

**Title XXIX
(29)
ENVIRONMENTAL QUALITY**

ORDINANCE NO. 163

Standing Rock Sioux Tribal Code of Justice



RESOLUTION NO. 457-95

**Approved June 27, 1995
by
Standing Rock Sioux Tribal Council**

RESOLUTION NO. 457-95

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Article 16, and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the Constitution of the Standing Rock Sioux Tribe, Article IV, Sections 1(a), (c) and (j) is empowered to negotiate with Federal, State and local governments and others on behalf of the Tribe, to promote and protect the health, education and general welfare of the members of the Tribe, and to manage, protect and preserve the property of the Tribe and the wildlife and natural resources of the Standing Rock Reservation; and

WHEREAS, the Standing Rock Sioux Tribal Council has worked to preserve and protect the Reservation's land and water resources, and has developed and implemented a Department of Environmental Regulation and Cultural Preservation; and

WHEREAS, the Tribe has successfully worked with the U.S. Environmental Protection Agency for the development of a Federal-Tribal partnership for environmental protection on the Standing Rock Indian Reservation; and

WHEREAS, the Standing Rock Sioux Tribal Council has long been concerned with the quality of the Reservation's potable and non-potable water supplies; and

WHEREAS, the Tribal Council contracted and successfully developed municipal, rural and industrial water systems, authorized for the Reservation in the Garrison Reformulation Act of 1986, to provide healthy drinking water supplies to communities on the Reservation; and

WHEREAS, the Tribal Council has developed a Water Code to ensure adequate instream flows; and a Solid Waste Management Ordinance to protect the Reservation's land and water resources from pollution caused by the improper disposal of solid waste; and

WHEREAS, in order to protect the public health and welfare of Tribal members, it is necessary to monitor and regulate the public water systems of the Standing Rock Indian Reservation; and

WHEREAS, in order to protect the public health and welfare of Tribal members, it is necessary to monitor and regulate the discharge of pollution onto the lands and into waters of the Reservation

NOW THEREFORE BE IT RESOLVED, that the foregoing Ordinance No. 163 amending the Code of Justice by adding Title XXIX, Environmental Quality Code, is hereby approved.


BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council be authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION

We, the undersigned Chairman and Secretary of the Standing Rock Sioux Tribal Council, do hereby certify that the Tribal Council is composed of 17 members, of whom 12 constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened and held on the 27th day of June, 1995, and that the foregoing resolution was duly adopted by the affirmative vote of 7 members, with 0 opposing, and with 5 not voting. The Chairman's vote is not required except in case of a tie.

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Dated this 27th day of June, 1995.


Jesse Taken Alive, Chairman
Standing Rock Sioux Tribal Council

ATTEST:


Elaine McLaughlin, Secretary
Standing Rock Sioux Tribal Council

(Official Seal)

ORDINANCE NO. 163

BE IT RESOLVED, that the Code of Justice of the Standing Rock Sioux Tribe be and the same is hereby amended to add Title XXIX, Environmental Quality Code, as follows:

TITLE XXIX. ENVIRONMENTAL QUALITY CODE

Chapter 1. Environmental Policy

29-101

Declaration of Policy

(a) The Standing Rock Sioux Tribal Council declares that the policies of this ordinance are:

- (1) to maintain and restore the environmental quality on the Standing Rock Indian Reservation (hereinafter referred to as "the Reservation");
- (2) to balance the economic development and infrastructure development needs and efforts of the Standing Rock Sioux Nation with the need to maintain and restore the environmental quality of the Reservation;
- (3) to promote efforts which will prevent or eliminate damage to the Reservation environment and biosphere;
- (4) to stimulate the health and welfare of the members of the Standing Rock Sioux Nation;
- (5) to promote public education and public participation in those aspects of the cultural heritage of the Lakota and Dakota people which emphasize the sacred nature of the earth, and to enrich the public understanding of the ecological systems and natural resources important to the Standing Rock Sioux Nation;
- (6) to provide for the exercise of the inherent sovereign power of self government by the Standing Rock Nation;
- (7) to provide for informed decision making by the Tribal Council and its designees, in performing and overseeing activities which substantially affect the Reservation environment;
- (8) to foster and promote the improvement of environmental quality on the Reservation to meet the conservation, social,

economic, health and other requirements and goals of the Tribe; and

(9) to provide for the development of the technical and administrative systems for the protection by the Tribal government of the Reservation environment.

(b) This ordinance shall be interpreted in light of the policies provided in this section.

29-102

Standing Rock Environmental Quality Commission

There is hereby created the Standing Rock Environmental Quality Commission (hereinafter referred to as the "Environmental Quality Commission"). The Environmental Quality Commission is a subdivision of the Tribe created for the sole purpose of protecting the environment of the Reservation.

(a) Composition of Environmental Quality Commission

The Tribal Council, by a majority vote of those voting at a meeting duly called and at which a quorum is present, shall appoint the members of the Environmental Quality Commission. The Commission shall consist of:

(1) One representative who resides in each district of the Reservation, representing that district;

(2) A resident of Corson County, chosen without regard to their status as a member or non-member of the Tribe, representing all residents of Corson County;

(3) A resident of Sioux County, chosen without regard to their status as a member or nonmember of the Tribe, representing all residents of Sioux County;

(4) A recognized expert in the area of environmental protection, appointed by the Tribal Council by a majority vote of those voting at a meeting duly called and which a quorum is present; and

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(5) A member of the Tribal Council, who shall abstain from voting on all business before the Commission but otherwise hold the rights and duties of a member of the Commission.

(b) (1) Officers The Commission shall choose from among its members a Chairperson, Vice Chairperson and Secretary. These officers shall serve for two year terms. They may be re-elected.

(2) Executive Committee The Chairperson of the Commission, the Commissioner serving pursuant to his or her expertise in the area of environmental protection, and one other Commissioner, selected by the Commission from among its members, shall serve as the Executive Committee. The Executive Committee shall meet upon the request of the Environmental Specialist, when urgent action is required upon any of the Commission's duties, as provided in subsection (d) of this section. Any actions of the Executive Committee must be ratified by the Commission to be final. All actions concerning issuance, modification or revocation of a permit, enforcement of the terms of a permit issued by the Commission, or other action to enforce the requirements of this or any other environmental protection ordinance of the Tribe, shall be heard before the Commission.

(c) (1) Terms of Commissioners That the members of the Environmental Quality Commission (hereinafter referred to as "the Commissioners") shall serve four year terms, provided that, in order to stagger the expiration of terms of office, the term as Commissioner of the district representatives shall coincide with the term of office of the local district councils, and the terms of the original Commissioners appointed at large from Corson County and Sioux County, and the Commissioner serving pursuant to his or her expertise in the area of environmental protection, shall be for one year.

(2) That a vacancy in the Environmental Quality Commission, howsoever caused, will be filled in the same manner in which the appointment of the Commissioner whose seat is vacant took place. The Commissioner so appointed to fill such vacancy shall serve the remainder of that term.

(d) Duties of Commissioners That the duties and functions of the Commissioners shall include, but not be limited to, the following:

(1) to gather timely and authoritative information concerning the conditions and trends in the quality of the Reservation environment, both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or likely to interfere, with the environmental policies of the Tribe, as provided in Section 101 of this ordinance;

(2) to implement the environmental policies of the Tribe, as provided in Section 101 of this ordinance;

(3) to conduct investigations, studies, surveys, research and analyses related to environmental quality on the Reservation, including the quality of the water, groundwater, soils, and air of the Reservation and radon levels;

(4) to implement and enforce this ordinance and other environmental protection ordinances of the Tribe;

(5) to report to the Tribal Council on the state and condition of the Reservation environment, and the environmental monitoring and regulatory activities of the Environmental Quality Commission;

(6) to present to the Tribal Council recommendations for environmental protection on the Reservation;

(7) to enact bylaws or regulations of the Environmental Quality Commission at the discretion of the Commissioners, provided however that any such bylaws or regulations shall not be effective until there has been an opportunity for public comment in accordance with this section. The Environmental Quality Commission shall cause to be posted conspicuously at public places in each local district and other communities of the Reservation a copy of proposed bylaws or regulations and a statement that interested parties may provide oral or written comments to the Environmental Quality Commission at a public hearing, the time and place of which shall be specified no later than fifteen (15) days in advance of the date of the hearing. In addition, the Commissioners shall cause to be published a copy of proposed bylaws and/or regulations in a newspaper of general circulation in Corson County (S.D.) and Sioux County

(N.D.). A copy of regulations or bylaws of the Commission shall be available for public inspection in the office of the Environmental Specialist, Standing Rock Sioux Tribe, Department of Environmental Regulation, Fort Yates, N.D. 58538;

(8) to negotiate and enter cooperative agreements with instrumentalities or agencies of the federal, state or tribal governments, for the protection of the Reservation environment. Such agreements shall require the approval of the Tribal Council.

(9) to request and obtain funding for the operation of the Environmental Commission and to carry out the duties and functions of the Commission;

(10) to consult with the local district councils and other community or municipal governmental agencies on the environmental instrumentalities of the Reservation;

(11) to employ such officers, employees and consultants as may be necessary to carry out its functions;

(12) to obtain such liability insurance or bonding that it deems necessary in the event of a citizens suit; and

(13) such other duties as are delegated to the Environmental Quality Commission by the Tribal Council.

(e) A Commissioner shall at all times conduct himself or herself with high moral standards while in office. A Commissioner shall be disqualified upon the conviction while in office of a felony, or a misdemeanor involving the use of alcohol. The term of a Commission seat that is vacated due to disqualification shall be filled

(f) Chapter II of the Standing Rock Solid Waste Management Ordinance, with the exception of Section 207, is deleted.

29-103

Environmental Specialist

There is established the position of Environmental Specialist of the Tribe. The Environmental Specialist shall be employed by the Tribal Council and comply with the Personnel Policies and Procedures of the Tribe. The Environmental Specialist shall report to the Environmental Quality Commission, and provide technical assistance to the Commission in carrying out its duties and functions, as provided in Section 102 of this ordinance. The rate of pay for the Environmental Specialist shall be established by the Tribal Council.

29-104

Certain Proceedings of the Environmental Quality Commission

(a) Requirement for Hearing A person aggrieved by a formal action of the Environmental Quality Commission shall be entitled to a hearing before the Commission. The aggrieved person shall request a hearing in writing within ten (10) days of the date of the adverse action of the Commission. Requests for hearing shall be transmitted to the Environmental Specialist, Standing Rock Sioux Tribe, Department of Environmental Regulation, Box D, Fort Yates, N.D. 58538. Such requests shall be deemed to be made when postmarked or received by the Environmental Specialist, whichever occurs earlier.

(b) Notice Requirements The Environmental Quality Commission shall notify the aggrieved person of a hearing in writing at least thirty (30) days in advance of the date scheduled for the hearing. The Environmental Quality Commission shall post conspicuously such notice in each local district and other communities of the Reservation, and cause such notice to be published in a newspaper of general circulation in Corson County (S.D.) and Sioux County (N.D.), no later than fifteen (15) days in advance of the date scheduled for the hearing. The notice shall include:

(1) A statement of the time, place and nature of the proceedings;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held, to include a reference to the particular sections of Tribal law involved;

(3) A short and plain statement of the issues and matters asserted;

(4) A statement that any resident of the Reservation may appear and present oral or written evidence; and

(5) A statement that the decision of the Environmental Quality Commission may be appealed to the Tribal Court.

(c) Conduct of Hearings (1) A hearing shall be held within forty-five (45) days of the date of the adverse action. Upon request of the aggrieved person, and for good cause, the date set for the hearing may be continued. A request to have the date of the hearing changed must be made at least five (5) days before the date set. In all cases, such request may be granted or denied by the Environmental Quality Commission.

(2) The proceedings shall be recorded. The record in a hearing shall include all pleadings, motions and intermediate rulings; the transcript from the hearing and the written decision by the Environmental Quality Commission. In the event of an appeal, the cost of transcribing the hearing shall be borne by the appellant;

(3) The aggrieved person may be represented by legal counsel or any other representative;

(4) The Chairperson of the Environmental Quality Commission shall preside over a hearing and regulate its conduct. The Chairperson shall open the hearing by making a statement of the matter to be heard and administer oaths to witnesses that shall testify. The aggrieved person shall present their case first. Technical rules of evidence shall not apply, however, if a party at a hearing pursues a line of questioning of a witness that is clearly irrelevant, incompetent or immaterial, the Chairperson may stop such interrogation. The members of the Environmental Quality Commission may cross examine or otherwise question witnesses. The Environmental Quality

Specialist may cross examine witnesses or the aggrieved person. The Environmental Specialist shall present the evidence of the Environmental Quality Commission, including making an oral statement, calling witnesses and presenting documentary evidence. The aggrieved person may cross examine all witnesses and submit rebuttal evidence.

(d) Decisions. The decision by the Environmental Quality Commission shall be made by a majority vote. It shall be based upon the entire record. The Chairperson or their designee on the Commission shall provide the decision in writing. The written decision shall include findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of each fact found upon each contested issue of fact. The Environmental Quality Commission shall issue its written decision no later than thirty (30) days from the date of the hearing. The aggrieved party and other interested persons who appeared at the hearing shall be notified of the decision by the board.

(e) Ex Parte Contacts Except upon notice and opportunity for all parties to be present, no Commissioner presiding at a hearing may consult with any person or party on any issue of fact or law in the proceedings, including the Environmental Specialist, excepting other Commissioners.

(f) Request for Rehearing The aggrieved person may request that the Environmental Quality Commission reconsider a hearing decision by filing a written petition within fourteen (14) days of receiving such decision. A petition for rehearing shall state in concise fashion the errors in such decision.

(g) Definitions for the purposes of this section:

- (1) The term "adverse action" includes, but is not limited to:
- (i) the denial, revocation or amendment of a permit to operate a system or facility for the storage, collection, transportation, or disposal of solid waste;
 - (ii) the denial, revocation or amendment of a permit to discharge effluent or other point source pollution into the waters of the Reservation;
 - (iii) the denial, revocation or amendment of a permit to construct, install, substantially modify, use or operate a public water system on the Reservation;
 - (iv) the denial, revocation or

amendment of a permit to store, use or apply pesticides; or (v) enforce any provision of these ordinances or any other environmental protection ordinance of the Tribe against such a person.

(2) The term "person" means an individual, firm, corporation, partnership, association, state, or municipality.

**29-105 Judicial Review of Decisions or Actions
 of the Environmental Quality Commission**

(a) The Standing Rock Tribal Court shall have the exclusive jurisdiction to review the promulgation by the Environmental Quality Commission of a regulation or bylaw. Such review may be obtained only upon the filing of a petition for judicial review within sixty (60) days of the adoption by the Commission of such regulation or bylaw. The Tribal Court may vacate such regulation or bylaw only if it violates this ordinance or another environmental protection ordinance of the Tribe or is otherwise contrary to law, or it constitutes an arbitrary or capricious exercise of authority.

(b) The Tribal Court shall have exclusive jurisdiction to review a hearing decision of the Environmental Quality Commission. Such review may be obtained only upon the filing by the aggrieved party, who invoked the hearing of a petition for judicial review within sixty (60) days of receipt of the hearing decision. The Tribal Court may reverse the hearing decision only if it violates this ordinance or another environmental protection ordinance of the Tribe or is otherwise contrary to law, or it constitutes an arbitrary or capricious exercise of authority.

**29-106 Reports on Activities
 Affecting Environment**

(a) The Environmental Specialist shall prepare and submit to the Tribal Council a detailed report on every major activity which substantially affects the Reservation environment and which:

(1) is funded in whole or in part with federal or Tribal monies;

(2) takes place on Tribal land; or

(3) otherwise requires the approval of the Tribal Council for such major activity to take place.

(b) The detailed report to be prepared under this section shall include an analysis of:

(1) the environmental impact of the proposed action, including the direct and indirect effects on cultural resources, water quality, groundwater, soils, air and wildlife;

(2) means of mitigating any adverse environmental impacts; and

(3) alternatives to the proposed action.

(c) For the purposes of this section, the term "major activity which substantially affects the Reservation environment" includes, but is not limited to, the following:

(1) the extraction of subsurface resources, minerals, sand or gravel;

(2) the paving of an existing graded but unpaved road, or the construction of a new road;

(3) the construction of a facility, a structure or a building that shall be used for public, governmental or commercial purposes;

(4) the construction or substantial modification of a public water or sewer system;

(5) the construction or substantial modification of a solid waste disposal facility or sanitary landfill.

(d) For the purposes of this section, the term "major activity which substantially affects the Reservation environment" shall not include the following:

- (1) operation, maintenance and limited rehabilitation of existing facilities;
- (2) transfer of existing federal facilities to other entities;
- (3) Tribe administrative actions relating to trust resources, such as management of trust funds or the granting or renewal of agricultural leases;
- (4) the construction of a well for individual use, or for community use if the well shall have a capacity of not more than 1,000 gallons per minute, or of an observation well;
- (5) the construction of a single family residence or the appurtenant facilities therefor;
- (6) the construction of service lines to an individual residence, building or well from an existing facility where installation will involve no clearance of vegetation other than for the placement of poles or lines;
- (7) amendments to rights of way where minor derivations from or additions to an original right of way are involved, or renewals or assignments of rights of way where there would be essentially no change in use and continuation would not lead to environmental degradation;
- (8) land transfers involving no development, physical alteration or change in land use;
- (9) the issuance of a water permit or diversion of water thereunder pursuant to the Tribal water code;
- (10) data gathering activities such as inventories, soil and range surveys, geological, archaeological, paleontological and cadastral surveys, or establishment of non-disturbance environmental quality monitoring programs and field monitoring stations including testing.

29-107

Sovereign Immunity

This ordinance does not constitute a waiver of the immunity of the Standing Rock Sioux Tribe as a sovereign government.

CHAPTER 2.

**STANDING ROCK SIOUX TRIBE
SAFE DRINKING WATER ORDINANCE**

29-201 Declaration of Purposes

The purposes of this ordinance are:

- (a) to promote the general welfare of the Standing Rock Sioux Tribe and its members, by ensuring that the drinking water supplies on the Standing Rock Indian Reservation have no adverse effects on human health and are free of harmful contaminants;
- (b) to protect and enhance the health of the young and the elderly, who are most susceptible to water borne diseases and the adverse health effects caused thereby;
- (c) to provide for the orderly administration and regulation of the suppliers of water on the Standing Rock Indian Reservation; and
- (d) to provide for the exercise of the inherent power of self government by the Standing Rock Sioux Tribe.

29-202 Definitions

For the purpose of this ordinance:

- (a) "Tribe" means the Standing Rock Sioux Tribe.
- (b) "Commission" means the Environmental Quality Commission of the Tribe.
- (c) "Reservation" means the Standing Rock Indian Reservation, comprising all territory within the Reservation boundaries as described in the Act of March 2, 1889 (25 Stat. 888).
- (d) "EPA" means the United States Environmental Protection Agency.
- (e) "mg/l" means milligrams per liter.

(f) "pCi/l" means picocuries per liter.

(g) The definitions of the EPA, that are included and set forth in 40 CFR 141.2 and 40 CFR 142.2, as published on July 1 of each calendar year, are hereby adopted by reference.

29-203 Authority and Duties of Commission

(a) The Commission is authorized and directed to exercise the following duties and functions:

(1) Administer and enforce a tribal safe drinking water program pursuant to this ordinance and 40 CFR 142.10 and 40 CFR 142.16 as published on July 1 of each calendar year:

(2) Maintain an inventory of the Reservation's public water systems, to consist of:

- (a) system name, address and the date established;
- (b) the supplier of water;
- (c) the population served;
- (d) well depth, if applicable;
- (e) a description of the source water, including whether it is surface water, groundwater or groundwater under the influence of surface water;
- (f) records, including costs; and
- (g) quality of water delivered to the free flowing outlet of the ultimate user.

(3) Conduct sanitary surveys and perform ongoing monitoring and analysis of the Reservation's public water system;

(4) Provide technical assistance, upon request, to the suppliers of water on the Reservation;

(5) Consult with the appropriate federal or state agencies for technical assistance, as may be necessary in administering a safe drinking water program;

(6) Enforce maximum contaminant levels pursuant to Section 204 of this ordinance;

(7) Undertake the monitoring and analysis of drinking water that is necessary for the implementation and enforcement of this ordinance;

(8) Require the submission of plans and design specifications for newly constructed or substantially modified existing public water systems, review such plans and specifications, and enforce the design and construction requirements for public water systems that are built or substantially modified after the enactment of this Ordinance, pursuant to Section 210 of this ordinance.

(9) Establish, remain prepared to implement and implement as may be necessary the plan for the provision of drinking water in an emergency, pursuant to Section 211 of this ordinance.

(10) Require each supplier of water to notify the users of such public water system of any violation of:

(i) any requirement of this ordinance;

(ii) the conditions of any variance or exemption granted to a supplier of water by the Commission; or

(iii) any administrative order of the Commission.

(11) Obtain funds or services from a federal or state agency, or any other source, public or private;

(12) Advise, consult, and cooperate with other public agencies, and undertake public education and hearings;

(13) Establish and maintain the necessary contractual arrangements with a laboratory certified by the EPA for analytical tests that shall be undertaken pursuant to this ordinance;

(14) Enter and inspect the property, premises and facilities of public water systems operated on the Reservation, pursuant to Section 206 of this ordinance;

(15) Require each supplier of water on the Reservation to keep the records and make the reports to the Commission as required under Sections 205 and 206 of this ordinance;

(16) Make such reports to the EPA that are required under 40 CFR 142.15 as published on July 1 of each calendar year.

(17) Issue such administrative orders as may be necessary to carry out this ordinance, and provide for their enforcement through all appropriate administrative or judicial processes; and

(18) Initiate actions in the Standing Rock Tribal Court and other courts of competent jurisdiction to enjoin any threatened or continuing violation of this ordinance, or any bylaws or regulations of the Commission issued thereunder.

(b) The Tribal Environmental Specialist shall assist the Commission in performing such duties and functions, and in carrying out this ordinance.

29-204

Maximum Contaminant Levels

All public water systems on the Reservation shall meet the requirements of the National Primary Drinking Water Regulations of the EPA, as set forth in 40 CFR 141.1, 141.4, 141.11 to 141.16, inclusive, 141.61, 141.62, 141.63, 141.100, 141.101, 141.3 and 141.111, as published on July 1 of each calendar year, are hereby adopted by reference.

29-205 Sampling and Monitoring Requirements

(a) Inorganic Chemicals

(1) The suppliers of water for all community water systems utilizing surface water sources shall sample for inorganic chemical contaminants no less frequently than once every year, except for the sampling of nitrate, for which such suppliers of water shall take samples no less than every calendar quarter.

(2) The suppliers of water for all community water systems utilizing ground water sources shall sample for inorganic chemical contaminants no less frequently than once every three years, except for the sampling of nitrate for which such suppliers of water shall take samples no less than once very year.

(3) If the result of an analysis of a sample taken under this section indicates that the level of any inorganic contaminant exceeds the applicable maximum contaminant level, the supplier of water shall report to the Commission within seven days and shall undertake three additional samples at the same sampling point, within the thirty day period immediately following the date of such sample. If the average of the level of the contaminant in the original sample and three additional samples exceeds the maximum contaminant level, the supplier of water shall notify the Commission and the public of such fact. The supplier of water shall provide public notice in accordance with Section 207 of this ordinance. The Commission shall designate the frequency of continued monitoring after receiving such notification as part of the terms of a variance, exemption or other order of the Commission.

(4) Compliance with the maximum contaminant level for nitrate shall be determined on the basis of the mean of two analyses. When a level exceeding the maximum contaminant level for nitrate is found, the supplier of water shall undertake a second analysis within 24 hours and if the mean of the two analyses exceeds the maximum contaminant level, the supplier of water shall report such findings to the Commission and shall notify the public.

(b) Organic Chemicals.

(1) The suppliers of water for community water systems utilizing surface water sources shall sample for organic chemical contamination no less frequently than every three years.

(2) If the result of an analysis of a sample taken under this section indicates that the level of any organic contaminant exceeds the applicable maximum contaminant level, the supplier of water shall report to the Commission within seven days and shall undertake three additional samples at the same sampling point, within the thirty day period immediately following such sample. If the average of the level of the contaminant in the original sample and three additional samples exceeds the maximum contaminant level, the supplier of water shall notify the Commission and the public of such fact. The supplier of water shall provide public notice in accordance with Section 207 of this ordinance. The Commission shall designate the frequency of continued monitoring after receiving such notice and the public notification as part of the terms of a variance, exemption or other order of the Commission.

(c) Total Coliform

(1) Each public water system on the Reservation shall collect total coliform samples at sites which are representative of water throughout the distribution system, according to a written sample siting plan. The plan shall be submitted to the Commission.

(2) The frequency of such samples for community water systems shall be as follows:

(i) For a system serving 15 to 1,000 persons, one sample per month;

(ii) For a system serving 1,001 to 2,500 persons, two samples per month;

(iii) For a system serving 2,501 to 3,300 persons, three samples per month;

- (iv) For a system serving 3,301 to 4,100 persons, four samples per month;
 - (v) For a system serving 4,101 to 4,900 persons, five samples per month;
 - (vi) For a system serving 4,901 to 5,800 persons, six samples per month;
 - (vii) For a system serving 5,801 to 6,700 persons, seven samples per month;
 - (viii) For a system serving 6,701 to 7,600 persons, eight samples per month;
 - (ix) For a system serving 7,601 to 8,500 persons, nine samples per month;
 - (x) For a system serving 8,501 to 9,400 persons, ten samples per month; and
 - (xi) For a system serving 9,401 to 10,300 persons, eleven samples per month.
- (3) If a community water system serving 25 to 1,000 persons has no history of total coliform contamination in its current configuration, and a sanitary survey conducted in the past five years shows that the system is supplied solely by a protected groundwater source and is free of sanitary defects, such system may reduce the monitoring frequency to one sample per calendar quarter.
- (4) The monitoring frequency for total coliforms for non-community water systems is as follows:
- (i) A non-community water system using only ground water (except ground water under the direct influence of surface water) and serving 1,000 persons or fewer must monitor each calendar quarter. If a sanitary survey shows that the system is free of sanitary defects, such system may reduce the monitoring frequency to one sample per year.

(ii) A non-community water system using only ground water (except ground water under the direct influence of surface water) and serving more than 1,000 persons during any month must monitor at the same frequency as a like-sized community water system. The system may reduce the monitoring frequency for any month the system serves 1,000 persons or fewer, except in no event shall such system monitor less than one sample per year.

(iii) A non-community water system using surface water, in total or in part, must monitor at the same frequency as a like-sized community.

(iv) A non-community water system using ground water under the influence of surface water must monitor at the same frequency as a like-sized community.

(5) A public water system that uses surface water or ground water under the direct influence of surface water, and does not practice filtration in compliance with Section 213 of this Ordinance must collect at least one sample near the first service connection each day the turbidity level of the source water exceeds 1 NTU. This sample must be analyzed for the presence of total coliforms. When one or more turbidity measurements in any day exceed 1 NTU, the system must collect this coliform sample within 24 hours of the first exceedance, unless the system, for logistical reasons outside the system's control, cannot have the sample analyzed within 30 hours of collection; in which case the repeat sample must be taken as soon as possible.

(6) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine compliance with the maximum contaminant level for total coliforms. Repeat samples taken pursuant to subsection (7) of this section are not considered special purpose samples, and must be used to determine compliance with the maximum contaminant level for total coliforms.

(7) Repeat monitoring.

(i) If a routine sample is total coliform-positive, the public water system must collect a set of repeat samples within 24 hours of being notified of the positive result. A system which collects more than one routine sample/month must collect no fewer than three repeat samples for each total coliform-positive sample found. A system which collects one routine sample/month or less must collect no fewer than four repeat samples for each total coliform-positive sample found. The Commission may extend the 24-hour limit on a case-by-case basis if the system has a logistical problem in collecting the repeat samples within 24 hours, that is beyond its control. In the case of an extension, the Commission must specify how much time the system has to collect the repeat samples.

(ii) The system must collect at least one repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If a total coliform-positive sample is at the end of the distribution system, or one away from the end of the distribution system, the Commission may waive the requirement to collect at least one repeat sample upstream or downstream of the original sampling site.

(iii) The system must collect all repeat samples on the same day, except that a system with a single service connection may collect the required set of repeat samples over a four-day period or to collect a larger volume repeat sample(s) in one or more sample containers of any size, as long as the total volume collected is at least 400 ml (300 ml for systems which collect more than one routine sample/month).

(iv) If one or more repeat samples in the set is total coliform-positive, the public water system must collect an additional set of repeat samples in the manner specified in this section. The additional samples must be collected

within 24 hours of being notified of the positive result, unless it is a system with a single service connection, which may collect repeat samples as provided in subsection (c)(7)(iii) of this section. The system must repeat this process until either total coliforms are not detected in one complete set of repeat samples, or the Commission determines that the maximum contaminant level for total coliforms has been exceeded

(v) If a system collecting fewer than five routine samples per month has one or more total coliform-positive samples, it must collect at least five routine samples the next month, unless the Commission:

(A) Performs a sanitary survey of such system, which results in satisfactory findings, or

(B) The Commission determines that the system is in compliance with the maximum contaminant level for total coliforms.

(vi) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample(s) from within five adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent sample(s) as a repeat sample instead of as a routine sample.

(vii) A laboratory performing analysis of the samples taken under this section must perform such analysis in accordance with the requirements of the EPA, contained in 40 CFR 141.21 as published on July 1 of each calendar year.

(viii) Public water systems which do not collect five or more routine samples/month must undergo an initial sanitary survey by June 29, 1994, for community public water systems and June 29, 1999, for non-community water systems. Thereafter, systems must undergo another sanitary survey every five years, except that non-community water systems using only protected and

disinfected ground water must undergo subsequent sanitary surveys at least every ten years after the initial sanitary survey. The Commission must review the results of each sanitary survey to determine whether the existing monitoring frequency is adequate and what additional measures, if any, the system needs to undertake to improve drinking water quality.

(ix) If any routine or repeat sample is total coliform-positive, the system must analyze that total coliform-positive culture medium to determine if fecal coliforms are present, except that the system may test for *E. coli* in lieu of fecal coliforms. If fecal coliforms or *E. coli* are present, the system must notify the Commission by the end of the day when the system is notified of the test result, unless the system is notified of the result after the Commission office is closed, in which case the system must notify the Commission before the end of the next business day. The Commission may allow a public water system to forego fecal coliform or *E. coli* testing on a total coliform-positive sample if there is an assumption that the sample is fecal coliform-positive or *E. Coli*-positive, in which case the system shall comply with subsection (b) of this section.

(d) Radionuclides

(1) The suppliers of water for all community water systems shall sample and monitor alpha particle activity, radium 226 and radium 228. Such sampling and monitoring shall include quarterly samples through a one year period. If no such sampling and monitoring has taken place as of the date of passage of this ordinance, the initial sampling shall commence within one year. The suppliers of water shall undertake continuing sampling and monitoring for radionuclides no less frequently than every four years.

(2) A gross alpha particle activity measurement may be substituted for the radium 226 and radium 228 analysis required under this section, provided that the measured gross alpha particle activity does not exceed 5 pCi/l. Monitoring for compliance after the initial period need not include analyses of radium 228, provided that the annual concentration of radium

228 has been analyzed using four quarterly samples, and the maximum contaminant level has not been exceeded.

(3) When the gross alpha particle activity exceeds 5 pCi/l, the supplier of water shall analyze the same or an equivalent sample for radium 226. If the concentration of radium 226 exceeds 3 pCi/l, the supplier of water shall analyze the same or an equivalent sample for radium 228.

(4) Suppliers of water shall conduct annual monitoring of any community water system in which the radium 226 concentration exceeds three pCi/l.

(5) If the average annual maximum contaminant level for gross alpha particle activity exceeds the applicable maximum contaminant level, the supplier of water shall report to the Commission within 48 hours and shall notify the public of such fact. The supplier of water shall provide public notice in accordance with Section 208 of this ordinance. The Commission shall designate the frequency of continued monitoring after receiving such notice and the public notification, as part of the terms of a variance, exemption or other order of the Commission.

(e) When a public water system supplies water to more than one community through the interconnection of public water systems, the Commission may modify the monitoring requirements imposed to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes.

(f) Notwithstanding the provisions of this section, each public water system on the Reservation shall sample and monitor water in compliance with the requirements of 40 CFR 141.21 to 141.30, as published on July 1 of each calendar year.

29-206

Reporting and On-Site Inspection

(a) (1) Except where a shorter reporting period is specified in Section 205 of this ordinance, a supplier of water on the Reservation shall report to the Commission the results of a test.

measurement or analysis thereof within 72 hours of receiving such results.

(2) The suppliers of water shall report to the Commission on the failure to undertake a sampling or measurement as required under Section 205 of this ordinance within 72 hours of the time required for such sampling or measurement.

(3) The suppliers of water shall report to the Commission on construction, substantial modification or rehabilitation, or extraordinary maintenance activities, including engineering design and specifications.

(b) The Environmental Specialist and any duly authorized officer, employee or agent of the Commission may enter and inspect any property, premises, or facility at which a public water system is located, at any reasonable time, for the purpose of ascertaining the state of compliance with this ordinance.

29-207

Public Notification

(a) A supplier of water shall notify persons served by the public water system if it:

- (1) fails to comply with a maximum contaminant level;
- (2) is granted a variance or an exemption from a maximum contaminant level; or
- (3) fails to comply with the requirements of any schedule required under this ordinance or prescribed by the Commission.

(b) Public notification shall be made by inclusion of a notice in the first set of water bills of the system issued after the failure or grant, and in any event by written notice within three months. Such notice shall be repeated at least once every three months so long as the system's failure continues or the variance or exemption remains in effect. If the system issues water bills less frequently than quarterly, or does not issue water bills, the notice shall be made by or supplemented by another form of direct mail.

(c) If a community water system has failed to comply with maximum contaminant level, the supplier of water shall notify the public of such failure as follows:

(1) By publication in a newspaper of general circulation in the community, not less than two consecutive issues of such publication;

(2) By furnishing a copy of the notice to radio or television stations whose transmission covers the area served by the system; and

(3) By posting the notice conspicuously in post offices within the area served by the system.

(d) The supplier of water for a non-community water system shall notify the persons served by the system by posting notice conspicuously in places where such persons may reasonably be expected to see and read the notice.

(e) The notice required under this section shall be written in a manner reasonably designed to fully inform the users of the system. The notice shall not use unduly technical language or unduly small print. The notice shall not be misleading. It shall disclose all material facts, including a description of the nature of the problem, and, when appropriate, a clear statement that a drinking water requirement under this ordinance and the primary drinking water regulations of the EPA have been violated, and any preventive measures that should be taken by the public. Notices should include a balanced explanation of the significance or seriousness to public health of the violation, an explanation of steps taken by the system to correct any problem, and the results of any additional monitoring, if applicable.

(f) Notwithstanding the provisions of this section, each public water system on the Reservation shall make such reports as are required under 40 CFR 141.31, 141.32, 141.34 and 141.35, as published on July 1 of each calendar year.

29-208 Recordkeeping By Suppliers of Water

The owner or operator of a public water system on the Reservation shall retain the following records:

- (a) Bacteriological and Chemical Analysis Records of bacteriological analysis shall be kept for not less than five years. Records of chemical analysis shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:
- (1) The date, place, and time of sampling and the name of the person who collected the sample;
 - (2) Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or other special purpose sample;
 - (3) Date of analysis;
 - (4) Laboratory and person responsible for performing analysis;
 - (5) The analytical technique/method used; and
 - (6) The results of the analysis.
- (b) Corrective Action Records of action taken by the system to correct violations of Section 205 of this ordinance shall be kept for period of not less than three years after the last action taken with respect to the particular violation involved.
- (c) Reports Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any Tribal, state or federal Agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.
- (d) Variances and Exemptions Records concerning a variance or exemption granted to the system shall be kept for a period ending no less than five years following the expiration of such variance or exemption.

(e) Notwithstanding the provisions of this section, each public water system on the Reservation shall keep such records as are required in 40 CFR 141.33, as published on July 1 of each calendar year.

29-209 Recordkeeping by the Commission

(a) The Commission shall maintain records of tests, measurements, analyses, decisions and determinations performed on each public water system.

(b) (1) Records of microbiological analyses shall be retained for not less than one year. Actual laboratory reports may be kept or data may be transferred to tabular summaries, provided that the information retained includes:

(i) The analytical method used;

(ii) The number of samples analyzed each month;

(iii) The analytical results, set forth in a form which makes possible comparison with the limits specified in Section 204 of this ordinance.

(2) Records of microbiological analyses of repeat or special samples shall be retained for not less than one year in the form of actual laboratory reports or in an appropriate summary form.

(3) Records of turbidity measurements shall be kept for not less than one year. Such records shall include:

(i) The date and place of sampling; and

(ii) The date and results of analyses.

(c) (1) Records of disinfectant residual measurements and other parameters necessary to document disinfectant effectiveness shall be kept for not less than one year.

(2) Records of orders of the Commission concerning filtration treatment or the sampling of disinfectant residual concentration that are made on a system-by-system basis, shall be kept for 40 years.

(d) The Commission shall retain, for not less than 10 years, files for each public water system on the Reservation which contain:

(1) Reports of sanitary surveys;

(2) Records of any formal Commission approvals or denials;

(3) Records of any enforcement actions;

(4) A record of the most recent vulnerability determination, including the monitoring results and other data supporting the determination, which shall be retained indefinitely until a subsequent vulnerability determination takes place;

(5) A record of all current monitoring requirements and the most recent monitoring frequency decision pertaining to each contaminant, including the monitoring results and other data supporting the decision, the Commission's findings based on the supporting data and any additional bases for such decision; except that the record shall be kept in perpetuity or until a more recent monitoring frequency decision has been issued;

(6) A record of the most recent asbestos repeat monitoring determination, including the monitoring results and other data supporting the determination;

(7) Records of annual certifications received from systems demonstrating the system's compliance with the treatment techniques for acrylamide and epichlorohydrin;

(8) Records of the applicable information, including the technical basis for the approval of the efforts by each supplier of water, for the control of lead and copper;

(e) The Commission shall retain records pertaining to each variance and exemption granted by it for a period of not less than 5 years following the expiration of such variance or exemption.

(f) The Commission shall collect and retain such other records as are required under 40 CFR 142.14, as published on July 1 of each calendar year.

(f) The Commission shall maintain and make available for public inspection the records maintained under this section.

29-210

Design and Engineering Plans and Specifications

(a) Submission of Plans and Specifications Plans and specifications shall be prepared for all new public water supply systems and for alterations or extensions to existing systems. Such plans and specifications, together with other pertinent information, shall be submitted to the Commission for review and comment. The Commission shall review such plans and specifications with the assistance of a professional engineer.

(b) Siting of New Public Water System All new, alternated, or expanded public water supply systems including wells, treatment, and storage facilities necessary for the continuous operation of the water system shall be located so as to:

- (1) Minimize potential breakdown as a result of floods, fires, or other disasters;
- (2) Prevent contamination of the water supply by existing sources of pollution; and
- (3) Provide sufficient property for water supply facilities to allow proper operations, maintenance, replacement, and storage of system components.

(c) Surface Water and Ground Water Under the Influence of Surface Water The following features for reliability or alternatives must be included in the design and construction of any plant that treats surface water or ground water under the direct influence of surface water:

- (1) Alarm devices to indicate failures in the coagulation, filtration, and disinfection processes. The alarm must notify

the person designated by the public water system as responsible for taking corrective action or, if the facility is unmanned, have the capability to shut down until corrective action can be taken;

(2) Standby replacement equipment to ensure continuous operation and control of unit processes for coagulation, filtration and disinfection;

(3) Multiple filter units to provide redundant capacity if filters are out of service for backwash or maintenance.

(d) Sewage Near Wells or Springs No floor drain, soil pipe, main drain or other pipe which is directly connected to a storm or sanitary sewer, or through which water or sewage from any such source may back up, may be nearer than 20 feet to any well, spring or other source of water supply. All pipes and drains or parts thereof through which sewage or waste water flows, or into which sewage or waste water may back up, which are located within 50 feet of any such water supply, must be constructed of extra heavy cast-iron soil pipe or cast-iron water pipe with leaded joints, or be of equivalent construction.

(e) Leaks from Toilets or Sewers: Pits Near Supply (1) No toilet, sewer, soil pipe or drain may be located over or where leakage therefrom can reach any water storage basin, reservoir, source of water supply or pump room.

(2) There must be no pits or unfilled space below the ground surface if any part of such opening is within 10 feet of the water supply, except well, pump or valve pits.

(f) Wall Casing or Lining All the part of the suction pipe or drop pipe of any well within at least 10 feet, and preferably 20 feet below the ground surface, must be surrounded by a watertight casing pipe extending above the ground, platform or floor surface as the case may be, and covered at the top. In certain types of wells, and frequently in reconstructing old wells, this watertight casing may be of a smaller diameter than an existing or newly installed lower casing and not connected thereto. In such instances the lower casing must be cut off at least 10 feet below the ground surface and the annular space at this cut-off point, between the lower and upper casings, must be closed with a suitable watertight cover over which a

compact earth fill must be placed to prevent settling at the ground surface. A dug well, in lieu of such casing pipe, may have a substantial watertight lining of concrete or vitrified tile, with an outer concrete lining 6 inches thick, or other suitable sleeve pipe surrounding the suction pipe or drop pipe and projecting above like a casing pipe. With the approval of the Commission, the impervious lining of dug wells, in particular instances, may be of lesser depth.

(g) Cover or Floor Every well, spring or structure used as a source of water, or for the storage of water, must, when practical, have a watertight cover. Such covers and pump room floors must be constructed of concrete or similarly impervious material to provide proper drainage from the cover or floor and prevent contamination of the water supply. Such cover or floor must be constructed so that there are no copings, parapets or other features which may prevent proper drainage or by which water can be held on the cover. Well casings must project at least six inches above ground level or the top of this cover or floor, and the cover or floor must slope away from the well casing or suction pipe in all directions. Dug well linings must extend at least six inches above the ground surface and have a cover. The cover must be watertight, properly grouted in place, and its edges must overlap at least two inches over the walls or curbs of such wells.

(h) Head and Base of Hand Pump Every hand-operated pump must have the pump head closed by a stuffing box or other suitable device to exclude contamination from the water chamber. The pump base must be a solid, one-piece recessed type of sufficient diameter and depth to admit the well casing. The top of the casing or sleeve of every well equipped with such a pump must project into the base of the pump at least 1 inch above the bottom and extend at least 6 inches above the level of the platform, well cover or pump room floor on which the pump rests. The pump must be fastened to the casing or sleeve by means of a flange connection and must not be attached to the platform. The annular space between well casing and suction pipe must be closed to prevent contamination. Where frost heaving occurs, or where a buried concrete slab is used, the opening between the well casing and the concrete well-cover slab must be encased in suitable plastic and impervious material not less than one-half inch thick. A high-grade roofing cement or similar material which remains plastic at low temperatures, and is readily applied by troweling, is a suitable material.

(i) Base of Power Pump Where power pumps are placed directly over the well, the pump must have a solid, watertight, metal base without openings, to form a cover for the well, recessed to admit the well casing, and the well casing must project into the base at least one inch above the bottom and at least one inch above the level of the foundation on which the pump rests. Where power pumps are not placed directly over the well, the well casing must extend at least six inches above the floor of the pump house. The annular space between well casing and suction pipe must be closed to prevent entrance of contamination if the base or cover has an air vent constructed according to subsection 1 of this section.

(j) Lubrication of Pump Bearings Pump bearings below the pump-room floor must be lubricated either with well water or water from some other approved source or lubricated in another manner approved by the Commission.

(k) Well, Pump, Valve and Pipe Pits

(1) No wellhead, well casing, pump, pumping machinery, valve connected with the suction pump or exposed suction pipe may be located in any pit, room or space extending below ground level, or in any room or space above the ground which is walled in or otherwise enclosed so that it does not have free drainage by gravity to the surface of the ground. This section does not apply to a dug well properly constructed nor to private supplies serving an individual dwelling.

(2) The requirements of this subsection shall be enforced only for water supply structures which are installed after enactment of this ordinance. Existing pits shall be accepted if otherwise constructed in accordance with the applicable engineering standards for such structures and facilities.

(3) Every well must have a means of measuring the well water level. An air-pressure line and gauge is preferable, but a 1-inch diameter welded or threaded opening with a threaded cap or plug placed in the casing or pump base is permissible. Unprotected openings in the casing or pump base are not permitted.

(l) Vent Openings Openings or vents must be constructed to prevent the entrance of birds, insects and contaminating materials.

must face downward and be not less than two feet above the floor of a pump room, the roof or cover of a reservoir, the ground surface or the surface of other water supply structures.

(m) Distribution and Storage: Water Distribution Lines

(1) The distribution system must be designed and constructed to prevent leakage of water due to defective materials, improper jointing, corrosion, settling, impacts, freezing or other causes. Adequate valves and blow-off must be provided so that necessary repairs can be made with a minimum interruption of service.

(2) Newly laid pipe lines, before covering, must, if possible, be tested under a hydrostatic pressure 50 percent in excess of the normal operating pressure after expelling all air from the pipe. The duration of each pressure test must be at least 30 minutes. All exposed pipes, fittings, valves, hydrants and joints must be carefully examined during the open trench test. All joints made with lead showing visible leakage must be recaulked until tight. Where the joints are made with sulfur compound or with cement and show seepage or slight leakage only the defective joints must be cut out and replaced. Any cracked or defective pipes, fittings, valves or hydrants discovered from this pressure test must be removed and replaced with sound material, and the test must be repeated until the pipe installation is satisfactory. Suitable means must be provided to determine the quantity of water lost by leakage under normal operating pressure. No pipe installation is acceptable until this leakage (evaluated on a pressure basis of 150 pounds per square inch) is less than 100 gallons per 24 hours per mile of pipe per inch nominal diameter for pipe in 12-foot lengths, 75 gallons for 16-foot lengths, and correspondingly varied for other lengths of pipe. In calculating leakage, allowance must be made for added joints in the pipe line above those incidental to normal unit lengths of pipe.

(3) The piping system must be designed and installed to maintain water at a positive pressure in all parts under normal use at all times.

(4) The system must be designed to circulate water effectively with a minimum of dead ends. All dead ends of

sizes larger than one and one-half inches in diameter must be equipped with blowoffs.

(5) Jointing materials must be free from oil, greasy substances or tar and must be disinfected and kept free from contamination and applied dry. They must not foster the growth of coliform bacteria.

(6) Water distribution and sewage collection lines must be laid in separate trenches at least 10 feet apart. In well-drained dry ground where sewage flow is by gravity at greater than two feet per second, water lines may be in the same trench on undisturbed earth six feet horizontally and three feet vertically above the sewer line, or as approved in writing by the Commission. Water lines must be placed below the frost line. Water and sewer line connections to an individual building, home or trailer may be in the same trench in well-drained dry ground if:

(i) The water line is installed on undisturbed earth 12 inches vertically above and 36 inches horizontally from the sewer line; and

(ii) The sewer line is constructed of the following kinds of pipe:

(A) Extra-heavy cast-iron soil pipe with hot-poured lead joints;

(B) Vitrified-clay or concrete pipe with hot-poured joints;

(C) Precast joints, approved rubber rings or other patented and approved watertight joints; or

(D) Asbestos-cement pipe with sleeve couplings of the same composition as the pipe and sealed with rubber rings.

(7) The sewer line shall be tested after installation with not less than a 10-foot head of water or by means of an equivalent test.

(8) If it necessary to lay water supply lines across streams, an overhead crossing must be made if this is feasible. If overhead crossings are not practical, special precautions must be observed to prevent the entrance of surface water into the water supply line, and to prevent damage to the line by currents, ice and floating objects. Laying the line at least five feet below the bottom of the body of water, use of flexible watertight joints, and cradling the pipe in concrete shall be considered for this installation. If the crossing is vital part of the water supply system, the construction of underwater crossings in duplicate must be considered to assure continuity of service.

(9) Water pipes must not be laid in water or where they can be flooded with water or sewage when laid. If water pipes must be laid below the water table or in wet ground, additional protection must be provided for the joints to ensure watertightness. New water mains must be flushed thoroughly through hydrants or other approved means to remove all dirt and foreign matter, and must be disinfected. New mains must not be put into service until satisfactory bacteriological results are obtained from testing.

(n) Storage of Water All reservoirs, cisterns and storage tanks must be watertight and made of concrete, steel or wood. If such reservoirs or storage tanks are buried in the ground or located underground, wood may not be used. All storage units must be properly covered to avoid contamination and be located or protected so that there will be no danger of contamination by surface drainage or flooding.

(o) Construction or Modification of Filtration or Disinfection Facilities

(1) A supplier of water proposing to construct a new facility for filtration and disinfection; or make additions to or modify significantly an existing facility for treatment, must submit an engineering report to the Commission. The report must describe how the facility will be designed to ensure that it complies with this section.

(2) A new facility for filtration and disinfection must:

- (i) Be designed to attain an average daily effluent turbidity goal of 0.2 NTU when using conventional, direct, and diatomaceous earth filtration plants;
- (ii) Be free of structural and sanitary hazards;
- (iii) Provide for protection against contamination by backflow;
- (iv) Provide equipment for measuring and recording flow;
- (v) Be designed to mitigate the effects of events such as earthquakes, fires, floods, freezing and sabotage that are reasonably foreseeable;
- (vi) Provide reasonable access for inspection, maintenance, and monitoring of all unit processes;
- (vii) Provide for filter-to-waste for each filter unit or addition of coagulant chemicals or organic polymers to the water used for backwashing;
- (ix) Provide backwash rates and facilities for surface or subsurface wash using air, water or a combination of these to clean the filter;
- (x) Provide treatment for the removal of solids from filter backwash water if the water is recycled into the treatment process. Recycled backwash water must be returned to the headworks of the treatment plant;
- (xi) Make provision for facilities for pretreatment in the design of direct filtration, slow sand filtration, or diatomaceous earth filtration plants;
- (xii) Provide equipment for disinfection that is of proper size for the full range of expected conditions of flow and capable of feeding accurately at all rates of flow; and
- (xiii) Provide for operations of the treatment plant without frequent shutdowns and startups.

(3) For the purpose of this section, "filter-to-waste" means a provision in the filtration process to allow the water that was filtered first to be wasted or reclaimed.

29-211

**Provision of Drinking Water
In An Emergency**

The Commission shall develop and implement a plan for the provision of drinking water in an emergency for every community on the Reservation, as follows:

- (a) The Commission, through the Environmental Specialist, shall be responsible for the provision of drinking water in an emergency. The Commission shall maintain and keep current an inventory of the Tribal, federal, local and state emergency management personnel, and the suppliers of water on the Reservation, and their telephone numbers. The Commission shall coordinate the efforts of the Tribal, federal, local or state emergency management personnel, and the appropriate suppliers of water, for the provision of drinking water an emergency.
- (b) The Commission shall maintain and keep current an assessment of the amount of drinking water consumed by each community water system, per day. Upon receiving reliable information that a supplier of water is unable to operate the public water system because of an emergency, the Environmental Specialist shall:
 - (1) estimate the number of days in which such public water system shall be inoperative;
 - (2) calculate the amount of drinking water that must be provided to the community served;
 - (3) determine the most feasible alternate source of drinking water for such community;
 - (4) provide for the transportation and distribution of drinking water to such community;

(5) provide instructions to the suppliers of water, to the extent they are continuing supplying water, on the release of water to meet essential needs;

(6) authorize essential facilities in the community to certify arrangements for water needed to maintain their operations. The Environmental Specialist shall give first priority to water being used for drinking and cooking purposes, hospitals, medical clinics, communications facilities and essential government services. If supplies permit, a second priority shall be given to fire protection, livestock and sanitation water; and

(7) in the event of limited water supplies, to enforce curtailment of non-essential uses of water such as air conditioning, cooling and humidifying, sprinkling and irrigation, swimming pools, commercial laundries and home washing machines, theaters and places of amusement, and non-essential manufacturing and services.

(c) Water that is transported in tank trucks should be batch chlorinated at the filling point. The tank should be thoroughly cleaned and disinfected before being placed into service. After disinfection each tank of water hauled should be dosed with chlorine at the rate of 1-2 mg/l.

(d) Each supplier of water shall immediately notify the Environmental Specialist upon determining the existence of an emergency condition which threatens its ability to supply drinking water.

(e) Each supplier of water shall immediately notify the public whenever contamination of a public water system is suspected. The supplier of water shall caution the public about drinking water from the system and about any suspected contamination of the source water. The supplier of water shall provide public notice in accordance with subsection (c) of Section 207 of this ordinance.

(f) Whenever possible, the public shall be excluded from drinking contaminated water until it is adequately purified or has otherwise been returned to acceptable standards. The public notice required under subsection (e) of this section shall include a statement informing the public of the proper manner of disinfecting water for

drinking, to read substantially as follows: " Drinking water may be disinfected by vigorously boiling the water for at least one full minute or by adding two drops of five and one quarter percent sodium hypochloride solution (common household bleach) to each quart of clear water, stirring and allowing it to stand for 30 minutes prior to drinking."

(g) In the event of a suspected contamination of the water supplied by a public water system, the supplier of water shall immediately sample such system and provide for a determination of the bacteriological quality of the drinking water. The results of such sampling shall be provided to the Commission immediately upon analysis.

(h) In the event of the contamination of source water, a water conduit or water storage reservoir, the supplier of water shall immediately isolate the contaminated source or facility and chlorinate the same. Prior to resuming service, all affected facilities and pipelines shall be flushed and chlorinated to 0.1 mg/l of free chlorination in the distribution system.

29-212 Control of Lead and Copper

(a) Lead and Copper Action Levels

(1) The lead action level is exceeded if the concentration of lead in more than 10 percent of tap water samples collected pursuant to this section is greater than 0.015 mg/l.

(2) The copper action level is exceeded if the concentration of copper in more than 10 percent of tap water samples collected pursuant to this section is greater than 1.3 mg/l.

(b) Corrosion Control Treatment Requirements Each public water system on the Reservation shall undertake corrosion control treatment to enable the system to meet the lead and copper levels defined in subsection (a) of this section. The Commission may exempt a public water system from corrosion control requirements if it meets the lead and copper action levels during each of two consecutive six month monitoring periods conducted pursuant to subsection (f) of this section. The Commission shall impose such

corrosion control treatment it deems necessary, after consultation with the owner and operator of a public water system, if such system fails to meet the action level for lead or copper. Such corrosion control treatment shall be instituted no later than six months after a public water system exceeds the action level for lead or copper. The Commission may consider the actual levels of lead and copper in the tap water and the financial resources available to the supplier of water for corrosion control treatment, in approving or otherwise determining the required corrosion control treatment for a public water system.

(c) Source Water Treatment Requirements

(1) A public water system on the Reservation exceeding the lead or copper action level shall undertake lead and copper source water monitoring and make a treatment recommendation to the Commission within six months after exceeding the lead or copper action level. Upon receiving such recommendation, the Commission shall evaluate the results of all source water samples for lead and copper, and shall impose such source water treatment it deems necessary, after consultation with the owner and operator of the system.

(2) A public water system shall properly install and operate the source water treatment imposed by the Commission, under this section. The Commission shall review the source water samples taken by the public water system both before and after the system installs source water treatment facilities, and determine whether the system has properly installed the water treatment facilities and equipment. Based upon its review and in consultation with the owner and operator of the system, the Commission shall designate the maximum permissible lead and copper concentrations for finished water entering the distribution system. The Commission shall notify the system in writing and explain the basis of its decision. The Commission may modify its determination where it concludes that such change is necessary to ensure that the system continues to minimize lead and copper concentration in source water, or upon the request of the public water system. The Commission may consider the financial resources available to the system in determining or modifying the maximum permissible lead and copper concentrations.

(d) Lead Service Line Replacement Requirements

(1) Systems that fail to meet the lead action level in tap samples taken after installing corrosion control or source water treatment shall replace lead service lines, in accordance with this subsection. Such systems shall replace annually at least seven percent of the number of lead service lines in place at the time the replacement program begins. The replacement program shall begin on the date the action level was exceeded in tap samples taken after installing corrosion control or source water treatment.

(2) The Commission shall presume that the public water system controls the entire lead service line up to the building inlet. A system may rebut this presumption, upon evidence satisfactory to the Commission. A system shall replace the entire service line, up to the building inlet, unless the Commission finds that the system has rebutted the presumption of ownership and control.

(e) Public Education and Supplemental Monitoring Requirements

(1) A public water system that exceeds the lead action level based on tap water samples taken after installing corrosion control or source water treatment shall deliver the public education materials contained in 40 CFR 141.85, as provided therein.

(2) A public water system that fails to meet the lead action level on the basis of tap samples taken after installing corrosion control or source water treatment shall offer to sample the tap water of any customer who requests it. The system is not required to pay for collecting or analyzing the sample, nor is the system required to collect and analyze the sample itself.

(f) Monitoring Requirements for Lead and Copper in Tap Water

(1) Any public water system on the Reservation which contains lead service lines shall draw 50 percent of the samples required under this section from sites that contain lead pipes, or copper pipes with lead solder, and 50 percent of the samples from sites served by a lead service line. All tap samples for

lead and copper shall be first draw samples. The samples shall be one liter in volume, and have stood motionless in the plumbing system for at least six hours. All service line samples shall be one liter in volume, and have stood motionless in the lead service line for at least six hours. Lead service line samples shall be collected in one of three ways:

(i) At the tap, after flushing the volume of water between the tap and the lead service line. The volume of water shall be calculated based on the interior diameter and length of the pipe between the tap and the lead service line;

(ii) Taping directly into the lead service line;

(iii) At a single family residence, allowing the water to run until there is a significance change of temperature which would be indicative of water that has been standing in the lead service line.

(2) Each public water system on the Reservation shall collect at least one sample during every six month period commencing from the effective date of this ordinance, as follows:

(i) For a system serving 100 or fewer persons, at 5 sites;

(ii) For a system serving 101 to 500 persons, at 5 sites;

(iii) For a system serving 501 to 3,300 persons, at 10 sites;

(iv) For a system serving 3,301 to 10,000 persons, at 20 sites; and

(v) For a system serving over 10,000 persons, at 30 sites.

(3) A public water system that meets the lead and copper action levels for two consecutive six month monitoring periods may reduce its sampling for lead and copper, to one year monitoring periods, and for those systems serving more than 500 persons at one half the number of sites. A public water

system that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring from annually to once every three years. Systems sampling annually or less frequently shall conduct the lead and copper sampling during the months of June, July, August or September. A system undertaking reduced monitoring under this section that exceeds the lead or copper action level shall resume sampling in accordance with subsection (f)(1) of this section.

(g) Monitoring Requirements for Lead and Copper in Source Water

(1) A public water system that fails to meet the lead or copper action level on the basis of tap samples conducted pursuant to subsection (f) of this section, shall collect lead and copper source water samples in accordance with the requirements regarding sample location, number of samples and collection methods specified in subsection (a) of Section 205 of this ordinance. Any system which exceeds the lead or copper action level at the tap shall collect one source water sample from each entry point to the distribution system within six months after the exceedance.

(h) Water Quality Parameters for Systems that Exceed Action Levels A public water system which fails to meet the lead or copper action levels shall monitor water quality parameters in accordance with 40 CFR 141.87, as published on July 1 of each calendar year.

(i) Notwithstanding the provisions of this section, each public water system on the Reservation shall comply with the requirements contained in 40 CFR 141.80 to 141.91, as published on July 1 of each calendar year.

All public water systems on the Reservation which are supplied by a surface water source, or a ground water source under the influence of surface water, shall comply with the following:

(a) General Requirements for Treatment The public water system shall treat the water in accordance with the requirements of this section. Such treatment must ensure:

- (1) At least 99.9 percent or 3-log removal or inactivation of pathogenic cysts such as *Giardia lamblia*; and
- (2) At least 99.9 percent or 4-log removal or inactivation of enteric viruses.

A public water system that meets the requirements contained in subsection (c) of this section and Section 214 of this ordinance shall be deemed to be in compliance with this subsection.

(b) Filtration: Acceptable Methods of Treatment The public water system shall treat water using the following:

- (1) Conventional filtration;
- (2) Direct filtration;
- (3) Diatomaceous earth filtration; or
- (4) Slow sand filtration.

(c) Required Standards of Performance for Filtration

(1) Except as otherwise provided in this subsection, the level of turbidity of representative samples of filtered water must be less than or equal to 0.5 NTU in at least 95 percent of the measurements taken each month for a public water system using conventional filtration, direct filtration or diatomaceous earth filtration. The Commission may allow a higher level of turbidity, if the system demonstrates compliance with subsection (a) of this section at the higher level of turbidity. The level of turbidity must not exceed five NTU.

(2) Except as otherwise provided in this subsection, the level of turbidity of representative samples of filtered water must be less than or equal to one NTU in at least 95 percent of the samples taken each month for a public water system using slow sand filtration. The Commission may allow a system to operate at a higher level of effluent turbidity, if the system

demonstrates compliance with subsection (a) of this section. The level of turbidity must not exceed five NTU.

(d) Standards for Operation The public water system shall operate a facility for filtration in accordance with the following requirements:

(1) A plant for conventional and direct filtration must be operated at a rate of flow not to exceed three gallons per minute per square foot for single media filters and six gallons per minute per square foot for dual or mixed media filters. For pressure filters, the rates of filtration must not exceed two gallons per minute per square foot for single media filters and three gallons per minute per square foot for dual, mixed media or deep bed filters.

(2) A slow sand filter must be operated at a rate of filtration of not to exceed 0.1 gallons per minute per square foot. The filter bed must not be dewatered except for cleaning and maintenance. A diatomaceous earth filter must be operated at a rate not to exceed one gallon per minute per square foot.

(3) During normal operating conditions, any filter removed from service must be backwashed upon start-up. Rates of filtration must be increased gradually when placing filters back into service after backwashing or any other interruption in the operation of the filter.

(4) In a plant using conventional or direct filtration, the turbidity of filtered water from any individual filter after backwashing or any other interruption must be less than 0.5 NTU after four hours of the initial operation of the filter, and the individual turbidity of the filter effluent must be less than or equal to one NTU. Coagulation and flocculation unit processes shall be used with conventional or direct filtration.

(5) A pressure filter must be inspected physically and evaluated annually for media condition, accumulation of mud and short circuiting. The supplier of water shall maintain a written record of such evaluations at the treatment plant.

(6) The level of turbidity of filtered water from each filter shall be monitored with a continuous turbidity meter and

recorder, or with a sampling program approved by the Commission.

(e) Criteria for Avoiding Filtration The Commission may allow a public water system to operate without a system for filtration, if the system:

- (1) Demonstrates compliance with subsection (a) of this section;
- (2) Demonstrates compliance with Section 215 of this ordinance;
- (3) Provides for the automatic shut-off of delivery of water to the distribution system if there is less than 0.2 mg/l of residual disinfectant in the water;
- (4) Demonstrates water quality that does not exceed 5 NTU, as measured at a point before the application of the disinfectant;
- (5) Demonstrates, for the last six months of operation, a bacteriological quality of water that does not exceed 100 colonies per 100 milligrams total coliform concentration or 20 colonies per 100 milligrams concentration of fecal coliform in at least 90 percent of the representative samples taken.
- (6) Demonstrates a willingness to participate in watershed management activities of the Commission, in the watershed in which the system is located;
- (7) Demonstrates compliance with the maximum contaminant levels for trihalomethane and total coliform; and
- (8) Demonstrates compliance with 40 CFR 141.74 and 141.75(a) as published on July 1 of each calendar year.

(f) Notwithstanding the provisions of this section, each public water system on the Reservation shall comply with the requirements of 40 CFR 141.70 and 141.71, as published on July 1 of each calendar year.

Disinfection of Water

- (a) Each public water system on the Reservation shall provide for the continuous disinfection of water, as provided in this section. The concentration of residual disinfectant in the water entering the distribution system shall not be less than 0.2 mg/l for more than four hours in any 24 hour time period.
- (b) A facility for disinfection must be equipped with :
 - (1) A reserve supply of chemicals; and
 - (2) A plan to prevent delivery to the distribution system of any water that has not been disinfected or that has been inadequately disinfected, in the event of a failure in the disinfection process.
- (c) Notwithstanding the provisions of this section, each public water system on the Reservation shall comply with the requirements of 40 CFR 141.72, as published on July 1 of each calendar year.

**Water Treatment Monitoring and
Recordkeeping Requirements**

- (a) Each public water system on the Reservation shall monitor the level of turbidity of representative samples of the combined filter effluent before clearwell storage at least once every 24 hours that the system is in operation.
- (b) Each public water system shall monitor the concentration of residual disinfectant in the water being delivered to the distribution system no less than one grab sample each day.
- (c) Each public water system shall measure and record the parameters that are needed to determine compliance with the requirements for concentration times, including, but not limited to:
 - (1) The temperature of the disinfected water;
 - (2) The pH of the disinfected water, if chlorine is used as a disinfectant;

(3) The disinfectant contact time; and

(4) The concentration of the residual disinfectant before or at the point the water reaches the first service connection.

(d) Each system shall monitor the concentration of residual disinfectant or heterotrophic plate count in accordance with the requirements regarding sample location, the number of samples and collection methods specified in subsection (d) of Section 205 of this ordinance.

(e) Each public water system shall maintain accurate and complete records of the operation of each treatment plant using surface water or ground water under the influence of surface water. The records shall include:

(1) The results of all monitoring conducted pursuant to this subsection;

(2) The date and results of any inspection or maintenance of a filter;

(3) The quantity of water produced;

(4) The hours of operation;

(5) The rates of flow at the plant;

(6) The rates of filtration;

(7) The rates of backwash; and

(8) The dates and description of failures of major equipment or unit processes and the action taken to correct such failures.

(f) Each system shall submit to the Commission a monthly report on the operation of each treatment plant not later than the 10th day of the following month, to include:

(1) The records compiled pursuant to subsection (e) of this section;

(2) The daily average level of turbidity for that month; and

(3) The percent of distribution samples with a detectable residual level of disinfectant.

(g) Notwithstanding the provisions of this section, each public water system shall comply with the requirements of 40 CFR 141.74 and 141.75, as published on July 1 of each calendar year.

29-216

Enforcement

(a) The Commission is authorized and directed to enforce the provisions of this ordinance. If the Commission finds that a public water system violates any provision of this ordinance, any regulation or bylaw of the Commission promulgated pursuant to this ordinance, or other written order of the Commission, the Commission shall undertake an enforcement action. An enforcement action may include the levy of a civil fine of not greater than \$500.00 per day of a willful violation, and issuance of a cease and desist order, as may be necessary. Enforcement actions of the Commission shall take place in accordance with this section.

(b) An enforcement action is commenced by the issuance of an administrative enforcement order. An administrative enforcement order shall include a brief and concise explanation of the violation. It shall order the supplier of water to cease and desist from supplying drinking water unless the violation is remedied within a specified time period, or to pay to the Commission a specified civil fine, or both. The time period specified for compliance shall be reasonable under the circumstances, taking into account the seriousness of the violation, the threat to human health and the remedial efforts previously undertaken by the supplier of water, if any. An administrative enforcement order shall include a statement that the supplier of water may request a hearing before the Commission on the alleged violation, and that a request for a hearing must be made in writing within 10 days of receipt of the administrative enforcement order. The Commission shall post conspicuously in a public place in the community served by the public water system a copy of the administrative enforcement order.

(c) If a supplier of water which has received an administrative enforcement order timely and properly requests a hearing before the Commission, a hearing shall be scheduled and conducted, and a

decision rendered, in accordance with the requirements of the Environmental Policy Ordinance of the Standing Rock Sioux Tribe.

(d) The Standing Rock Tribal Court shall have exclusive jurisdiction to review a hearing decision of the Commission. Such review may be obtained only upon the filing of a petition for judicial review within ten days of receipt of the Commission's hearing decision, by the affected supplier of water. The Tribal Court may reverse the Commission's decision only if it violates this ordinance or another environmental protection ordinance of the Tribe or is otherwise contrary to law, or it constitutes an arbitrary or capricious exercise of authority.

(e) The Commission is authorized to commence a civil action in the Standing Rock Tribal Court, to require compliance with an administrative order of the Commission, after the appeal and judicial review process for such order is completed.

(f) The Commission is authorized to issue an administrative enforcement order for the immediate closure of a public water, if such system poses an imminent and substantial danger to public health. Such order shall be effective immediately upon issuance, with the supplier of water or other aggrieved party entitled to a hearing before the Commission within 10 days.

(g) The Commission shall transmit a copy of every administrative enforcement order to the Chairman of the Standing Rock Tribal Council.

(h) Any person may bring a civil action for injunctive relief in the Standing Rock Tribal Court against a public water system on the Reservation which violates a provision of this ordinance, provided, however, that no such action may be commenced after the issuance by the Commission of an administrative enforcement order and before the appeal and judicial review process for such order is completed. In any action under this section, the Commission may intervene as a matter of right.

29-217

Variances and Exemptions

(a) Variance Except as provided for in 40 CFR 141.4, and after an opportunity for public comment, the Commission may authorize an variance from a maximum contaminant level if:

(1) The raw water sources which are reasonably available cannot meet the maximum contaminant levels specified in Section 204 of this ordinance, despite application of the best available technology or treatment techniques, as specified in 40 CFR 142 Subpart G.

(2) The concentration of the contaminant or contaminants for which the applicable maximum contaminant level is exceeded by granting such variance, shall not result in an unreasonable risk to human health; and

(3) The Commission develops and orders, in consultation with the supplier of water, a schedule for compliance.

(b) Exemption Except as provided in 40 CFR 141.4, the Commission may exempt a public water system from a maximum contaminant level or a requirement for the treatment of water, upon finding that:

(1) Due to compelling factors, including the financial resources available to the supplier of water, the public water system is unable to comply with the maximum contaminant level;

(2) The granting of the exemption will not result in an unreasonable risk to human health; and

(3) The supplier of water shall submit to the Commission within six months of the date of the exemption a schedule designed to attain compliance, as soon as is feasible.

29-218 Sovereign Immunity

This ordinance does not constitute a waiver of the immunity of the Standing Rock Sioux Tribe as a sovereign government.

29-219 Interpretation

This ordinance shall be interpreted to be no less stringent than the requirements of the EPA for the operation of public water systems.

CHAPTER 3.

**STANDING ROCK SIOUX TRIBE
CLEAN WATER ORDINANCE**

29-301 Declaration of Policies

(a) The Standing Rock Tribal Council declares that:

(1) It is the objective of this ordinance to maintain and restore the chemical, physical and biological integrity of the waters of the Standing Rock Indian Reservation;

(2) The existing uses of water on the Standing Rock Indian Reservation, and the level of water quality necessary to protect the existing uses, shall be protected and maintained;

(3) The subsistence, cultural and spiritual uses of water by members of the Standing Rock Sioux Tribe are threatened by the degradation of the quality of the waters of the Reservation; and

(4) The Standing Rock Environmental Quality Commission is the appropriate regulatory agency to protect the existing uses and quality of the waters of the Standing Rock Indian Reservation.

(b) This ordinance shall be interpreted in accordance with the policies and purposes provided in this section.

29-302 Definitions

For the purposes of this ordinance:

(a) "Acute Toxicity" means a deleterious response (e.g., mortality, disorientation, immobilization) to a stimulus observed in 96 hours or less.

(b) "Background conditions" mean the biological, chemical, and physical conditions of a water body, upstream from the point or non-

point source discharge under consideration. Background sampling location in an enforcement action will be upstream from the point of discharge, but not upstream from other inflows. If several discharges to any water body exist, and an enforcement action is being taken for possible violations to the standards, background sampling will be undertaken immediately upstream from each discharge.

(c) "Ceremonial and Religious water use" means activities involving traditional Dakota or other Native American practices.

(d) "Chronic Toxicity" means the lowest concentration of a constituent causing observable effects (i.e., considering lethality, growth, reduced reproduction, etc.) over a relatively long period of time, usually a 28-day test period for small fish test species.

(e) "Commission" means the Standing Rock Environmental Quality Commission.

(f) "EPA" means the U.S. Environmental Protection Agency.

(g) "Mixing zone" or "dilution zone" means a limited area of volume of water where initial dilution of a discharge takes place; and where numeric water quality criteria can be exceeded but acutely toxic conditions are prevented from occurring.

(h) "pH" means the negative logarithm of the hydrogen ion concentration.

(i) "Primary contact recreation" means activities where a person would have direct contact with water to the point of complete submergence such as swimming.

(j) "Reservation" means the Standing Rock Indian Reservation, as defined in the Act of March 2, 1889 (25 Stat. 888).

(k) "Secondary contact recreation" means activities where a person's water contact would be limited to the extent that bacterial infections of eyes, ears, respiratory, or digestive systems or urogenital areas would normally be avoided (such as wading or fishing).

(l) "Surface water" means all water above the surface of the ground within the exterior boundaries of the Standing Rock Indian

Reservation including but not limited to lakes, ponds, reservoirs, artificial impoundments, streams, rivers, springs, seeps and wetlands.

(m) "Temperature" means water temperature expressed in Centigrade degrees (C).

(n) "Total dissolved solids (TDS)" means the total filterable residue that passes through a standard glass fiber filter disk and remains after evaporation and drying to a constant weight at 180 degrees C. It is considered to be a measure of the dissolved salt content of the water.

(o) "Toxicity" means acute and/or chronic toxicity.

(p) "Tribal Council" means the governing legislative council of the Standing Rock Sioux Tribe.

(q) "Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

(r) "Wildlife habitat" means the waters and surrounding land areas of the Reservation used by fish, other aquatic life and wildlife at any stage of their life or activity.

29-303

Duties of Commission

(a) In order to carry out this Ordinance, the Commission is authorized and directed to:

(1) Abate violations of a discharge permit issued under Section 307 of this Ordinance, and of any provision of this Ordinance, including civil penalties and emergency injunctive relief, in the Standing Rock Tribal Court or other court of competent jurisdiction;

(2) Undertake continuing water pollution control planning;

(3) Identify categories of sources of discharge, including but not limited to municipal sources, industrial sources and

agricultural sources and standards of required pre-treatment of effluents for each source;

(4) Identify total maximum daily loads of pollutants for the various waters of the Reservation, as it deems necessary;

(5) Determine the socio-economic importance of a proposed activity that would significantly lower water quality;

(6) Ensure full protection of existing uses of water, including in-stream uses;

(7) Prevent the significant degradation of the quality of the waters of the Reservation;

(8) Monitor the compliance of permittees, pursuant to Section 307 of this Ordinance; and

(9) Enforce the provisions of this Ordinance.

(b) The Environmental specialist of the Standing Rock Sioux Tribe shall assist the Commission in carrying out its duties under this Ordinance.

29-304

Antidegradation Policy

(a) Existing in-stream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(b) Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Commission finds, after inter-governmental coordination and public participation, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the Commission shall assure water quality adequate to protect existing uses fully. Further, the Commission shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point

sources and all cost-effective and reasonable best management practices for nonpoint source control.

(c) Where high quality waters of the Reservation are identified as constituting an outstanding Tribal or national resource, such as waters within areas designated as unique water quality management areas and waters otherwise of exceptional recreational, ecological or cultural significance, and are designated as special resource waters, that water quality shall be maintained and protected.

(d) In those cases where potential water quality impairment associated with a thermal discharge is involved, this antidegradation policy's implementing method shall be consistent with section 316 of the Clean Water Act, 33 USC 1251 et seq.

(e) The Commission shall not designate a segment of a water of the Reservation as a mixing zone for the dilution of discharge, unless it finds, after an opportunity for public comment, that such mixing zone will not:

(1) impact existing uses and quality of the water; and

(2) impact existing uses and quality of waters that are downstream of such mixing zone and which may be affected by it.

29-305

Classes of Surface Waters and Water Quality Criteria

The following criteria shall apply as designated to the various classes of surface waters on the Reservation.

Class I (Extraordinary)

(a) **Designated uses.** The designated uses include, but are not limited to, the following:

(1) Water supply (domestic, industrial, agricultural).

(2) Stock watering.

(3) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting.

(4) Wildlife habitat.

(5) Ceremonial and religious water use.

(6) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment.)

(7) Commerce and navigation.

(b) Water quality criteria.

(1) Bacteriological Criteria - The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 8 per 100 milliliters, nor shall any single sample exceed an enterococci density of 35 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a 30 day period.

(2) Dissolved oxygen - The dissolved oxygen shall exceed 9.5 mg/l.

(3) Total dissolved gas - concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(4) Temperature - shall not exceed 16.0 degrees C due to human activities. Temperature increase shall not, at any time, exceed $t=23/(T+5)$.

(5) pH - shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.2 units.

(6) Turbidity - shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(7) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

Class II (Excellent)

(a) Designated uses. The designated uses include but are not limited to, the following:

- (1) Water supply (domestic, industrial, agricultural).
- (2) Stock watering.
- (3) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.
- (4) Wildlife habitat.
- (5) Ceremonial and religious water use.
- (6) Recreation (primary contact, recreation, sport fishing, boating and aesthetic enjoyment).
- (7) Commerce and navigation.

(b) Water quality criteria

(1) Bacteriological Criteria - The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 16/100 milliliters, nor shall any single sample exceed an enterococci density of 75 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(2) Dissolved oxygen - The dissolved oxygen shall exceed 8.0 mg/l.

- (3) Total dissolved gas - concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.
- (4) Temperature - shall not exceed 18.0 degrees C due to human activities. Temperature increase shall not, at any time, exceed $t=28/(T+7)$.
- (5) pH - shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.5 units.
- (6) Turbidity - shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
- (7) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

Class III (Good)

(a) Designated uses. The designated uses include but are not limited to, the following:

- (1) Water supply (industrial, agricultural).
- (2) Stock watering.
- (3) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.
- (4) Wildlife habitat.
- (5) Recreation (secondary contact, recreation, sport fishing, boating and aesthetic enjoyment).
- (6) Commerce and navigation.

(b) Water quality criteria

(1) Bacteriological Criteria. The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 33/100 milliliters, nor shall any single sample exceed an enterococci density of 150 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(2) Dissolved oxygen

	Early life stages	Other life stages
7 day mean	9.5 (6.5)	NA
1 day minimum	8.0 (5.0)	6.5

(3) Total dissolved gas - concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(4) Temperature - shall not exceed 21.0 degrees C due to human activities. Temperature increase shall not, at any time, exceed $t=34/(T+9)$.

(5) pH - shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.5 units.

(6) Turbidity - shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(7) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

Class IV (Good)

(a) Designated uses. The designated uses include but are not limited to, the following:

- (1) Water supply (industrial).
- (2) Stock watering.
- (3) Fish and shellfish: (salmonid and other fish migration).
- (4) Recreation (secondary contact, recreation, sport fishing, boating and aesthetic enjoyment).
- (5) Commerce and navigation.

(b) Water quality criteria

(1) Dissolved oxygen

	During periods of salmonid & other fish migration	During all other time periods
30 day mean	6.5	5.5
7 day mean	NA	NA
7 day mean minimum	5.0	4.0
1 day minimum	4.0	3.0

(2) Total dissolved gas - concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(3) Temperature - shall not exceed 22.0 degrees C due to human activities. Temperature increase shall not, at any time, exceed $t=20/(T+2)$.

(4) pH - shall be within the range of 6.5 to 9.0 with a human-caused variation of less than 0.5 units.

(5) Turbidity - shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(6) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

Lake Class

(a) Designated uses. The designated uses include but are not limited to, the following:

- (1) Water supply (domestic, industrial, agricultural).
- (2) Stock watering.
- (3) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.
- (4) Wildlife habitat.
- (5) Ceremonial and religious water use.
- (6) Recreation (primary contact, recreation, sport fishing, boating and aesthetic enjoyment).
- (7) Commerce and navigation.

(b) Water quality criteria

(1) Bacteriological Criteria. The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 33/100 milliliters, nor shall any single sample exceed an enterococci density of 150 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period..

(2) Dissolved oxygen - no measurable decrease from natural conditions.

(3) Total dissolved gas - concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(4) Temperature - no measurable change from natural conditions.

(5) pH - no measurable change from natural conditions.

(6) Turbidity - shall not exceed 5 NTU over natural conditions.

(7) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those which may affect public health, the natural aquatic environment, or the desirability of the water for any use.

29-306

Designations.

(a) The designations for the flowing surface water of the Reservation are as follows:

(1) Battle Creek - Class III

(2) Cannonball River, from its III confluence with Cedar Creek to the mouth, and its tributaries - Class III

(3) Cedar Creek, from the western boundary of the Reservation to the confluence with the Cannonball River, and its tributaries - Class III.

(4) Four Mile Creek - Class III

(5) Grand River and its tributaries - Class II

(6) Missouri River, from the mouth of the Cannonball River to the southern boundary of the Reservation - Class II

(7) Oak Creek - Class II

(b) The designation for the following surface waters shall be Lake Class:

- (1) Bohle Lake
- (2) Froelich Reservoir
- (3) Kellers Lake
- (4) Mallard Lake
- (5) McGhee Lake
- (6) McIntosh Lake (east)
- (7) McIntosh Lake (west)
- (8) Morristown Lake (east)
- (9) Morristown Lake (west)
- (10) Pudwell Lake
- (11) Tatanka Lake
- (12) Railroad (or Trail City) Lake

29-307

Permit System

(a) There shall be no discharge of any pollutant into the waters of the Reservation, without a permit for such discharge from the Commission. In issuing permits under this section, the Commission shall:

- (1) Determine the limit of effluent or discharge which shall be necessary to protect the use for such water that is designated in Section 306 of this Ordinance, and include in the permit such effluent limitations;
- (2) Impose the standard of performance to be achieved through application of the best available demonstrated control technology for the applicable category of the source of the discharge;
- (3) Fix terms for the permit not to exceed five years;
- (4) Provide for the modification or termination of the permit, for cause;

(5) Insure that any Tribally or other publicly-owned treatment facility pretreat effluent in compliance with the requirements of the EPA;

(6) Provide for public comment on the application for a permit;

(7) Provide in the permit for the inspection, monitoring, entrance into the facilities of the permittee and require reports of the permittee for the discharge to be permitted; and

(8) Provide for the enforcement of the terms of the permit in the Standing Rock Tribal Court.

(b) There shall be no discharge on land of sludge, sewage or septage, without a permit for such discharge from the Commission. In issuing permits under this section, the Commission shall insure that there is compliance with 40 CFR 503.

(c) The Commission shall not issue a permit under this section if such permit authorizes a discharge that will degrade the quality of the water below the classification of criteria and uses prescribed in this ordinance.

(d) A permit issued under this section shall not be transferable.

29-308

Enforcement

(a) The Commission is authorized and directed to enforce the provisions of this ordinance. If the Commission finds that a person violates any provision of this ordinance, a permit issued pursuant to Section 307 of this ordinance, any regulation or bylaw of the Commission promulgated pursuant to this ordinance, or other written order of the Commission, the Commission shall undertake an enforcement action. An enforcement action may include the levy of a civil fine of not greater than \$500.00 per day of a willful violation, the modification or termination of a permit, and issuance of a cease and desist order, as may be

necessary. Enforcement actions of the Commission shall take place in accordance with this section.

(b) An enforcement action is commenced by the issuance of an administrative enforcement order. An administrative enforcement order shall include a brief and concise explanation of the violation. It shall order the supplier of water to cease and desist the actions causing the violation, or to pay to the Commission a specified civil fine, or both. An administrative enforcement order shall include a statement that the person may request a hearing before the Commission on the alleged violation, and that a request for a hearing must be made in writing within 10 days of receipt of the administrative enforcement order. The Commission shall post conspicuously in a public place a copy of the administrative enforcement order.

(c) If a person that has received an administrative enforcement order timely and properly requests a hearing before the Commission, a hearing shall be scheduled and conducted, and a decision rendered, in accordance with the requirements of the Environmental Policy Ordinance of the Standing Rock Sioux Tribe. The administrative enforcement order shall remain effective pending a decision on the hearing.

(d) The Standing Rock Tribal Court shall have exclusive jurisdiction to review a hearing decision of the Commission. Such review may be obtained only upon the filing of a petition for judicial review within ten days of receipt of the Commission's hearing decision, by the affected supplier of water. The Tribal Court may reverse the Commission's decision only if it violates this ordinance or another environmental protection ordinance of the Tribe or is otherwise contrary to law, or it constitutes an arbitrary or capricious exercise of authority.

(e) The Commission is authorized to commence a civil action in the Standing Rock Tribal Court, to require compliance with an administrative order of the Commission, after the appeal and judicial review process for such order is completed.

(f) The Commission is authorized to issue an administrative enforcement order for the immediate abatement of pollution which poses an imminent and substantial danger to public health. Such order shall be effective immediately upon issuance, with the

person affected entitled to a hearing before the Commission within 10 days.

(g) The Commission shall transmit a copy of every administrative enforcement order to the Chairman of the Standing Rock Tribal Council.

(h) Any person may bring a civil action for injunctive relief in the Standing Rock Tribal Court against a person on the Reservation that violates a provision of this ordinance, provided, however, that no such action may be commenced after the issuance by the Commission of an administrative enforcement order and before the appeal and judicial review process for such order is completed. In any action under this section, the Commission may intervene as a matter of right.

(i) For the purpose of this section, the term "person" includes a natural person, corporation or business association, Tribal or other publicly-owned treatment works, and local, municipal or other governmental facility.

29-309

Sovereign Immunity

This ordinance does not constitute a waiver of the immunity of the Standing Rock Sioux Tribe as a sovereign government.