment production; and water treatment. This term does not include mineral, oil, or gas wastes.

cc. "Infectious waste" means:

(1) Laboratory wastes, including but not limited to cultures of etiologic agents, (1 NOTE TO COUNCIL: "Etiologic agents" are microscopic organisms such as bacteria or viruses, which can cause disease.) which pose a substantial threat to health due to their volume and virulence.

(2) Pathologic specimens, including but not limited to human or animal tissues, blood elements,



excreta, and secretions that contain etiologic agents, and attendant disposable fomites.

(3) Surgical specimens including but not limited to human or animal parts and tissues removed surgically, or at autopsy that, in the opinion of the attending physician or veterinarian, contain etiologic agents and attendant disposable fomites.

(4) Human dialysis waste materials including but not limited to arterial lines and dialysate membranes.

(5) Carcasses of animals infected with etiologic agents that may present a substantial hazard to public health if improperly managed.

(6) Equipment, instruments, utensils, or any other material that is likely to transmit etiologic agents.

(7) Any other material that is likely to transmit etiologic agents or presents a significant danger of infection because it is contaminated with, or may reasonably be expected to be contaminated with, etiologic agents.

dd. Lateral expansion" means a horizontal expansion of the waste boundaries of an existing MSWLF.

ee. "Leachate" means any liquid formed by the drainage of liquid from solid waste or by the percolation or flow of liquid through solid waste including but not limited to any constituents extracted from the solid waste and dissolved or suspended in the liquid.

ff. "Liner" means a continuous layer of natural or artificial material or a continuous membrane of artificial material installed beneath or on the sides of a solid waste facility which acts as a barrier to vertical or lateral fluid movement.

gg. "Liquid waste" means any waste material which contains free liquid that is defined by Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Pub. No. SW-846).

hh. "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees Celsius and atmospheric pressure.

ii. "Municipal solid waste landfill" or "MSWLF" means a discrete area of land or an excavation that receives household waste and other types of RCRA Subtitle D waste and is not a land application unit, surface impoundment, injection well, or waste pile as defined in 40 CFR Sec. 257. An MSWLF may be publicly or privately owned. Unless otherwise specified, the term MSWLF includes new MSWLFs, existing MSWLFs, and lateral expansions.

jj. "New MSWLF" means any municipal solid waste landfill that has not received waste.

kk. "Nuisance" means a condition that occurs as a result of the handling, treatment, composting, or disposal of solid waste that (1) is injurious to human health or is indecent or offensive to the senses and interferes with the comfortable enjoyment of life or property, and (2) adversely affects an entire community or neighborhood or any considerable number of persons.

ll. "100-year flood" means a flood that has a one percent or greater chance of being equaled or

exceeded in a one-year period based on criteria established by the Director of the Environmental Protection Department.

mm. "Open burning" means the combustion of solid waste without:

- . (1) Control of combustion air to maintain adequate temperature for efficient combustion,
- . (2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and
- . (3) Control of the emission of the combustion products.

nn. "Open dump" means any facility or site on the Reservation where solid waste has been disposed of that is not a sanitary landfill authorized under the Code and under 40 CFR Parts 257 or 258.

oo. "Operator" means the person(s) responsible for the overall operation of an MSWLF or part of an MSWLF.

pp. "Owner" means the person(s) who owns any interest in an MSWLF or part of an MSWLF.

qq. "Part 258 Criteria" means the environmental criteria contained in 40 CFR Part 258 for the location, operation, design, groundwater monitoring, corrective action, closure, post-closure care, and financial assurance requirements for MSWLFs.

rr. "Permit" means an authorization and license issued by the Compliance Officer for the collection and/or transportation of solid waste or construction and/or operation of an MSWLF on the Reservation.

ss. "Permittee" means a person who is authorized by a permit issued by the Compliance Officer to collect and/or transport solid waste or construct and/or operate an MSWLF in compliance with this Code.

tt. "Permit documents" means permit applications, draft and final MSWLF permits, other documents that include applicable design and management conditions in accordance with 40 CFR Part 258, and the technical and administrative information supporting permit conditions such as guidance documents.

uu. "Person" means any individual, trust, firm, association, partnership, corporation or other business entity, and any political subdivision, government agency, municipality, public corporation, or other governmental entity, and includes the Tribe and its instrumentalities, (NOTE TO COUNCIL: "Instrumentalities" is a broad term commonly used in statutes that, in this context, encompasses anyone who is working on behalf of the Tribe, including employees, contractors, volunteers, and any other agents of the Tribe.) members of the Tribe, non-member Indians, and non-Indians.

vv. "Pollution" means the unauthorized disposal of any solid waste or hazardous waste into the air, land, surface water, or groundwater.

ww. "Post-closure maintenance" means all activities undertaken at a closed MSWLF to maintain

the integrity of containment features and to monitor compliance with applicable performance standards required under the Code.

xx. "Post-closure maintenance period" means a period of at least thirty (30) years after closure of an MSWLF.

yy. "RCRA" means the Resource Conservation and Recovery Act of 1976 as amended.

zz. "Recovery" means the recovery of material, byproducts, or energy from solid waste.

aaa. "Recycling" means the process of sorting, cleansing, treating, and reconstituting solid waste or other discarded material in order to prepare an altered form for use.

bbb. "Regional Administrator" means an EPA Regional Administrator.

ccc. "Regulated hazardous waste" means a solid waste that is a hazardous waste as defined in 40 CFR Part 261 that is not excluded from regulation as a hazardous waste under 40 CFR Sec. 261.4(b) or was not generated by a conditionally exempt small quantity generator as defined in 40 CFR Sec. 261.5.

ddd. "Removal" means the act of taking solid waste or hazardous waste from the place of generation either by a permitted collection agency or by the owner of the solid waste or hazardous waste.

eee. "Reservation" means the Northern Cheyenne Indian Reservation and all lands of any kind within the exterior boundaries of the Reservation as established by the Presidential Executive Orders of November 26, 1884, and March 19, 1900, and any other lands which now or hereafter are subject to the jurisdiction of the Tribe.

fff. "Resource recovery system" means a solid waste management system that provides for collection, separation, recycling, and recovery of solid waste including disposal of nonrecoverable waste residue.

ggg. "Rules and regulations" means any rules and regulations, not inconsistent with this Code, promulgated by the Director of the Environmental Protection Department, in consultation with the Director of the Solid Waste Department, and approved by the Tribal Council, regulating the collection, transportation, or disposal of solid waste on the Reservation that implement or supplement any provision of the Code.

hhh. "Run-off" means rainwater, leachate, or other liquid that drains over land from any part of an MSWLF.

iii. "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of an MSWLF.

jjj. "Sanitary landfill" means a disposal facility employing a method of disposing of solid waste on land without creating a nuisance, pollution, or a hazard to public health or safety, by using methods to confine the solid waste to the smallest practical area, reduce it to the smallest practical area, reduce it to the smallest practical volume, and cover it with a layer of suitable cover material at specific designated intervals. A sanitary landfill by definition must meet all of the Part 258 Criteria. An MSWLF under the Code is a sanitary landfill.

kkk. "Service" means the delivery of one or more documents to a recipient in accordance with the procedures described in Rule 3 of the Tribe's Rules of Civil Procedure. "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plan, or air pollution control facility, exclusive of treated effluent from a wastewater treatment plant. "Sewage sludge" means any residue, excluding grit or screenings, removed from wastewater, whether in a dry, semi-dry, or liquid form.

lll. "Solid waste" means any discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial mining, agricultural operations, and community activities, but does not include (1) sewage sludge, (2) solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. 1342, or (3) source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended. "Solid waste" includes garbage, refuse, human waste that is not sewage sludge, and any other substance or material determined to be solid waste by the Director of the Environmental Protection Department pursuant to this Code.

mmm. "SWDA" means the Federal Solid Waste Disposal Act, 41 U.S.C. §§ 6901-6992k, as amended.

nnn. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amendable to recovery and storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

ooo. "Tribal Council" or "Council" means the governing body of the Northern Cheyenne Tribe.

ppp. "Tribal Court" means the courts of the Tribe.

qqq. "Tribe" means and "Tribal" refers to the Northern Cheyenne Tribe.

rrr. "Tribe's Solid Waste Disposal Program" means the authorities, activities, and procedures in the Code, the Tribe's Waste Management Plan, and any other Tribal laws or regulations that comprise the Tribe's system for regulating the collection, handling, transportation, disposal, treatment, and storage of solid waste, including all of the location, operational, design, groundwater monitoring, corrective action, closure, post-closure and financial action and assurance requirements under the Part 258 Criteria for MSWLFs.

sss. "Tribe's Integrated Solid Waste Management Plan" means the Tribe's policies and plans for all solid waste collection, handling, transportation, disposal, treatment, storage, recycling, and resource conservation, on or off the Reservation, adopted pursuant to Chapter 3 of the Code.

ttt. "Vector" means any insect, arthropod, rodent, or other animal capable of transmitting a pathogen from one organism to another or of disrupting the normal enjoyment of life by adversely affecting the public health, safety, or well-being.

14-1-3. Purpose. This Code is enacted to provide for the establishment of a comprehensive solid waste collection and disposal system and to regulate the generation, storage, collection, disposal, treatment, and management of solid waste on the Reservation in order to protect public health and the environment. This Code is intended to:

- (a) Protect the health, welfare, political integrity, and economic security of the Tribe, its members, and residents and other persons living on the Reservation;
- (b) Protect the historical and cultural values and traditions of the Tribe and ensure preservation of the Reservation as a permanent Tribal homeland;
- (c) Prevent the deterioration of the natural environment on the Reservation by minimizing impacts from the improper disposal of solid waste to the air, surface water, groundwater, wildlife, and land resources;
- (d) Reduce littering and eliminate disposal of waste in open dumps through regulation of the storage, collection, transportation, and disposal of solid waste on the Reservation by persons subject to the jurisdiction of the Tribe;
- (e) Encourage the development of a Reservation-wide system for curbside solid waste pickup and recycling;
- (f) Encourage solid waste source reduction on the Reservation; and
- (g) Comply with the requirements of federal law relating to the generation, storage, transportation, treatment, and disposal of solid waste on the Reservation.

14-1-4. Findings. The Council makes the following findings and declarations in support of the Code:

- (a) The existing and increasing volume and variety of solid waste, including hazardous waste, generated and disposed of on the Reservation, in combination with the often inadequate existing methods of managing solid waste and hazardous waste, contribute to land, air, and water pollution, and threaten the economy, public health, safety, welfare, and well being of the Tribe, its members, and residents and other persons on the Reservation. These circumstances also negatively impact the Tribe's natural resources and contribute to deterioration of the environment and quality of life on the Reservation.
- (b) The enactment of this Code is in the best interest of ensuring, promoting, and protecting the health and welfare of the Tribe, its members, and residents and other persons on the Reservation; the character, culture, and historical significance of the Reservation; and the Reservation's natural environment.

14-1-5. Jurisdiction and Applicability.

- (a) This Code is adopted pursuant to the authority vested in the Tribal Council under Article IV of the Constitution of the Tribe as amended.
- (b) The Tribe has inherent sovereignty to exercise civil authority and jurisdiction 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, health, safety, welfare, political integrity, and economic security of the Tribe.
- (c) Because any violations of this Code or any rules or regulations adopted thereunder will demonstrably and seriously impact the environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Tribe, this Code, and any rules and

regulations adopted thereunder, shall apply to (1) all persons within the exterior boundaries of the Reservation including but not limited to Tribal members, Indians who are members of other Indian Tribes, non-Indians, and any other person as defined in the Code; (2) all persons, households, commercial businesses, schools, governmental facilities, farmers, ranchers, private contractors, and all other entities and/or facilities that operate within the Reservation or impact the storage, collection, disposal, or treatment of solid waste on the Reservation; and (3) all places and lands located anywhere within the exterior boundaries of the Reservation, including all trust and non-trust lands, notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, or any real property interest of any kind, held by any person as defined under the Code.

#### 14-1-6. The Tribes' Sovereign Immunity.

(a) Neither the Code, nor the Tribe's solid waste program, nor any action or agreement of the Solid Waste Department or its Director, nor the Environmental Protection Department or its Director or Compliance Officer, nor their respective employees, agents, contractors, subcontractors, or other delegates shall in any respect constitute waiver or modification of the sovereign immunity of the Tribe, or its instrumentalities, officials, employees, or agents, unless expressly and explicitly provided otherwise in this Code or other Tribal law, federal law, or a written agreement approved by the Council.

(b) The Tribe reserves the right to contest the jurisdiction of the federal courts in any citizens' suit filed against it or its instrumentalities, officials, employees, or agents under Section 7002 of the SWDA.

(c) On behalf of the Tribe, the Solid Waste Department and its Director, and the Environmental Protection Department and its Director, may enter into such contracts as are specifically or generally authorized by the Council, subject to available funding, for the purpose of implementing or enforcing the Code and the Tribe's solid waste program.

14-1-7. Consensual Relationship between Non-Members, The Tribe, And Tribal Members. Any person who is not a member of the Tribe authorized to use or occupy land anywhere within the Reservation, whether trust or non-trust land, shall be conclusively presumed to have entered into a consensual relationship with the Tribe or its member(s), through commercial dealings, contracts, leases, or other arrangements. Such use or occupancy of land, to the extent it involves the storage, collection, transportation, and/or disposal of solid waste on the Reservation, is hereby conclusively presumed to threaten or potentially have a serious impact upon the environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Tribe, and its members.

## CHAPTER TWO – TRIBAL ADMINISTRATION

#### 14-2-1. The Tribe's Environmental Protection Department.

(a) The Tribe's Environmental Protection Department is designated as the Lead Tribal Agency for all purposes under 40 CFR Part 239 and 40 CFR Part 258. The Environmental Protection Department shall have the powers, duties, and responsibilities provided for in this Code.

(b) The Director of the Environmental Protection Department is authorized to hire and retain Department staff and consultants, and acquire Department equipment and facilities to the extent of available resources and if necessary for the proper discharge of the Environmental Protection Department's responsibilities under this Code.

(c) The Director of the Environmental Protection Department, in consultation with the Director of the Solid Waste Department, shall develop and periodically review and revise the Tribe's Integrated Solid Waste Management Plan pursuant to Chapter 3 of this Code.

(d) The Director of the Environmental Protection Department may, subject to approval by the Council, expend available funds to perform any cleanup, abatement, or remedial work necessary to remedy violations of permits issued pursuant to Chapter 5 of this Code, any other part of this Code, or any rule, regulation, or guidance document adopted under this Code.

(e) The Director of the Environmental Protection Department, in consultation with the Director of the Solid Waste Department, may propose to the Tribal Council rules and regulations to implement or enforce any provision or requirement of the Code and, upon approval thereof by the Tribal Council, promulgate such rules and regulations, which shall be enforceable as Tribal law.

(f) The Director of the Environmental Protection Department, in consultation with the Director of the Solid Waste Department, may issue guidance documents as part of the Tribe's solid waste program, which may prescribe specific technical or scientific criteria for implementing the location, construction, design, operational, closure, or post-closure requirements for MSWLFs. Guidance documents may supplement the Part 258 Criteria, but any criteria set forth in any guidance document shall not be in conflict with any Part 258 Criteria or contain any criteria which are less stringent than the Part 258 Criteria. Guidance documents issued by the Director of the Environmental Protection Department, however, may provide more stringent criteria for MSWLFs than are required by the Part 258 Criteria. Guidance documents shall be enforceable if they are specifically referenced or attached as part of, or as a condition of, any permit issued under the Code.

(g) The Director of the Environmental Protection Department, in consultation with the Director of the Solid Waste Department, shall apply, as soon as practicable, for federal and state financial aid, training, and technical assistance for development of the Tribe's Integrated Solid Waste Management Plan and to implement the Tribe's solid waste program. This shall include seeking grants available from EPA's Regional Office as may be authorized under the SWDA and any other grants, funds, or assistance which may be available from the EPA, BIA, the U.S. Indian Health Service, the U.S. Department of Housing and Urban Development, the Administration for Native Americans, and any other agency or public or private source.

(h) The Director of the Environmental Protection Department, in consultation with the Director of the Solid Waste Department, shall prepare and file an annual report with the Council no later than July 1 of each year which shall review the progress achieved under the Tribe's solid waste program and shall include any additional reports requested by the Tribal Council.

(i) The Director of the Environmental Protection Department may recommend in the annual report or on other occasions specific actions that should be taken by the Council regarding the Tribe's solid waste program.

(j) The Director of the Environmental Protection Department shall communicate with EPA regarding the Tribe's solid waste program.

(j) The Director of the Environmental Protection Department shall have the power to hold public and administrative hearings specifically provided for in the Code.

(k) The Director of the Environmental Protection Department may, subject to available funding

and approval of the Council, hire additional Environmental Protection Department staff to help ensure implementation and enforcement of the Code.

(l) The Director of the Environmental Protection Department may, upon finding that the Director of the Solid Waste Department or other officers or employees of Solid Waste Department are not adequately fulfilling their duties under this Code, issue a directive requiring the Director of the Solid Waste Department to fully implement such duties.

(m) Without diminishing the responsibilities or authorities of the Director of the Environmental Protection Department, he or she may in writing delegate duties and responsibilities assigned to the Director of the Environmental Protection Department in this Code to any employee, agent, or representative of the Tribe or agent of EPA.

#### 14-2-2. The Environmental Protection Department's Compliance Officer.

(a) There is hereby established within the Environmental Protection Department the position of "Compliance Officer," who shall be appointed by the Director of the Environmental Protection Department and confirmed by the Council. The Compliance Officer shall be a qualified person with professional experience relating to the management and disposal of solid waste. The Compliance Officer shall be an official and employee of the Tribe, and shall be paid a salary established by the Council. The Compliance Officer shall have the powers, duties, and responsibilities set forth below and otherwise established in this Code, subject to the supervision and oversight of the Director of the Environmental Protection Department.

(b) The Compliance Officer shall implement, administer, and enforce the Code and the Tribe's solid waste program pursuant to all of the powers and duties delegated to him or her therein. Unless expressly and explicitly authorized by the Tribal Council, the Compliance Officer is not authorized to consent to or otherwise subject the Tribe or any of its instrumentalities, officials, employees, or agents to non-Tribal jurisdiction or to in any respect waive Tribal sovereign immunity.

(c) The Compliance Officer shall, in compliance with the SWDA and subject to available funding, identify all open dumps on the Reservation and prohibit the disposal of any solid waste at any open dump on the Reservation. The Compliance Officer shall, subject to available resources, take action to close in a timely manner all open dumps on the Reservation as required by the Part 258 Criteria.

(d) The Compliance Officer may, pursuant to Chapter 5 of the Code, issue permits for any existing MSWLFs on the Reservation and for the collection and transportation of solid waste on the Reservation.

(e) The Compliance Officer shall have the power to hold public and administrative hearings specifically provided for in the Code.

(f) The Compliance Officer shall enforce the Code and the Tribe's solid waste disposal program, as more specifically set forth in Chapter 11, including assessing civil damages and penalties and revoking, suspending, or modifying permits as provided in this Code.

(g) The Compliance Officer shall investigate, upon his or her own motion or receipt of a credible complaint submitted pursuant to Section 13-1 of this Code, any suspected violation of a permit issued pursuant to Chapter 5 of this Code, or any suspected violation of any part of this Code or



any rule, regulation, or guidance document adopted under the Code.

14-2-3. The Tribe's Solid Waste Department.

(a) The Tribe's Solid Waste Department is hereby established as an administrative agency of the Tribe. The Solid Waste Department shall have the powers, duties, and responsibilities provided for in this Code.

(b) The Solid Waste Department shall be managed by a Director appointed by the Council. The Director of the Solid Waste Department shall be a qualified person with professional experience relating to the management and disposal of solid waste. The Director of the Solid Waste Department shall be an official and employee of the Tribe, and shall be paid a salary established by the Council. The Director of Solid Waste Department shall manage the Solid Waste Department on a day-to-day basis acting within the scope of his or her duties and powers as set forth in the Code. The Director of the Solid Waste Department may hire or retain Department staff and consultants, and acquire Department equipment and facilities, to the extent of available resources and if necessary for the proper discharge of the Solid Waste Department's responsibilities under this Code.

(c) The Solid Waste Department and its Director shall comply with all directives issued by the Director of the Environmental Protection Department relating to implementation or enforcement of this Code. The Tribal Council may remove any employee or officer of the Solid Waste Department, including the Director of the Solid Waste Department, upon finding that such employee or officer has failed to comply with a directive issued by the Director of the Environmental Protection Department or has otherwise failed to adequately implement this Code.

CHAPTER THREE--THE TRIBE'S INTEGRATED SOLID WASTE MANAGEMENT PLAN

14-3-1. Integrated Solid Waste Management Plan.

(a) The Director of the Environmental Protection Department, in consultation with the Director of the Solid Waste Department, shall develop and periodically review and revise the Tribe's Integrated Solid Waste Management Plan, which shall:

(1) Identify and plan for the closing of all open dumps within the Reservation, subject to available funding, in accordance with the SWDA and Part 258 Criteria.

(2) Formulate Tribal policies for the collection, transportation, handling, treatment, and disposal of solid waste on the Reservation. To the extent feasible, the Plan shall include a program for Reservation curbside solid waste pickup, a program for recycling of solid wastes, and a program for the disposal of household hazardous wastes other than in an MSWLF on the Reservation.

(3) Estimate the volume and composition of all solid waste which is generated on the Reservation and the volume and composition of solid waste from sources outside the Reservation that may be disposed of in any MSWLF on the Reservation pursuant to any intergovernmental agreement that the Tribal Council may authorize.

(4) Identify the responsibilities of any other Tribal agencies and entities involved in the implementation of the Tribe's solid disposal waste program and the distribution of Federal or

State funds to the Tribal authorities responsible for development and implementation of the Tribe's solid waste disposal program.

(5) Review and advise the Council on Tribal regulatory systems necessary to fully implement the Tribe's solid waste disposal program and enforce the Code and rules or regulations promulgated thereunder.

(6) Review any contracts or other arrangements for the closing of open dumps on the Reservation and the removal of solid waste disposed of at open dumps on the Reservation and assess the costs of fulfilling such contracts or arrangements.

(7) Identify preferred locations on the Reservation for the establishment of new MSWLFs.

(8) Evaluate how solid waste will be disposed of on or off the Reservation in compliance with the Part 258 Criteria, including an assessment of costs for constructing and operating MSWLFs and transfer stations on the Reservation and an assessment of costs for the collection and transportation of solid waste on or off the Reservation.

(9) The Plan may also include any other matters which are relevant to the Tribe's solid waste disposal program.

(b) Within thirty (30) days of presentation of an Integrated Solid Waste Management Plan by the Director of the Environmental Protection Department to the Council pursuant to paragraph (b) of this Section, the Director of the Environmental Protection Department shall publicize the existence of the Plan and make it widely available to all interested persons. Within sixty (60) days of its presentation, the Director of the Environmental Protection Department shall hold public hearings in the Reservation Districts to permit interested parties to comment on the proposed Plan. The Plan, as revised following such public hearings, shall go into effect upon approval by the Tribal Council.

#### CHAPTER FOUR—PROHIBITIONS AND SPECIAL WASTES

##### 14-4-1. Prohibition on Dumping of Solid Waste.

(a) It is unlawful for any person to dispose of any solid waste or hazardous waste anywhere on the Reservation except as expressly permitted in this Code, the Tribe's Integrated Solid Waste Management Plan approved by the Council, or regulations promulgated by the Director of the Environmental Protection Department and approved by the Council pursuant to this Code.

(b) On or after April 1, 2011, any landfill or site where solid waste may have previously been disposed at anywhere within the Reservation is deemed to be permanently closed unless before then:

(1) The site is specifically determined by the Compliance Officer to be in compliance with 40 CFR Part 258; and

(2) The site is specifically determined by the Compliance Officer to be an MSWLF where solid waste may be disposed of under 40 CFR Part 258 or a landfill where solid waste may be disposed of under 40 CFR Part 257.

(c) On or after April 1, 2011, any landfill site on the Reservation which has not been determined by the Compliance Officer to be an MSWLF or a landfill authorized to accept waste under 40 CFR Part 257 is considered to be an open dump site.

14-4-2. Prohibition on Disposal of Regulated and Conditionally Exempt Small Quantity Generator Hazardous Waste.

(a) The receiving, accepting, handling, treatment, storage, processing, dumping, or disposal of regulated hazardous waste, as defined under the Code, anywhere within the exterior boundaries of the Reservation is expressly prohibited and unlawful. Transportation of any regulated hazardous waste within the exterior boundaries of the Reservation must be in full compliance with the Code and Federal law or is unlawful.

(b) The collection, storage, transfer, transportation, and disposal off the Reservation of conditionally exempt small quantity generator hazardous waste generated on the Reservation is subject to such rules and regulations as the Director of the Environmental Protection Department may issue in compliance with Federal law.

(c) These prohibitions do not apply to household hazardous waste that is not a regulated hazardous waste and may lawfully be disposed of at an MSWLF on the Reservation.

14-4-3. Prohibition on Burning of Solid Waste and Hazardous Waste. On or after April 1, 2011, it is a violation of this Code for any person to burn any solid or hazardous waste at an MSWLF or anywhere within the Reservation, except as the Director of the Environmental Protection Department may specifically authorize or permit by regulation which is not prohibited by the Code or Federal law. With Council approval, the Director of the Environmental Protection Department may authorize by regulation the infrequent open burning of agricultural wastes, silvicultural wastes, land cleaning debris, diseased trees, or debris from emergency cleanup operations at an MSWLF.

14-4-4. Other Prohibitions on Disposal at MSWLFs.

(a) The following solid waste materials shall not be disposed of or accepted at any MSWLF on the Reservation under any conditions:

- (1) Radioactive wastes.
- (2) Regulated hazardous wastes.
- (3) Infectious biomedical wastes which includes human tissue or human anatomical remains.
- (4) Animals or bedding exposed to infective agents.
- (5) Sharps, needles and lancets which have not been contained for disposal in leak- proof, rigid, puncture-resistant containers such as cartons or metal cans which are taped closed or tightly lidded to preclude loss of contents under sever compaction conditions.
- (6) Bulk quantities of infectious-type wastes including blood, blood products, and body

fluids.

- (7) Any materials containing asbestos.
- (8) Human waste, sewage, or sewage sludge.
- (9) Bulk liquids of any kind.
- (10) Polychlorinated biphenyls (PCBs).
- (11) Car batteries.
- (12) Used oil.
- (13) 55 gallon drums.
- (14) Explosives.
- (15) Tires.
- (16) Oil or gas exploration wastes.

(b) The Director of the Environmental Protection Department may prohibit the disposal of other solid wastes at MSWLFs on the Reservation as it deems necessary in its discretion pursuant to rules and regulations adopted by the Director of the Environmental Protection Department and approved by the Council. The Director of the Environmental Protection Department shall issue rules and regulations approved by the Council governing the disposal or prohibition of disposal of other solid wastes not listed herein, including but not limited to, ashes and powders, and mineral wastes, and soils. The Director of the Environmental Protection Department shall develop rules and regulations, subject to Council approval, for special wastes that require special handling, treatment, and/or disposal.

#### 14-4-5. Construction and Demolition Debris.

(a) Every construction, demolition, and renovation project within the Reservation that is 1,000 square feet or greater ("Covered Projects") shall comply with this Section. Compliance with the provisions of this Article shall be listed as a condition of approval on building or demolition permits issued for a Covered Project, if any such permits are required.

(b) The proponent of any Covered Project ("Applicant") shall complete and submit a Waste Management Plan ("WMP") to the Compliance Officer before the commencement of any construction or demolition activities. The completed WMP shall describe all of the following:

- (1) the estimated volume or weight of project C&D debris, by materials type, to be generated;
- (2) the estimated maximum volume or weight of such materials that can feasibly be diverted via reuse;
- (3) the estimated maximum volume or weight of such materials that can feasibly be diverted via recycling;
- (4) the vendor and/or facility that the Applicant proposes to use to collect or receive said

materials; and

(5) the estimated volume or weight of C&D materials that will be landfilled.

The Compliance Officer shall only approve a WMP application if he or she determines that the application provides all of the information set forth in paragraph (b) of this Section. If the Compliance Officer determines that the WMP application is incomplete, he or she shall either:

(1) Return the WMP application to the Applicant marked “denied” along with a statement of reasons for the denial and notification to the Applicant that he or she is not authorized to commence any building or demolition activities on the subject property, or

(2) Return the WMP application to the Applicant marked “Further Explanation Required.”

No construction or demolition activities for a Covered Project may commence until the Compliance Officer has approved the WMP application in writing. Approval shall not be required, however, where an emergency demolition is required to protect public health or safety.

14-4-6. Agricultural Waste. Every person who handles surplus agricultural pesticides and/or pesticide containers shall comply with this Code and applicable federal law. Surplus pesticides or herbicides may not be discarded within the exterior boundaries of the Northern Cheyenne Reservation in any manner which that endangers humans, animals, Reservation Waters, and/or the environment. Pesticide and herbicide containers must be drained or emptied according to label directions and power or triple-rinsed before processing or disposal.

14-4-7. Septic Tanks. Septic tank waste shall only be disposed of at approved facilities in accordance with 40 C.F.R. § 503 and in coordination with the Northern Cheyenne Tribal Utilities Commission, which accepts septic waste from septic tank trucks and or portable toilets.

14-4-8. Liquids. Liquids shall be in approved containers at roll-off sites/transfer sites. Bulk or non-containerized liquid waste may not be placed in the roll-off/transfer sites.

14-4-9. Carcasses. No animal carcass shall be disposed of at any solid waste facility within the Reservation. Pets and livestock carcasses may be buried on private property with authorization of the owner. The Tribe’s Sanitation Department is responsible for control of animal carcasses found on the Reservation and shall promulgate regulations, subject to approval by the Council, to dispose of animal carcasses on the Reservation in a sanitary and safe manner. The Sanitation Department may establish reasonable fees to cover the costs of pickup and disposal of animal carcasses pursuant to this Section.

14-4-10. Wrecked, Junked, or Unserviceable Vehicles.

(a) It is unlawful to store, collect, or dispose of junked, wrecked, or unserviceable vehicles on the Reservation in a manner that causes or creates a nuisance.

(b) No person shall store or keep any unserviceable vehicle or implement within any Reservation town or village unless he or she has a permit from the Northern Cheyenne Land Committee allowing him to maintain a junkyard. Junk vehicles shall not be deposited at any solid waste facility, roll-off site, transfer station, or any other collection site.

(c) Any wrecked, junked, or unserviceable vehicles accumulated in a quantity of more than four

(4) on a single Reservation property shall be considered to be a junkyard and shall subject to all applicable requirements and fees for junkyards;

(d) Any vehicle abandoned on Tribal and/or public facilities such as roads, streets, alleys, highways, or public parking areas for more than 48 hours may be impounded and towed away at the direction of the Compliance Officer or Tribal or BIA law enforcement to an impoundment area. Any person claiming such vehicle shall give proof of ownership and pay any towing and storage charges. Vehicles not claimed within 30 days of impoundment may be declared abandoned, and may be sold at auction by the impounding authority to pay for towing and storage charges. All remaining income from the sale of the vehicle shall be remitted to the Tribe.

#### 14-4-11. Abandoned Buildings, Mobile Homes, and Trailers.

(a) Any building, mobile home, or trailer on the Reservation that is not-inhabited for more than 120 days and is unsafe, unfit for habitation, junked, partially disassembled, wrecked, non-operative, may be declared a solid waste by the Compliance Officer and must be managed as such in full compliance with this Code.

(b) Before any action is taken pursuant to paragraph (a) of this Section, the Compliance Officer shall, pursuant to Section 11-2 of the Code, serve on the landowner where the abandoned or uninhabited building, mobile home, or trailer is located, and the owner (if known and applicable) of the abandoned or uninhabited mobile home or trailer, an order directing the repair, removal, and/or disposal of the building, mobile home, or trailer in accordance with this Code and any other applicable Tribal and federal laws within thirty (30) days or such other period as the Compliance Officer may authorize in writing. The recipient of such an order may request a hearing on the order and avail himself or herself of the other applicable procedural rights under Chapters 11 and 12 of the Code.

#### 14-4-12. Scrap Tires.

(a) No person may store more than one-thousand (1,000) pounds of scrap tires, whether whole or shredded, on private or Tribal property on the Reservation except pursuant to written authorization by the Compliance Officer, which shall be granted only if the applicant demonstrates that:

- (1) storage will be temporary;
- (2) storage will not create a nuisance;
- (3) access to the storage area will be controlled;
- (4) the storage area will be accessible to fire control equipment; and
- (5) storage will comply with the Code and all other applicable Tribal and federal laws.

(b) No person may collect or transport scrap tires except pursuant to a solid waste transportation permit issued under Section 5-3 of the Code. However, no permit shall be required under this Code for the occasional collection or transporting of less than five-hundred (500) pounds of scrap tires if such activity is not in furtherance of a continuing commercial enterprise.

(c) All scrap tires collected or transported on the Reservation must be promptly delivered to an end-user who will process, recycle, and/or dispose the materials in a manner that complies with any permit required under this Section, the Code, and any other applicable Tribal and federal laws.

(d) For purposes of this section, a “scrap tire” is a tire that is no longer suitable for its originally intended purpose due to wear, damage, or defect.

14-4-13. Asbestos.

(a) No asbestos or asbestos-containing materials or items may be disposed of within the Reservation.

(b) Removal, storage, transportation, of asbestos and asbestos-containing materials or items must be conducted pursuant to a permit issued under Chapter 5 of this Code, and must be conducted in compliance with the applicable requirements of this Code, the Clean Air Act (42 U.S.C. §§ 7401-7671q), the SWDA, and EPA regulations and guidelines.

(c) Prior to transportation of friable asbestos-containing materials or items, such materials or items must be wetted, placed in leak-tight containers, and properly labeled. Containers containing friable asbestos-containing materials or items shall be carefully handled. Handling of asbestos or asbestos-containing materials or items must be performed by certified asbestos personnel.

14-4-14. Medical Wastes.

(a) Waste from medical and dental clinics, including infectious wastes, on the Reservation shall be stored in containers with the 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.

(b) Medical waste that has edges or projections capable of cutting or piercing the skin (i.e., “sharps”) may not be disposed of on the Reservation unless they are contained in leak- proof, rigid, puncture-resistant containers such as cartons or metal cans which are taped closed or tightly lidded to preclude loss of contents under sever compaction conditions.

(c) Disposal of medical wastes shall be conducted in compliance with the applicable requirements of this Code and all other applicable Tribal and federal laws.

14-4-15. Used oil and lead-acid batteries.

(a) No used oil or lead-acid batteries may be disposed of within the Reservation.

(b) Removal and/or transportation on the Reservation of used oil or lead-acid batteries on the Reservation must be conducted pursuant to a permit issued under Section 5-3 of this Code, and must be in compliance with the applicable requirements of this Code and federal law. However, no permit shall be required under this Code for the occasional collection or transport of less than forty (40) quarts of used oil or less than four (4) lead- acid batteries if such activity is not in furtherance of a continuing commercial enterprise.

14-4-16. White goods.

(a) No white goods may be disposed of within the Reservation without written authorization by

the Compliance Officer.

(b) No permit shall be required under this Code for the collection or transport of white goods on the Reservation.

(c) For purposes of this section, “white goods” are major household appliances such as refrigerators, stoves, ovens, freezers, dishwashers, clothes washers and dryers, and microwave ovens.

14-4-17. Household Wastes.

(a) No permit shall be required under this Code for the collection or transport of household waste if such activity is not in furtherance of a commercial enterprise and is not collected or transported pursuant to a contract with the Tribe for waste collection services.

(b) If economically feasible, the Director of the Environmental Protection Department may propose rules and regulations not inconsistent with this Code to the Tribal Council for the collection and lawful disposal of household hazardous wastes generated on the Reservation other than at an MSWLF on the Reservation and, upon approval thereof by the Tribal Council, promulgate such rules and regulations, which shall be enforceable as Tribal law.

14-4-18. Other Special Wastes. All dangerous materials and substances on the Reservation shall be rendered harmless prior to collection and/or disposal on the Reservation in accordance with Tribal and federal law.

14-4-19: Scavenging. Scavenging at solid waste collection sites, storage facilities, transfer sites, disposal facilities, or collection vehicles on the Reservation is prohibited.

CHAPTER FIVE--PERMITS

14-5-1. Permits Required. Except as otherwise provided in this Code, no person may (1) collect and/or transport solid waste or (2) construct and/or operate an MSWLF on the Reservation except pursuant to a permit issued by the Compliance Officer authorizing such activity.

14-5-2. Permits for the Construction and/or Operation MSWLFs.

(a) Any person authorized to conduct business on the Reservation may submit an application to the Compliance Officer for a permit to construct and/or operate an MSWLF on the Reservation, which must demonstrate that the applicant will comply with the Code, the rules and regulations promulgated under the Code, other applicable Tribal and federal environmental standards and criteria, relevant guidance documents, permit conditions, and applicable orders issued by the Compliance Officer under authority of the Code. The burden of proof shall rest on the applicant to demonstrate compliance with all such Tribal and federal solid waste criteria and requirements.

(b) A permit application submitted pursuant to this Section shall contain the following minimum information:

- (1) A legal description and area map of the site of the proposed facility.



(2) A title report showing ownership of the site of the proposed facility and all encumbrances, covenants, conditions, restrictions, reservations to title, easements, and rights of way on or across the site.

(3) Proof that (A) the applicant is the owner or otherwise holds a sufficient leasehold or other interest in the proposed site or other lawful authorization from the owner of the site authorizing use of the site for purposes set forth in the application; (B) any taxes, fees, lease, and other payments with respect to the site are current; (C) the applicant has received approval of the proposed use of the site from the Tribal Council; and (D) if the site is trust or restricted land, the applicant has received all legally-required approvals of any leasehold or other use rights in the site from the Secretary of Interior or his authorized delegate. The applicant shall include in the application a certified copy of such lease or other use authorization with all exhibits and attachments.

(4) A map and aerial photograph showing the proposed MSWLF site and all land use and political jurisdictions within five miles of the proposed site. The map and aerial photograph shall be of sufficient scale and resolution to show all homes, airports, wells, water ways, topography, roads, and other objects that may be affected.

(5) A report describing the following:

- . (A) The population and area to be served by the proposed site;
- . (B) The life expectancy of the facility;
- . (C) The geological formation, aquifer characteristics, and groundwater elevations below the site and reliable data on existing groundwater quality within 2,000 feet of the site;
- . (D) The source and characteristics of cover material to be used;
- . (E) Topography of the site and drainage patterns; and
- . (F) Location of the 100-year flood plain as approved by the Compliance Officer in relation to the site.

(6) A general design and operations plan for the facility, certified by a professional engineer, that identifies how the MSWLF will meet the requirements of the Code and 40 CFR Part 258 relating to site location, site design, performance, operating standards, groundwater monitoring, closure, post-closure, and financial assurance. The design and operations plan shall include one or more topographic maps with contour intervals that show the proposed fill area, borrow areas, access roads, drainage areas, fencing, equipment, buildings, and groundwater monitoring systems.

(7) A financial statement estimating the cost of construction, operation, closure, and post-closure of the MSWLF. The financial statement shall also explain the applicant's financial condition, the applicant's net worth, and the ability of the applicant to fund the continued operation, closure, and post-closure maintenance of the site in compliance with the Code and the requirements of 40 CFR Part 258. An identification statement certified as to its truth and accuracy signed by the applicant and notarized containing the following information:

- (A) The name, address, social security number, and phone number of all persons owning

or holding an interest in the applicant company of 5% or more;

(B) The name, address, social security number, and phone number of all officers, directors, or partners of the applicant company;

(C) A statement that no officer, director, partner, or holder of an interest of 5% or more of the applicant company has ever been convicted of a felony and that no felony charges are currently pending;

(D) A statement that discloses in detail any charge, complaint, fine, order, decree, statement, or finding of "no contest" for violation of any tribal, federal, state, county or municipal environmental or health laws, regulations, permits, or conditions against any officer, director, partner or holder of an interest of 5% or more within the past five (5) years.

(E) A description of any judgments rendered against any officer, director, partner, or holder of an interest of 5% or more in the applicant in the five (5) years preceding the date of the application.

(F) A description of any bankruptcy or insolvency proceedings instituted by any officer, director, partner, or holder of an interest of 5% or more in the applicant occurring in the five (5) years preceding the date of the application.

(c) The Compliance Officer shall not issue a solid waste construction and/or operation facility permit under this Section unless the Tribe and any other owner of the site has leased or otherwise made available the site to the proposed facility operator for the proposed operation in accordance with Tribal and federal law.

(d) The Compliance Officer may issue a solid waste construction and/or operation facility permit under this Section only if he or she finds, on the basis of information contained in the application and otherwise available to the Compliance Officer, and only after conducting a public hearing as specified in Section 13-2 of the Code, that the applicant will comply with the Code; the 40 CFR Part 258 Criteria; and all applicable Tribal and federal law, rules, regulations, technical standards, criteria, guidance documents, and permit conditions.

(e) The Compliance Officer may issue a solid waste construction and/or operation facility permit under this Section only if he or she finds that the applicant has the financial and technical ability to construct and/or operate, close, and post-close the MSWLF as required by the Code.

(f) In issuing any permit under this Section, the Compliance Officer may impose permit conditions that are more stringent than those required in the Code or federal law if reasonably necessary. The Compliance Officer shall not issue a solid waste construction and/or operation facility permit unless he or she is convinced that the permittee will ensure long-term protection of the Tribe's public health, environment, and natural resources.

(g) A solid waste operation facility permit shall be valid for the operation, closure, and post-closure period designated and required for such MSWLF, but such permit is subject to revocation, suspension, or modification as provided in Section 5-7 of this Chapter. Any conditions imposed on any solid waste construction and/or operation facility permit issued by the Compliance Officer may only be modified after a public hearing that is duly noticed regarding modification of such permit.

14-5-3. Permits for the Collection and/or Transportation of Solid Waste.

(a) Any person authorized to conduct business on the Reservation may submit an application to the Compliance Officer for a permit to collect and transport solid waste on the Reservation, which must demonstrate that the applicant will comply with the Code, the rules and regulations promulgated thereunder, applicable Tribal and federal environmental standards and criteria, relevant guidance documents, permit conditions, and applicable orders issued under authority of the Code. The burden of proof shall rest on the applicant to demonstrate compliance with all Tribal solid waste criteria and requirements.

(b) As a condition for the issuance of a permit under this Section, the Compliance Officer shall require every vehicle operated by the collector/transporter to collect and/or transport solid waste to be conspicuously marked to identify the solid waste transported, the trade name of the collector/transporter, and the number of the solid waste transportation permit issued pursuant to this Section. The Compliance Officer shall also require, as a condition of a permit issued under this section, that all vehicles and drivers permitted to collect and/or transport solid waste be licensed by the State of Montana and comply with all safety and insurance requirements of the State of Montana.

(c) Permits for the collection and/or transportation of solid waste issued under this Section shall be subject to annual renewal by the Compliance Officer.

(d) As a condition for the issuance of a permit under this Section, the Compliance Officer shall require each permittee to make an annual report by December 1 of each year to the Compliance Officer that discloses 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 Compliance Officer may require. The Compliance Officer may deny a permit renewal if the permittee fails to properly and timely file the annual report required in this paragraph.

(e) In issuing permits under this Section, the Compliance Officer shall impose any conditions on the permittee that he or she deems reasonably necessary to protect the environment, and the health, safety, and welfare of the Tribe and its members. The Compliance Officer may impose permit conditions that are more stringent than required in the Code and federal law if reasonably necessary. The Compliance Officer shall not issue a solid waste collection or transportation permit unless he or she is convinced that the permittee will ensure long-term protection of the Tribe's public health, environment, and natural resources.

14-5-4. Public Hearing On Applications for Construction and Operation Permits.

(a) The Compliance Officer shall not issue a solid waste construction and/or operation permit under Section 5-2 of this Chapter unless there has been a public hearing conducted by the Compliance Officer pursuant to Section 13-2 of the Code.

(b) All applications for a solid waste construction and/or operation permit submitted pursuant to Section 5-2 of this Chapter, including all documentation required for such permit, shall be available for public review and inspection at least sixty (60) days in advance of the hearing required in paragraph (a) of this Section. The Compliance Officer shall publish weekly notice of such public hearing on each application beginning at least sixty (60) days in advance of the hearing in the most widely circulated newspaper on the Reservation, for three consecutive weeks. The Compliance Officer shall also post in each Reservation District notice of the public hearing

on an MSWLF permit application at least sixty (60) days in advance of the hearing.

14-5-5. Oath And Application Filing Fees.

(a) Each report and application submitted to the Compliance Officer pursuant to this Chapter shall be signed or notarized under oath in a form approved by the Compliance Officer.

(b) Each application submitted to the Compliance Officer pursuant to this Chapter shall be accompanied by a reasonable filing fee established by the Compliance Officer to reflect the Tribe's costs of processing the application, preparing an environmental assessment, publishing and distributing the public notice, conducting the hearing, retaining technical and legal consultants to review the application and the environmental assessment, preparation of the permit and its attachments, and other costs reasonably related to permitting required under this Chapter.

14-5-6. Other Fees. In order to recover Environmental Protection Department operating costs, the Compliance Officer may impose reasonable fees in addition to those authorized in Section 5-5 of this Chapter on each permittee who constructs or operates an MSWLF or collects and transports solid waste. Any such fees shall be specifically referred to in each permit. The payment of such fees shall be a condition of maintaining any permit issued pursuant to this Chapter. Nonpayment of fees established under this Chapter shall be a violation of the Code.

14-5-7. Revocation, Suspension, and Modification of Permits.

(a) The Compliance Officer may issue an order revoking, suspending, or modifying any permit issued pursuant to this Chapter for cause including the following:

(1) A determination that the permittee has violated or is in violation of: a condition or requirement contained in his or her permit; the Code; rules, regulations, orders, or guidance documents issued pursuant to the Code; or other applicable Tribal or Federal law;

(2) A determination that the permit was obtained by misrepresentation or that the permit application failed to fully disclose relevant facts; or

(3) A determination that the permittee's activities under the permit are endangering the Tribe's environment or natural resources or pose a risk to the health and welfare of residents of the Reservation.

(b) An order issued pursuant to paragraph (a) of this section shall become final and unreviewable unless the suspected violator submits to the Director of the Environment Protection Department a written request for a hearing within thirty (30) days of service of the order. A hearing requested under this paragraph shall be conducted in accordance with Section 12-1 of the Code.

14-5-8. Compliance Monitoring.

(a) The Compliance Officer shall have the right to obtain information from a permittee, including but not limited to records and technical reports or studies contained in the permittee's operating record, that may be relevant to determine whether a permittee is in compliance with the Code, conditions contained in a permit, rules or regulations promulgated under the Code, guidance documents, any orders issued pursuant to the Code, or other applicable federal or Tribal laws.

(b) The Compliance Officer shall have the right to enter and inspect records and conduct sampling and monitoring at any site or premise subject to any permit issued under this Chapter and any other site where evidence relevant to the operation of permitted facilities are located to determine whether a permittee is in compliance with all Tribal solid waste requirements, including but not limited to the Code, conditions contained in a permit, rules or regulations promulgated under the Code, guidance documents, orders issued pursuant to the Code, or other applicable federal or Tribal laws.

(c) All sampling, monitoring, and testing conducted by the Compliance Officer pursuant to this Section shall incorporate chain of custody and quality assurance procedures to ensure that the results of any sampling, monitoring, and testing is admissible as evidence in any proceeding before the Compliance Officer, Director of the Environmental Protection Department, or Tribal Court.

#### CHAPTER SIX—OPERATING CRITERIA FOR MSWLFs.

14-6-1. In General. 40 CFR Secs. 258.20 through 258.29 are incorporated by reference herein. All owners/operators of MSWLFs on the Reservation shall comply with the Part 258 Criteria in addition to the requirements of the Code, rules or regulations promulgated under the Code, guidance documents, orders issued pursuant to the Code, and other applicable Tribal or federal law.

#### 14-6-2. Procedures for Excluding the Receipt of Regulated Hazardous Waste.

(a) Owners/operators of MSWLFs on the Reservation must implement a written program under 40 CFR Sec. 258.20 at each facility for detecting and excluding all regulated hazardous wastes as defined in 40 CFR Part 261 and certain other unregulated hazardous wastes as defined herein, including conditionally exempt small quantity generator hazardous wastes, and polychlorinated biphenyls (PCBs) wastes as defined in 40 CFR Part 261.

(b) Operational activities to exclude regulated hazardous wastes and small quantity generator hazardous wastes must include the following:

- (1) A person on duty at all times during operating hours;
- (2) Random inspections of incoming loads;
- (3) Inspection of suspicious loads and recordkeeping of all inspection results;
- (4) Training of personnel to recognize hazardous wastes that emphasizes familiarity with containers and labels typically used for hazardous wastes and other hazardous materials;
- (5) Notification procedures if a regulated hazardous waste is discovered at an MSWLF, including the notification of the EPA Regional Administrator, the Compliance Officer, and the Director of the Environmental Protection Department;
- (6) A plan for transporting regulated hazardous waste off site to a RCRA subtitle C facility, securing the area, obtaining of samples for testing purposes, and determining waste characteristics by analytical methods; and
- (7) A contractual agreement with a hazardous waste handler with an EPA ID number for

hauling hazardous waste off-site to an approved RCRA subtitle C facility.

14-6-3. Daily Cover Material Requirements. 40 CFR Sec. 258.21 is incorporated by reference herein. An owner/operator of an MSWLF on the Reservation must cover disposed solid waste with six inches of earthen material at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.

14-6-4. Disease Vector Control. 40 CFR Sec. 258.22 is incorporated by reference herein. An owner/operator of an MSWLF on the Reservation must prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment. For purposes of this section, "disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

14-6-5. Explosive Gases Control. 40 CFR Sec. 258.23 is incorporated by reference herein. There must be methane gas monitoring at all MSWLFs on the Reservation in compliance with 40 CFR Sec. 258.23. The Compliance Officer must approve any methane gas monitoring plan for each MSWLF. An owner/operator must immediately notify the Compliance Officer if the concentration of methane gas exceeds the lower explosive limit for methane in facility structures or at the facility property boundary. An owner/operator must also within seven days place in the operating record documentation of the methane gas levels detected and a description of the interim steps taken to protect human health. An owner/operator must also implement a remediation plan for methane gas releases within 60 days of detection, as approved by the Compliance Officer, and such remediation plan must be placed in the operating record.

14-6-6. Air Criteria.

(a) 40 CFR Sec. 258.24 is incorporated by reference herein. Owners or operators of all MSWLFs on the Reservation must ensure that the units do not violate any applicable requirements developed under a Tribal Implementation Plan approved or promulgated by the Administrator of the EPA pursuant to section 110 of the Clean Air Act, as amended, or any other applicable Tribal or federal air quality law.

(b) Open burning of solid waste is prohibited at all MSWLFs on the Reservation except as the Compliance Officer may specifically authorize by rule or regulation that is not prohibited by Federal law.

14-6-7: Access Requirements. 40 CFR Sec. 258.25 is incorporated by reference herein. Owners or operators of all MSWLFs on the Reservation must control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment.

14-6-8. Run-On/Run-Off Control Systems. 40 CFR Sec. 258.26 is incorporated by reference herein. Owners or operators of all MSWLFs on the Reservation must design, construct, and maintain:

(a) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 25-year storm;

(b) A run-off control system from the active portion of the landfill to collect and control

at least the water volume resulting from a 24 hour, 25-year storm; and

(c) Run-off from active portions of MSWLFs must be handled in accordance with 40 CFR Sec. 258.27(a).

14-6-9. Surface Water Requirements. 40 CFR Sec. 258.27 is incorporated by reference herein. MSWLFs on the Reservation shall not:

(a) Cause a discharge of pollutants into waters of the United States, including wetlands, that violate any requirements of the Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to section 402 of the Clean Water Act.

(b) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violate any provisions of the Clean Water Act, or any Tribal water quality laws.

14-6-10. Liquids Restrictions.

(a) 40 CFR Sec. 258.28 is incorporated by reference herein. Bulk or noncontainerized liquid waste may not be placed in MSWLFs on the Reservation unless:

(1) The waste is permitted household waste other than septic waste; or

(2) The waste is leachate or gas condensate derived from the MSWLF and the MSWLF, whether it is a new or existing MSWLF, or lateral expansion, is designed with a composite liner and leachate collection system as described in 40 CFR Sec. 258.40(a)(2).

(b) "Gas condensate" under this Section means the liquid generated as the result of a gas recovery process at the MSWLF. Any MSWLF design documentation for placement of leachate or gas condensate in an MSWLF on the Reservation must be placed in the operating record, and the Compliance Officer must be notified that it has been placed in the operating record.

(c) Containers holding liquid waste may not be placed in an MSWLF on the Reservation unless:

(1) The container is a small container similar in size to that normally found in household waste;

(2) The container is designed to hold liquids for use other than storage; and

(3) The waste is household waste.

14-6-11. Recordkeeping Requirements.

(a) The recordkeeping requirements of 40 CFR Sec. 258.29 are incorporated by reference herein. The owner or operator of an MSWLF on the Reservation must record and retain in an operating record, in a location to be approved by Compliance Officer, the following information as it becomes available:

(1) Any location restriction demonstration required under 40 CFR Secs. 258.10 through 258.16;

(2) Inspection records, training procedures, and notification procedures required under

40 CFR Sec. 258.20;

(3) Gas monitoring results from monitoring and any remediation plans required by 40 CFR Sec. 258.23;

(4) Any MSWLF design documentation for placement of leachate or gas condensate in an MSWLF under 40 CFR Sec. §258.28(a)(2);

(5) Any demonstration, certification, finding, monitoring, testing, or analytical data required under 40 CFR Secs. 258.50 through 258.58;

(6) Closure and post-closure care plans and any monitoring, testing, or analytical data as required under 40 CFR Secs. 258.60 and 258.61; and

(7) Any cost estimates and financial assurance documentation required by 40 CFR Secs. 258.70 through 258.75; and

(8) Any information demonstrating compliance with the small community exemption as required by 40 CFR 258.1(f)(2).

(b) The owner or operator of an MSWLF on the Reservation must notify the Compliance Officer when documents from paragraph (a) of this Section have been placed or added to the operating record. All information contained in the operating record must also be furnished upon request to the Compliance Officer and shall be made available at all reasonable times for inspection by the Compliance Officer.

#### CHAPTER SEVEN-MSWLF DESIGN CRITERIA

14-7-1. In General. The uniform design criteria for MSWLFs contained in 40 CFR Sec. 258.40 are incorporated by reference for new MSWLF units and lateral expansions of existing MSWLFs on the Reservation. No new MSWLF units or lateral expansions shall be constructed unless they comply with the Part 258 uniform design criteria, which includes a composite liner and a leachate collection system as set forth in 40 CFR Sec. 258.40(a)(2).

14-7-2. Design Criteria for MSWLFs. The uniform design criteria in 40 CFR Sec. 258.40(a)(2) shall apply unless the Director of the Environmental Protection Department determines that the small landfill exemption under 40 CFR Sec. 258.1(f)(1) applies, and that an MSWLF on the Reservation is exempt from the design criteria under Subpart D of 40 CFR Part 258.

#### CHAPTER EIGHT—MSWLF GROUNDWATER MONITORING AND CORRECTIVE ACTION

14-8-1: In General. The groundwater monitoring and corrective action criteria contained in 40 CFR Secs. 258.50 through 258.58 are incorporated by reference herein and apply to all existing MSWLFs, new MSWLFs, and lateral expansions of MSWLFs on the Reservation.

#### 14-8-2. Groundwater Monitoring and Corrective Action.

(a) All existing MSWLFs, new MSWLFs, and lateral expansions of MSWLFs on the Reservation must comply with all of the groundwater monitoring and corrective action rules of subpart E of 40 CFR Part 258 including those contained in 40 CFR Secs. 258.51 through 258.58. All existing



MSWLFs, new MSWLFs, and lateral expansions of MSWLFs on the Reservation must be in compliance with the groundwater monitoring requirements on or before certain specified dates as determined by the Compliance Officer based upon the Part 258 Criteria. Once groundwater monitoring is established at an MSWLF on the Reservation, such monitoring shall be conducted throughout the active life, closure, and post-closure care period.

(b) For each MSWLF on the Reservation that is subject to groundwater monitoring, the basic requirements for groundwater monitoring, and for corrective action, if necessary, are set forth herein. Although not all of the Part 258 Criteria are restated herein, an owner/operator is nevertheless required to comply with all Part 258 technical standards, including but not limited to monitoring well design and construction, sampling requirements, specified statistical methods and decision criteria, and quality assurance and chemical testing procedures, and all groundwater monitoring requirements in 40 CFR Part 258 are incorporated by reference herein.

(c) The Compliance Officer shall monitor and ensure that an owner/operator complies with all of the technical standards and quality assurance and chemical testing procedures that are required for groundwater monitoring under 40 CFR Part 258, including but not limited to the following provisions:

- (1) 40 CFR Sec. 258.51 regarding groundwater monitoring systems;
- (2) 40 CFR Sec. 258.53 regarding groundwater sampling and analysis requirements;
- (3) 40 CFR Sec. 258.54 regarding detection monitoring programs;
- (4) 40 CFR Sec. 258.55 regarding assessment monitoring programs;
- (5) 40 CFR Sec. 258.56 regarding assessment of corrective measures;
- (6) 40 CFR Sec. 258.57 regarding selection of remedy; and
- (7) 40 CFR Sec. 258.58 regarding implementation of the corrective action program.

## CHAPTER NINE—MSWLF CLOSURE, POST-CLOSURE, AND FINANCIAL ASSURANCES

### 14-9-1. Closure of MSWLFs.

(a) All owners or operators of MSWLFs on the Reservation must install or demonstrate the presence of a final cover system that is designed to minimize infiltration and erosion in compliance with 40 CFR Sec. 258.60.

(b) All owners or operators of MSWLFs on the Reservation must prepare a written closure plan that describes the steps necessary to close their MSWLF at any point during its active life in accordance with the cover design requirements. The closure plan, at a minimum, must include the following information:

- (1) A description of the final cover and the methods and procedures to be used to install the cover;
- (2) An estimate of the largest area of the MSWLF ever requiring a final cover at any time

during the active life;

(3) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(4) A schedule for completing all activities necessary to satisfy the closure criteria in 40 CFR Sec. 258.60.

(c) An owner or operator subject to the requirements of paragraph (b) of this Section must notify the Compliance Officer that a closure plan has been prepared and placed in the operating record by the date of the first receipt of solid waste.

(d) Prior to beginning closure of an MSWLF on the Reservation, the owner or operator of the facility must notify the Compliance Officer that a notice of intent to close the unit has been placed in the operating record.

(e) The owner or operator of an MSWLF on the Reservation must begin closure activities of each MSWLF no later than 30 days after the date on which the MSWLF receives the known final receipt of wastes or, if the MSWLF has remaining capacity and there is a reasonable likelihood that the MSWLF will receive additional wastes, no later than one year after the most recent receipt of wastes.

(f) The owner or operator of an MSWLF on the Reservation must complete closure activities of each MSWLF in accordance with the closure plan within 180 days following the beginning of closure as specified in 40 CFR Sec. 258.60(f).

(g) Following closure of each MSWLF on the Reservation, the owner or operator must supply the Compliance Officer with a certification signed by an independent registered professional engineer that verifies that closure has been completed in accordance with the closure plan and place such certification in the operating record.

(h) The Compliance Officer shall take whatever action is reasonably necessary in perpetuity to notify any potential users or purchasers of the on-Reservation MSWLF property that the land has been used as a landfill facility and that its use is restricted under 40 CFR Sec. 258.61(c)(3). Post-closure use of the property shall not disturb the integrity of the site, final cover, liner(s) or monitoring systems, unless necessary to comply with requirements under 40 CFR Part 258.

#### 14-9-2. Post-Closure Care Requirements.

(a) Following closure of an MSWLF on the Reservation, the owner or operator must conduct post-closure care. Post-closure care must be conducted for thirty (30) years except as provided under paragraph (b) of this Section, and must include the following:

(1) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(2) Maintaining and operating the leachate collection system in accordance with the requirements in 40 CFR Sec. 258.40. The Compliance Officer or Director of the Environmental Protection Department may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the

environment;

(3) Monitoring the ground water in accordance with the requirements of subpart E of 40 CFR Part 258 and maintaining the groundwater monitoring system; and

(4) Maintaining and operating the gas monitoring system in accordance with the requirements of 40 CFR Sec. 258.23.

(B) The length of the post-closure care period may be increased by the Compliance Officer or the Director of the Environmental Protection Department if either determines that the lengthened period is necessary to protect human health or the environment.

(C) The owner or operator of an MSWLF must prepare a written post-closure plan that includes, at a minimum, the following information:

(1) A description of the monitoring and maintenance activities required in 40 CFR Sec. 258.61(a) for each MSWLF and the frequency at which these activities will be performed;

(2) The name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

(3) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner(s), any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in 40 CFR Part 258.

(d) The owner or operator must notify the Compliance Officer that a post-closure plan has been prepared and placed in the operating record by the initial receipt of waste.

(e) Following completion of the post-closure care period for each MSWLF on the Reservation, the owner or operator must supply the Compliance Officer with a certification signed by an independent registered professional engineer that verifies that all post-closure care has been completed in accordance with the post-closure plan, and shall place such certification in the operating record.

17-9-3. Financial Assurance Requirements. Owners or operators of MSWLFs on the Reservation are required to comply with the financial assurance criteria under Subpart G of 40 CFR Part 258. For purposes of implementing the requirements found at 40 CFR Secs. 258.71 through 258.74 and incorporated into this section by reference, the term “State Coordinator” shall mean the Compliance Officer.

## CHAPTER TEN—SOLID WASTE STORAGE AND COLLECTION

### 14-10-1. Tribal Solid Waste Storage Containers.

(a) The Director of the Solid Waste Department shall arrange for the placement of a sufficient number of suitable and approved Tribal solid waste storage containers for receiving and storing solid waste at transfer stations and other locations on the Reservation where solid waste is likely to be disposed. Tribal solid waste storage containers shall be placed at locations that minimize negative traffic and aesthetic impacts to the Reservation and its residents. All Tribal solid waste storage containers shall be of sound construction, resistant to animal entry, constructed with rust

and impact resistant materials, and equipped with tight-fitting covers. The Director of the Solid Waste Department is responsible for maintaining Tribal solid waste storage containers in a neat, clean, safe, and sanitary condition.

(b) Tribal solid waste storage containers shall be of sufficient size and adequate number to fully contain solid waste that is generated on the Reservation during a seven-day period. Except as otherwise allowed by this Code, the Director of the Solid Waste Department shall be responsible for maintaining Tribal solid waste storage container sites free of improperly stored solid waste accumulations.

(d) It shall be unlawful for any person to:

(1) allow Tribal solid waste storage containers to exceed any weight and capacity limits established by the Director of the Solid Waste Department;

(2) place yard and tree trimmings of greater than 4 feet of length in a Tribal solid waste storage container;

(3) tamper with, modify, remove, or destroy any Tribal solid waste storage container;

(e) The Director of the Solid Waste Department shall condemn any Tribal solid waste storage containers by affixing a condemnation notice thereto if the Director of the Solid Waste Department determines the container is unsafe or a nuisance. It shall be unlawful for any person, except as expressly authorized by the Director of the Solid Waste Department to use a Tribal solid waste storage container if a condemnation notice is affixed to the container, or to remove or tamper with a notice of condemnation that the Director of the Solid Waste Department has affixed to a Tribal solid waste storage container.

14-10-2. Storage of Solid Waste on Private Property. The owner, agent, and occupant of every on-Reservation dwelling, business establishment, and other premises where solid waste accumulates shall be responsible for the safe and sanitary storage of bulk solid waste accumulated at that premises until it is removed. No person shall store solid waste on the Reservation in such a manner as to cause a nuisance, a human health or safety hazard, or harm to the environment or natural resources of the Reservation.

14-10-3. Solid Waste Collection.

(a) Subject to available funding, the Director of the Solid Waste Department shall establish a schedule and arrange for the collection of solid waste from Tribal solid waste storage containers as needed but not less than once every seven days.

(b) Subject to available funding, the Director of the Solid Waste Department shall arrange for curbside solid waste collection from every dwelling, business establishment, and other premises on the Reservation where solid waste accumulates.

(c) Solid waste shall be collected and transported in a manner that prevents spillage and littering. Should spillage and/or littering occur, the solid waste shall be immediately picked up by the person who caused the spillage and returned to the vehicle or appropriate solid waste facility.

(d) Any person collecting or transporting of solid waste under this Section must be authorized to do so by a permit issued by the Compliance Officer pursuant to Section 5-3 of the Code.

14-10-4. Recycling. To the extent economically feasible, the Director of the Solid Waste Department shall establish a system for the recycling of on-Reservation solid wastes including curbside pickup of recyclable materials.

14-10-5. Solid Waste Collection Vehicles.

(a) Only vehicles approved by the Director of the Solid Waste Department shall be used for the collection and/or transportation of solid waste pursuant to this Chapter. Such vehicles shall:

- (1) be kept cleaned and maintained;
- (2) have covered, watertight, metal bodies of easily cleanable construction, be cleaned frequently to prevent a nuisance, and be maintained in good repair; and
- (3) be loaded and moved in such a manner that the contents will not fall, leak, or spill from vehicles.

14-10-6. Load Rejection. The Director of the Solid Waste Department may refuse to allow disposal of any or all materials at an MSWLF, roll-off site, or other collection site on the Reservation. If materials are refused at an MSWLF, roll-off site, or another collection site, then it shall be the sole responsibility of the owner to dispose of waste properly.

14-10-7. Material Separation. The Director of the Solid Waste Department shall require separation of any materials deemed necessary prior to collection or acceptance at an MSWLF, roll-off site, or any other collection site on the Reservation.

14-10-8. Service Fees for Solid Waste Services.

- (a) The Director of the Solid Waste Department, with the prior approval of the Tribal Council, shall establish reasonable fees for transfer, disposal, recycling, and other solid waste services performed under this Chapter. Any person who benefits from the solid waste services provided pursuant to this Chapter shall be subject to such fees. Fees established pursuant to this paragraph shall be limited so as to not encourage unlawful solid waste disposal practices.
- (b) Non-payment of solid waste fees established under this Section is a violation of this Code and may result in action being taken by the Compliance Officer pursuant to Chapter 11 of the Code

14-10-9. Contracts for Solid Waste Services. The Director of the Solid Waste Department is authorized, with the approval of the Council, to enter contracts with private solid waste collectors to discharge any duties assigned to the Director of the Solid Waste Department in this Chapter. Such contracts shall obligate each such private solid waste collector to adhere to all relevant requirements of this Code and federal law. Contracts entered into pursuant to this Section shall be terminable by the Director of the Solid Waste Department or the Director of the Environmental Protection Department, with approval of the Council, upon 30-days written notice.

## CHAPTER ELEVEN—INVESTIGATIONS AND ENFORCEMENT

14-11-1. Investigations and Warrants.

- (a) Subject to paragraph (b) of this Section, the Compliance Officer, Tribal law enforcement

officers, and BIA law enforcement officers are authorized to enter at reasonable times upon any private or public property on the Reservation for the purpose of inspecting and investigating conditions relating to solid or hazardous waste. It shall be a misdemeanor for any person to interfere with such inspections or investigations.

(b) Unless an emergency exists as defined in paragraph (e) of this Section, or the Compliance Officer or Tribal law enforcement officers have reason to believe that any unlawful activity is being conducted or is imminent, the Compliance Officer or Tribal law enforcement officers shall provide the owner, operator, or occupant of the property to be inspected or investigated under paragraph (a) of this Section prior notification and request from the owner, operator, or occupant authorization to enter the property for the inspection or investigation during normal business hours. If such authorization is denied, the Compliance Officer or Tribal law enforcement officers shall obtain an administrative warrant from the Tribal Court to enter the property and conduct an inspection or investigation.

(c) The Tribal Court shall issue an administrative warrant requested pursuant to Section (b) of this Chapter upon a showing by the Compliance Officer, Tribal law enforcement officers, or BIA law enforcement officers that there is a reasonable basis to believe that an inspection or investigation on the subject property will uncover evidence of a violation of: any provision of: this Code; any rule, regulation, or guidance document adopted under this Code; any condition of any permit issued under this Code; or any provision of other applicable Tribal or federal law.

(d) If samples or other property are taken in an inspection or investigation pursuant to this Chapter, the owner of the taken property is entitled to a receipt for the property.

(e) In the event of an emergency that presents an immediate and substantial threat to the public health and safety or the environment, the Compliance Officer shall have the authority to issue an order granting emergency authorization for an inspection or investigation of private property. Any person against whom an emergency order is issued shall be entitled to a hearing before the Compliance Officer within twenty-four (24) hours, in which the Compliance Officer shall affirm, modify, or set aside the order authorizing the emergency inspection or investigation. Any decision issued pursuant to this Section shall be reviewable by the Tribal Court pursuant to the judicial review procedures established in Section 12-3 of the Code.

#### 14-11-2. Enforcement Orders.

(a) Any person who violates any condition of a permit issued under the Code, any part of this Code, or any rule, regulation, or guidance document adopted under this Code, shall, upon order of the Compliance Officer: cease and desist from any improper action or violation(s); clean up any solid waste; abate any hazard, pollution, or nuisance; and otherwise comply with any corrective or remedial order issued by the Compliance Officer. The Compliance Officer's order may require compliance immediately or within a specified period of time, and may assess civil damages and penalties pursuant to Section 11-3 of this Chapter.

(b) An order issued pursuant to paragraph (a) of this section shall state with reasonable specificity the nature of the violation, the time for compliance if applicable, the basis for any assessed civil damages and penalties, the right to a hearing before the Compliance Officer, and instructions for how the alleged violator may obtain such a hearing. Such order shall be served on the alleged violator in the same manner that a complaint is served under Rule 3 of the Tribe's Rules of Civil Procedure.

(c) An order issued pursuant to paragraph (a) of this section shall become final and unreviewable unless the suspected violator submits to the Director of the Environment Protection Department a written request for a hearing within thirty (30) days of service of the order. A hearing requested under this paragraph shall be conducted in accordance with Chapter 12-1 of the Code.

(d) The Compliance Officer through the Tribe's Attorneys may file a petition in Tribal Court for enforcement of a final order issued under paragraph (b) of this Section, which the Tribal Court shall grant unless it determines that the final order was issued in violation of Tribal or federal law.

#### 14-11-3. Civil Damages and Penalties.

(a) The Compliance Officer may include in an order issued pursuant to Section 11-2 of this Chapter an assessment of civil damages to recompense: damages to any affected land or natural resources; the reasonable costs actually incurred or reasonably expected to be incurred by the Tribe for cleaning up any solid or hazardous waste or abating the effects thereof; and the costs of any enforcement actions including reasonable attorney fees. Civil damages assessed under this Section shall be remitted to the Tribe.

(b) The Compliance Officer may also include in an order issued pursuant to Section 11-2 of this Chapter an assessment of civil penalties, which shall not be more than Five Thousand Dollars (\$5,000.00) for each day each violation occurs plus reasonable attorney fees and costs. In determining the appropriate civil penalty, the Compliance Officer shall consider the severity of the suspected violation and whether the suspected violator has been subjected to other enforcement action under this Chapter. Civil penalties assessed pursuant to this paragraph shall be paid to the Tribe's Environmental Protection Department, and be retained in a trust fund designated solely for paying costs of remedial responses to environmental emergencies occurring on the Reservation.

(c) Any civil penalties or damages imposed under this Section are in addition to, and do not supersede or limit any other remedies which may be available to the Tribe or any other Reservation property owner or user, including the filing of an action for injunctive relief in Tribal Court or the filing of a civil action for civil damages or any other relief.

#### 14-11-4. Criminal Penalties.

(a) If the Compliance Officer has probable cause to believe that any person over whom the Tribal Court may exercise criminal jurisdiction has intentionally violated: any condition in a permit issued under the Code; any provision of the Code; or any rule, regulation, or guidance document adopted under this Code, the Compliance Officer may file a criminal complaint with the Tribal Prosecutor seeking criminal prosecution of the alleged violator.

(b) Upon conviction in Tribal Court in a proceeding initiated pursuant to paragraph (a) of this Section, for each separate offense the violator shall be subject to a fine of not less than One Hundred Dollars (\$100.00), nor more than Five Thousand Dollars (\$5,000.00), and, in the discretion of the Tribal Court, may also be subject to imprisonment in the Tribal jail of not less than one day, nor more than ninety days. Alternatively, upon conviction in Tribal Court, the violator shall be placed on probation and required by the Tribal Court to provide not less than forty (40) hours, but not more than two hundred (200) hours, of community service assisting the Tribe's Solid Waste Department or performing community service on the Reservation.

14-11-5. Compliance Schedules. The Compliance Officer may include in an order issued pursuant

to Section 11-2 of this Chapter a compliance schedule for any person determined to be in violation of: a permit condition issued under the Code; the solid waste criteria required under this Code; or any rule, regulation, or guidance document adopted under this Code. The compliance schedule shall require that the violator make diligent effort to remedy the violation within a specified period of time.

14-11-6. Enforcement Against Non-Members. If the Compliance Officer has probable cause to believe that a non-member has violated: any material condition in a permit issued under the Code; any material provision of the Code; or any material rule, regulation, or guidance document adopted under this Code, the Compliance Officer, in addition to any other remedy lawfully available, may initiate proceedings in accordance with Tribal law for the exclusion of the non-member from the Reservation and suspension or termination of the non-member's rights to engage in activities on the Reservation.

## CHAPTER TWELVE—ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

### 14-12-1. Administrative Hearings.

(a) Upon receipt of a written request for a hearing pursuant to Section 11-2(c) of the Code, the Director of the Environmental Protection Department shall initiate a hearing on the violation by serving a written complaint on the alleged violator that specifically sets forth the acts and omissions, that the alleged violator is charged with, and specifying those provisions of the Code and any orders, permit conditions, rules or regulations, guidance documents, or other laws that the alleged violator is alleged to have violated. The complaint shall be accompanied by a summons advising the alleged violator of a date for a hearing before the Director of the Environmental Protection Department which shall not be earlier than ninety (90) days after service of the complaint.

(b) The alleged violator shall file an answer to the complaint with the Director of the Environmental Protection Department within thirty (30) days after receiving service of the complaint, in which the alleged violator shall admit or deny all charges in the complaint and allege any defenses, mitigating circumstances, or objections.

(c) Prior to any hearing held before the Director of the Environmental Protection Department under this Section, any party to the hearing, upon written request made to any other party to the hearing prior to the hearing, is entitled to: (1) obtain the names and addresses of witnesses, to the extent known by such other party to the hearing, including but not limited to those intended to be called to testify at the hearing; and (2) inspect and copy any relevant documents in the possession or under the control of such other party including but not limited to statements made by a person pertaining to the subject matter of the hearing and investigative or expert reports pertaining to the subject matter of the hearing. Nothing in this Section shall authorize the inspection or copying of any writing that is privileged from disclosure by law or otherwise made confidential or protected as attorney work product.

(d) Before a hearing has commenced pursuant to this Section, the Director of the Environmental Protection Department may issue and have served subpoenas and subpoenas duces tecum (NOTE TO COUNCIL: A "subpoena duces tecum" is a summons requiring a named party to appear and produce documents or other evidence for use at a hearing or trial.) at the request of any party to the hearing for the attendance of witness or production of documents at the hearing. Any subpoenas issued by the Director of the Environmental Protection Department shall be enforceable in Tribal Court or other court of competent jurisdiction.



(e) In a hearing held before the Director of the Environmental Protection Department under this Section, oral evidence shall be taken only on oath. Each party to the hearing shall have the rights to: call and examine witnesses; introduce exhibits; cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; impeach any witness regardless of who called the witness to testify; and rebut any evidence. Any party to the hearing who does not testify on his or her own behalf may be called and examined as if under cross-examination. All proceedings under this Section shall be on the record and preserved.

(f) A hearing held before the Director of the Environmental Protection Department under this Section need not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons may rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used solely for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding, unless it would be admissible over objection in civil actions.

(g) In a hearing held before the Director of the Environmental Protection Department under this Section, the Director may take notice of any generally accepted technical or scientific matters. Parties present at the hearing shall be informed of any matters to be noticed and those matters shall be noted in the record. Any party shall be given a reasonable opportunity on request to refute such noticed matters by additional evidence.

14-12-2. Final Decision. Within sixty (60) days after a hearing pursuant to Section 12-1, the Director of the Environmental Protection Department shall issue his or her Final Decision on the matter. The Final Decision shall be in writing and shall contain: findings of fact; a determination of the legal issues presented; an assessment of any civil damages and penalties; if applicable, a determination of whether a permit shall be revoked, suspended, or modified; and an assessment of costs and reasonable attorney fees. A copy of the Final Decision shall be served on the alleged violator and the Compliance Officer, with a copy transmitted to the Tribal Council. A Final Decision issued pursuant to this Section is enforceable by filing a civil action in Tribal Court by the Director of the Environmental Protection Department through the Tribal Attorneys.

14-12-3. Judicial Review.

(a) An adverse party aggrieved by a Final Decision of the Director of the Environmental Protection Department issued pursuant to Section 12-2 of this Chapter is entitled to judicial review of the Final Decision by the Tribal Court. A petition for review shall be filed in the Tribal Court within thirty (30) days after the Director of the Environmental Protection Department's Final Decision is served on the violator. The Tribal Council may likewise appeal any Final Decision of the Director of the Environmental Protection Department by filing a petition for review within thirty (30) days after delivery of the final decision to the Tribal Council. Failure to timely file a petition for review shall be deemed a waiver of all rights to appeal the Final Decision.

(b) In any appeal brought under paragraph (a) of this Section, the Tribal Court shall conduct a review of the record of the proceedings of the Director of the Environmental Protection Department but shall not take new evidence. The Tribal Court may then modify or reverse a Final Decision of the Director of the Environmental Protection Department only if the Final Decision is contrary to law, not supported by the evidence, or arbitrary and capricious. The Director of the

Environmental Protection Department, upon request of the Tribal Court, shall provide to the Tribal Court a certified copy of all pleadings, documents, records, transcripts, and other evidence that formed the basis for the Final Decision. The filing of a petition for review shall not operate as a stay of the Director's Final Decision, but the Tribal Court shall have the authority to issue a stay upon such terms as it deems appropriate.

(c) The Tribal Council hereby expressly waives the sovereign immunity of the Director of the Environmental Protection Department and the Tribe's Environmental Protection Department in their official and not in their personal capacities for the explicit, limited, and sole purpose of enabling the Tribal Court to review of the Director's Final Decision under Section 12-2 of this Chapter, and for no other purpose. The sovereign immunity of the Director of the Environmental Protection Department and the Environmental Protection Department is not waived in any other respect, including without limitation suits for monetary damages or otherwise. Except as expressly provided for in this paragraph, the sovereign immunity of the Tribe, the Tribal Council, or any other Tribal instrumentalities, employees, or agents is hereby fully preserved.

(d) The rights of the Tribe with respect to an alleged violator under this Chapter, including the right to issue compliance orders; recover civil penalties; recover civil damages; order clean up, abatement, corrective actions, or remediation; or revoke, suspend, or modify a permit, are not intended to be exclusive, and the Tribe reserves all other legal rights which it otherwise has against any alleged violator, including the right to seek injunctive relief or other relief in Tribal Court or any other court of competent jurisdiction.

14-12-4. Intervention. In any hearing before the Director of the Environmental Protection Department or civil action filed in the Tribal Court under this Chapter, the Tribal Council shall have the right to intervene as a party, and any other person shall be allowed to intervene under the same conditions as allowed under Rule 24(a)(2) of the Federal Rules of Civil Procedure, which provides for intervention as a matter of right only when the applicant for intervention claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest. The Tribe may not defeat such right of intervention on the basis that the applicant's interest is adequately represented by existing parties.

## CHAPTER THIRTEEN- PUBLIC PARTICIPATION

### 14-13-1. Public Complaints.

(a) Any person may submit a complaint to the Compliance Officer alleging a violation of any of: the conditions in a permit issued under this Code; any provision of this Code; any rule, regulation, or guidance document adopted under this Code; or any other applicable Tribal or federal law.

(b) If the Compliance Officer determines that a complaint received under paragraph (a) of this Section is credible, the Compliance Officer shall initiate an inspection or investigation of the alleged violation pursuant to Section 11-1 of the Code. The Compliance Officer shall thereafter take such enforcement action as he or she determines that there is a reasonable basis to claim a violation pursuant to Chapter 11 of the Code.

### 14-13-2. Public Hearings.

(a) The Director of the Environmental Protection Department shall hold one or more informal public hearings prior to taking the following actions:

- (1) The adoption of and any updates to the Tribe's Integrated Solid Waste Management Plan;
- (2) The issuance of any rules or regulations under the Tribe's Solid Waste Management Code, including any guidance documents, as proposed by the Director of the Environmental Protection Department;
- (3) The approval of any site location for a new MSWLF on the Reservation;
- (4) The issuance of any permits for the construction and/or operation of an MSWLF on the Reservation, or for the collection or transportation of solid waste on the Reservation;
- (5) The suspension of any groundwater monitoring requirements under 40 CFR Sec. 258.50;
- (6) The assessment of any corrective measures and selection of remedies which may be necessary under 40 CFR Secs. 258.56 and 258.57;
- (7) The approval of any covenant not to sue or any settlement of any claim against any permittee under the Code; and
- (8) Any other matters which the Director of the Environmental Protection Department deems appropriate for public participation and review, or which may be required under 40 CFR Part 239 or this Code.

(b) In a public hearing held pursuant to paragraph (a) of this Section, the Director of the Environmental Protection Department shall allow the public to submit both written and oral comments, which shall be placed in an administrative record for the relevant action maintained by the Environmental Protection Department.

(c) The Director of the Environmental Protection Department shall schedule hearings held pursuant to paragraph (a) of this Section at a convenient location on the Reservation and give reasonable advance notice of the date, time, and subject matter of such hearings by publication in the newspaper most widely circulated on the Reservation. Sixty (60) days advance notice is required for the issuance of any MSWLF permits.

#### CHAPTER FOURTEEN – INDEMNIFICATION

14-14-1. Indemnification. Any person who contracts with the Tribe to collect, transport, distribute, or dispose of solid waste on the Reservation shall indemnify ("indemnitor") and defend the Tribe and/or any of its members, officers, agents or employees from any claim of liability and from all resulting liabilities of any nature resulting from the indemnitor's violation of: any permit issued under the Code; any provision of this Code; any rule, regulation, or guidance document adopted under this Code; or any other applicable Tribal or federal law, to the extent that such claims or liabilities were not proximately caused by the wrongful conduct of the party claiming indemnity hereunder.

#### CHAPTER FIFTEEN- INTERPRETATION, SEVERANCE AND APPLICABILITY OF PART 258 CRITERIA

14-15-1. Interpretation. If any provision in this Code conflicts with any other provision of this Code, other Tribal law, or federal law, the most stringent and protective provision shall be controlling.

14-15-2. Severability. If any provision of the Code, or application of any provision of the Code to any person or circumstance, is determined to be invalid or unlawful, the application of such provision to other persons and circumstances, and the remaining provisions of the Code, shall not be affected.

14-15-3. Applicability of Part 258 Criteria. The Code incorporates by reference all of the criteria contained in 40 CFR Part 258. If any provision of 40 CFR Part 258 is modified or repealed, such modification or repeal shall automatically incorporated by reference as part of this Code, and supersede the provisions that were modified or repealed. If any of the Part 258 Criteria are not actually restated in this Code they are nevertheless incorporated by reference and are applicable. Any specific provisions of the Code that are more stringent than the Part 258 Criteria are applicable and controlling.

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