

REGULAR TRIBAL COUNCIL MEETING
INTER-OFFICE FOLLOW-UP

MEETING DATE: March 03, 2015

PAGE: 9

JUDICIAL COMMITTEE – Joe Dunn, reporting.
February 23, 2015 [REGULAR MEETING]

#16. MOTION WAS MADE BY JOE DUNN, SECONDED BY ROBERT TAKEN ALIVE, TO APPROVE OF TITLE XXVI-SOLID & HAZARDOUS WASTE CODE, BY RESOLUTION.

ROLL CALL VOTE: ARCHAMBAULT, II, DAVE – NOT VOTING

BROWN OTTER, Milton	EX.	ARCHAMBAULT, Paul	YES
CLAYMORE, Duane	YES	BROWN OTTER, Ron	L.
DUNN, Joe	YES	LITTLE EAGLE, Avis	YES
HARRISON, "Ben" Samuel	YES	MCLAUGHLIN, Jesse	YES
TAKEN ALIVE, Robert	YES	TAKEN ALIVE, Jesse	EX.
TWO BEARS, Cody	YES	WHITE, Adele	YES
WHITE BULL, Frank	YES	WHITE, Sr., Randal	YES
WHITE MOUNTAIN, Jr., Joseph	YES	YOUNG, Phyllis	YES

VOTE: YES – 13 NO – 0 NOT VOTING – 1

MOTION CARRIED 2 – EXCUSED 1 – LATE

#17. MOTION WAS MADE BY JOE DUNN, SECONDED BY ROBERT TAKEN ALIVE, TO APPROVE OF TITLE XXXI – PESTICIDES CODE, BY RESOLUTION.

ROLL CALL VOTE: ARCHAMBAULT, II, DAVE – NOT VOTING

BROWN OTTER, Milton	EX.	ARCHAMBAULT, Paul	YES
CLAYMORE, Duane	YES	BROWN OTTER, Ron	L.
DUNN, Joe	YES	LITTLE EAGLE, Avis	YES
HARRISON, "Ben" Samuel	YES	MCLAUGHLIN, Jesse	YES
TAKEN ALIVE, Robert	YES	TAKEN ALIVE, Jesse	EX.
TWO BEARS, Cody	YES	WHITE, Adele	YES
WHITE BULL, Frank	YES	WHITE, Sr., Randal	YES
WHITE MOUNTAIN, Jr., Joseph	YES	YOUNG, Phyllis	YES

VOTE: YES – 13 NO – 0 NOT VOTING – 1

MOTION CARRIED 2 – EXCUSED 1 – LATE

#18. MOTION WAS MADE BY JOE DUNN, SECONDED BY PHYLLIS YOUNG, TO APPROVE OF THE NON-FUNDED PARTICIPATION AGREEMENT BETWEEN THE

ORDINANCE NO. 193

BE IT RESOLVED, adding **TITLE XXVI – SOLID & HAZARDOUS WASTE CODE** amends the Code of Justice for the Standing Rock Sioux Tribe.

RESOLUTION NO. 098-15

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 Section 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 amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1[a], 1[c], and 1[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 promote efficient and environmentally safe solid waste management on the Standing Rock Indian Reservation; and

WHEREAS, the Standing Rock Sioux 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 Regulation of the collection, sorting, transportation and disposal of solid waste, in order to protect public health and the environment for the people of the Standing Rock Indian Reservation; and

WHEREAS, the Standing Rock Sioux Tribal Council has worked to protect the groundwater resources of the Reservation through the provision incorporated into the Environmental Quality Code in the operation of sanitary landfills to prevent leaching of hazardous material into our groundwater resources; and

WHEREAS, the Standing Rock Sioux Tribal Council has worked to provide for the enforcement and implementation of the Solid & Hazardous Waste Code, Title XXVI with emphasis of the Permit Fees assessed to all solid and hazardous waste management, treatment, storage, incineration, transfer or disposal facilities, general contractors conducting management and disposal of waste on the Standing Rock Indian Reservation for the purpose of managing the Solid Waste 1% Permit Fee Funds;

NOW THEREFORE BE IT RESOLVED, that the forgoing **ORDINANCE NO. 193** Amending the Code of Justice, **TITLE XXVI – SOLID & HAZARDOUS WASTE CODE**, is hereby approved.


BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby 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 Tribal Council do hereby certify that the Tribal Council is composed of [17] members of whom 14 constituting a quorum, were present at a meeting, thereof, duly and regularly called, noticed, convened and held on the 3rd day of MARCH, 2015, and that the foregoing resolution was adopted by the affirmative vote of 13 members, with 0 opposing, and with 1 not voting. THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.

DATED THIS 3rd DAY OF MARCH, 2015.

ATTEST:


Dave Archambault, II, Chairman
Standing Rock Sioux Tribe


Adele M. White, Secretary
Standing Rock Sioux Tribe

[OFFICIAL TRIBAL SEAL]

Meeting Date: 03-03-2015
Motion No.: 16

TITLE XXVI
SOLID AND HAZARDOUS WASTE CODE

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SOLID AND HAZARDOUS WASTE MANAGEMENT CODE

CHAPTER ONE PURPOSE, SCOPE AND APPLICABILITY

Section 101. Short Title.

This Title XXVI, known as the Standing Rock Sioux Tribe's Solid and Hazardous Waste Management Code shall also be known as the Solid and Hazardous Waste Code ('SHWC' or the "Code").

Section 102. Finding of Necessity.

The Standing Rock Sioux Tribe finds and declares that disposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to public health and the environment; that open dumping is particularly harmful to public health, potentially contaminates drinking water from underground and surface sources, and pollutes the air and the land; and that potentially recoverable material that could be recycled is needlessly buried each year, using scarce land resources, even though methods are available to separate usable materials from solid waste.

The Standing Rock Sioux Tribe is hereby creating a coordinated program for the regulation of the management of solid and hazardous waste within the exterior boundaries of the Standing Rock Indian Reservation to be managed by the Director of the SRST Department of Environmental Regulation/Environmental Protection Agency under the oversight of the Environmental Quality Commission.

The Standing Rock Sioux Tribal Council finds that:

- (1) The enrolled members of the Standing Rock Sioux Tribe ("Tribe") and all residents of the Standing Rock Indian Reservation ("Reservation") have a right to a clean environment;
- (2) It is the policy of the Tribe to prohibit the uncontrolled disposal of solid, inert, hazardous, infectious and other waste within the exterior boundaries of the Reservation;
- (3) It is the policy of the Tribe to prohibit the disposal of solid, inert, hazardous, infectious and other waste that is generated outside of the Reservation on the Reservation;
- (4) Efficient and environmentally-acceptable solid and hazardous waste management practices are necessary to achieve and maintain a clean environment within the exterior boundaries of the Reservation;
- (5) The costs of the solid and hazardous waste management system on the Reservation should be borne by those who utilize such service;

- (6) Serious economic, management, and technical problems exist in the management of solid and hazardous wastes resulting from residential, commercial, agricultural, industrial and other activities carried out on the Reservation; and
- (7) Inefficient and improper methods of managing solid and hazardous waste create serious hazards to public health on the Reservation, and result in scenic blight, cause pollution of air and water resources, increase rodent and vector disease, create public nuisances, and otherwise interfere with the quality of our environment within the exterior boundaries of the Tribe.

Section 103 Purposes

The Standing Rock Sioux Tribe, by enacting this code, intends the following:

- (1) to protect the health, safety, welfare and environment of the Standing Rock Sioux Tribe, its tribal members and all other persons within the exterior boundaries of the Reservation;
- (2) to manage, protect and preserve the cultural, social and economic stability of residential, agricultural commercial, industrial, forest, riparian, and environmentally sensitive lands and resources within the Reservation;
- (3) to protect the historical and cultural values and traditions of the Tribe, the Reservation as a permanent Tribal homeland, and the aboriginal character of the Reservation;
- (4) to prevent air, water, and land from solid and hazardous waste pollution, including contamination of the Tribe's aquifers, groundwaters, surface waters, drinking water supplies, and all other natural resources;
- (5) to prevent the deterioration of the environment, standard of living, quality of life, welfare and well-being of all persons within the exterior boundaries of the Reservation;
- (6) to maintain and improve the aesthetic appearance of the Standing Rock Indian Reservation, by:
 - (i) assuring that solid waste management practices are conducted in a manner which protects human health and the environment and minimizes the need for corrective action at a future date;
 - (ii) prohibiting open dumping and requiring the closure of existing open dumps;
 - (iii) prohibiting open burning at solid waste facility;
 - (iv) minimizing the generation of solid waste by encouraging recycling and reuse; and
 - (v) providing for the promulgation of guidelines for solid waste collection, transport, separation, recovery and disposal practices and systems.
- (7) to provide and promote Tribal environmental protection and services within the Reservation, and to regulate environmental activities under principles of tribal sovereignty;
- (8) to regulate the storage, collection, transportation, treatment, and disposal of solid, hazardous and special wastes, and the remediation of any releases of a hazardous substance pollutant or contaminant to protect the human health and welfare of the Reservation;

- (9) to establish a cooperative effort with the federal, state and municipal governments to promote efficient and environmentally safe solid waste management on the Reservation;
- (10) to provide for the development of the technical and administrative systems for the implementation and enforcement of a response program to address the identification, assessment, remediation and/or institutional control, as needed, of any actual or potential release of a hazardous substance, pollutant or contaminant, including petroleum and controlled substances within the exterior boundaries of the Reservation; and
- (11) to exercise the inherent sovereign power of the Tribe to govern itself within the exterior boundaries of the Reservation.

Section 104 Definitions

Unless otherwise provided or the context requires another definition, the definitions set forth in this Section shall apply to the terms used throughout this code. Additional definitions sometimes appear in the specific sections to which they apply.

“Agricultural Waste” shall mean the solid waste derived from the processing of animal products and production and processing of orchard or field crops and livestock such as manure, spoiled grain, grain screenings, undigested rumen material, slaughtering, livestock carcasses, fertilizer, and fertilizer containers, but does not include pesticide waste or pesticide containers.

“Approved container” shall mean any receptacle intended for the temporary storage of waste, that is durable, leakproof, nonabsorbent, water tight, corrosion resistant, rodent and insect resistant, easily cleanable, has close-fitting covers and adequate handles to facilitate handling, and is in good condition. Containers are further limited to the following:

- a) “Individual household containers” must be at least 95 gallon capacity; and
- b) “Business and drop box containers” must be compatible with the collection vehicle used by DER/EPA or its agents or contractors.

“Approved site” shall mean a solid waste management, storage, transfer or disposal site or facility which has met all the requirements of this code, any other applicable federal or tribal regulations, and is approved by the Tribal Council as the place for such management or disposal of solid waste.

“Asbestos” shall mean the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

“Asbestos containing waste materials” (ACM) shall mean any waste that contains commercial asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

“Background” shall mean the concentrations or measures of constituents or parameters in air, soil, or water that has not been affected by constituents or leachate from the solid waste facility being monitored.

“Brownfield” shall mean real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

“Bulky Wastes” shall mean large bulky items of solid waste, such as household appliances, large automobile parts, furniture, trees and stumps and other oversized wastes whose large size makes it unsuitable for disposal in waste collection containers.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, as amended by the Superfund Amendments and Reauthorization Act of 1986 and the Small Business Liability Relief and Brownfields Revitalization Act of 2002.

“Closure” shall mean the termination of the receiving, handling, recycling, treatment, composting, or disposal of solid waste at an approved site, and includes all operations necessary to close and reclaim a solid waste management unit or facility and prepare the facility for post-closure maintenance. Closure actions may include, but are not limited to, sloping filled areas to provide adequate drainage, applying final cover, providing erosion control measures, grading and seeding, installing monitoring devices, constructing surface water control structures, installing gas control systems, and measures necessary to secure the site.

“Collection” shall mean the act of collecting and removing of solid waste or hazardous waste at the place of generation by an approved collection agent and does not mean "removal".

“Collection vehicle or equipment” shall mean any vehicle or equipment used in the collection of waste.

“Commercial solid waste” or “commercial waste” shall mean all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities no matter the ownership structure, but excluding residential, industrial and special wastes.

“Commission” or “the Commission” see Environmental Quality Commission.

“Composting” shall mean the controlled biological decomposition of organic solid waste under aerobic conditions.

“Construction” shall mean the erection or building of new structures and the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures.

“Construction and Demolition Waste” shall mean refuse, materials and rubble associated with the construction, remodeling, repair or dismantling of such objects as roads, buildings, or similar structures.

“Demolition” shall mean the wrecking or taking out of any load-supporting structural member of a building or facility together with any related handling operations or the intentional burning of any facility.

“DER/EPA” shall mean the SRST Department of Environmental Regulation/Environmental Protection Agency.

“Discharge” shall mean the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

“Director” shall mean the Director of SRST DER/EPA, also the Environmental Specialist specified under SRST-EPO Section 29-103, or his/her designee.

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

“Disposal Site” shall mean a site, location, tract of land, landfill site, or premises used or intended to be used for partial and or total solid waste disposal.

“Environmental Professional” shall mean a person who possesses sufficient specific education, training, and experience necessary, as determined by the Director, to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases.

“Emergency Response” shall mean immediate containment and/or removal of oil or hazardous substances, pollutants or contaminants from the land, air or water or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare of the Tribe (including, but not limited to, fish, shellfish, wildlife, tribal, public and private property) or to the environment. The taking of such timely actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare of the Tribe or to the environment, which may otherwise result from a release or threat of release of hazardous substances, pollutants or contaminants.

“Environmental Specialist” shall mean the Environmental Specialist specified under SRST-EPO Section 29-103 and also the Director of SRST DER/EPA (Director), or his/her designee.

“Environmental Site Assessment” or **“ESA”** shall mean the process by which a person or entity seeks to determine if a particular parcel of property (including improvements) is subject to recognized environmental conditions and such assessment is conducted in accordance with the requirements specified by the Director.

“Environmental Quality Commission” or **“EQC”** or **“the Commission”** shall mean the Commission authorized to implement and enforce this environmental ordinance/code, and hear formal appeals, pursuant to all of the duties delegated to it herein and in the SRST Title XXIX: Environmental Policy Ordinance.

“Existing solid waste facility unit” shall mean any municipal solid waste landfill unit that is receiving solid waste as of the appropriate dates specified in 40 C.F.R. § 258.1(3). Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management. Also, see "new solid waste facility unit".

“Facility” shall mean all contiguous land and structures, other appurtenances, and improvements on the land used for the storage, treatment or disposal of solid waste or hazardous waste, and shall also mean transfer stations, as defined by this code.

“Fomite” shall mean any substance that may harbor or transmit pathogenic organisms.

“Franchised Service” shall mean any solid waste collection service permitted under this code, operating within Tribal jurisdiction and with Tribal approval.

“Garbage” shall mean the same as Household Waste, and shall also include putrescible material including, but not limited to, rejected animal, fruit and vegetable wastes resulting from the use, handling, preparation, cooking and consumption of food or storing of meat, fish, fowl, fruit or vegetables, including wastes from markets, storage facilities, and processing plants.

“Groundwater” shall mean water below the land surface in a zone of saturation.

“Guidance document” shall mean a document prepared by or referenced by the Director of DER/EPA that supplements criteria under this code. A guidance document may provide specific technical direction regarding the manner in which an owner or operator shall comply with this code. Guidance documents may be referred to or attached as conditions to permits. Such technical direction must either conform to this code, or be more stringent. A guidance document may also provide direction as to how the Director of the DER/EPA interprets the Tribe's solid waste permit program, consistent with Tribal laws and this code.

“Hazardous Substance” shall mean any substance designated pursuant to Section 311(b)(2)(A) of the CWA; any element, compound, mixture, solution, or substance designated pursuant to Section 102 of CERCLA; any hazardous waste having

the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*; any toxic pollutant listed under Section 307(a) of the CWA; any hazardous air pollutant listed under Section 112 of the Clean Air Act, 42 U.S.C. § 7521 *et seq.*; and any imminently hazardous chemical substance or mixture with respect to which the U. S. EPA Administrator has taken action pursuant to Section 7 of the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*.

“Hazardous waste” shall mean any waste substance, material, smoke, gas, particulate matter, or combination thereof that:

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

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

(3) is hazardous, toxic, ignitable, reactive, or corrosive, and that is defined, listed and regulated as such by the Tribe or the United States of America under 40 C.F.R. Part 261 pursuant to Section 3001 of the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*

“Hazardous Waste Generation” shall mean the act or process of generating hazardous waste for collection, storage, treatment, transportation or disposal.

“Hazardous Waste Management” shall mean the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous waste.

“Household hazardous waste” shall mean hazardous waste discarded by households.

“Household waste” shall mean any solid waste, including garbage, trash, and sanitary waste in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

“Incineration” shall mean to reduce to ashes through combustion using a containment or enclosed device which provides for control of combustion parameters.

“Incinerator” shall mean any enclosed device that:

(1) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(2) Meets the definition of infrared incinerator or plasma arc incinerator.

“Industrial solid waste” shall mean solid waste generated by manufacturing or industrial processes that is not a regulated hazardous waste under Subtitle C of RCRA. Such wastes may be designated as “Special Waste” under this Code. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term shall also include mineral wastes or oil and gas wastes.

“Inert waste” shall mean non-putrescible solid waste which will not generally contaminate water or form a contaminated leachate. Inert waste does not serve as food for vectors. Inert waste includes, but is not limited to: construction and demolition material such as metal, wood, bricks, masonry and cement concrete; asphalt; concrete; metal; and tree branches or other vegetative materials approved by the Director.

“Infectious waste” shall mean

(1) Laboratory wastes, including but not limited to cultures of etiologic agents, which pose a substantial threat to health due to their volume and virulence.

(2) Pathologic specimens, including but not limited to human or animal tissues, blood elements, excreta, and secretions that contain etiologic agents, and attendant disposable fomites.

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

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

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

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

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

“Institutional Controls” shall mean long-term restrictions on the use of a site or property established by the Tribal Council and/or the appropriate responsible governmental entity or entities due to existing levels of hazardous substances, pollutants or contaminants in soils, water or groundwater above background.

“Junk” shall mean materials which will not be utilized if not collected and processed for reuse or recycling, including but not limited to mean lead scrap, copper, brass, iron, steel, rope, wire, glass, rags, paper, trash, rubber, debris, demolition waste, abandoned mobile homes or trailers, dismantled or wrecked vehicles, untaxed, untitled or unlicensed vehicles or parts thereof; and other old scrap ferrous or nonferrous materials.

“Landfill” shall mean an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land treatment unit, surface impoundment, injection well, or waste pile.

“Land treatment” shall mean the controlled application of solid waste, excluding application of animal manure, into the surface soil to alter the physical, chemical, and biological properties of the waste.

“Lateral expansion” shall mean a horizontal expansion of the waste boundaries of an existing solid waste facility unit.

“Leachate” shall mean a liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such waste.

“Litter” shall mean any discarded, used, or unconsumed substance or waste, including but not limited to, any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic, or paper containers or other packaging construction material, abandoned motor vehicle, motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

“Littering” shall mean the improper disposal, depositing, release, leaking or placing of any solid waste or junk by any person, acting on his own or on behalf of a firm, corporation governmental subdivision or agency in any location, other than an approved solid waste collection, storage, treatment or disposal container or area within the boundaries of the Standing Rock Indian Reservation.

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

“Medical Waste” shall mean any solid waste which is generated in the diagnosis, treatment or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. Such term does not include any hazardous waste identified or listed under this code or any household waste as defined by the code.

“Mixed Waste” shall mean waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954, 42 U.S.C. § 2011 *et seq.*

“Mining waste” shall mean all waste materials (solid, semi-solid, and liquid) from the mining and processing of ores and minerals, including soil, waste rock, and other forms of overburden as well as tailings, slag, and other processed mining wastes.

“Mobile Home or Trailer” shall mean a portable habitable structure that was originally fitted with wheels to facilitate movement or transportation on public roads. Such wheels may or may not still be present on the structure.

“Municipal solid waste facility unit” shall mean a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 C.F.R. § 257.2. A solid waste facility unit also may receive, as authorized under the SWDA and this code, other types of RCRA Subtitle D wastes, such as, commercial solid waste, nonhazardous sludge, and industrial solid waste. This code, however, prohibits the disposal of certain solid wastes in a solid waste facility that would otherwise be permitted under the SWDA, such as the conditionally exempt small quantity hazardous generator waste. A solid waste facility may be publicly or privately owned. A solid waste facility unit may be a new unit, an existing unit or a lateral expansion. A lateral expansion is the horizontal expansion of the waste boundary of an existing unit. A solid waste facility must comply with all of the criteria under this code.

“New solid waste facility unit” shall mean any municipal solid waste landfill unit that has not received waste.

“Nuisance” shall mean a condition that occurs as a result of the handling, treatment, composting, or disposal of solid waste, which condition (1) is injurious to human health or is indecent or offensive to the senses and interferes with the comfortable enjoyment of life or property; (2) affects an entire community or neighborhood or any considerable number of persons; or (3) any act or condition created by a person(s) which results in an inconvenience to or affects the health or safety of the public.

“Open burning” shall mean ~~means~~ the burning of solid waste in an open area, field, pile, or in any other uncontrolled manner.

“Open dump” shall mean any facility or site on the Reservation where solid waste or hazardous waste has been disposed of, which is not a sanitary landfill authorized under this code and not in full compliance with the requirements under 40 C.F.R. Parts 257 or 258.

“Operator” shall mean the person(s) responsible for the overall operation of a facility or part of a facility.

“Owner” shall mean the person(s) who owns a waste management facility or part of a facility.

“Part 258 Criteria” shall mean the environmental criteria contained in 40 C.F.R. Part 258 for the location, operation, design, groundwater monitoring, corrective action, closure, post- closure care, and financial assurance requirements for solid waste disposal facilities.

“Permit” shall mean an authorization and license issued under the authority of the DER/EPA Director regulating the collection and transportation of solid waste, or regulating the treatment and disposal of solid waste, including the construction and/or operation of a solid waste facility on the Reservation as required under this code.

“Permittee” shall mean a person who is authorized and permitted by the DER/EPA Director, to collect and transport waste, or construct or operate a waste management facility in compliance with this code.

“Permit documents” shall mean permit applications, drafts and final solid waste facility permits, or other documents that include applicable design and management conditions in accordance with this code, and the technical and administrative information used to explain the basis of permit conditions, partnership, Indian Tribe, Tribally chartered corporation or business, political subdivision, government agency, municipality, industry, public or private corporation, any legal entity or private enterprise, and includes members of the Tribe, all other non-member Indians, and all non-Indians.

“Person” shall mean an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), joint venture, sole proprietorship, municipality, state, governmental or private entity.

“Pesticide” shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant.

“Pollutant or contaminant” shall include, but not be limited to any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any

organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term pollutant or contaminant shall also include a controlled substance (as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. § 802) and petroleum or petroleum product, or any pollutant or contaminant that may present an imminent and substantial danger to public health or welfare of the Tribe or any person within the exterior boundaries of the Reservation.

“Pollution” shall mean the following:

(a) the condition caused by the presence in or on soil, air, or water of any solid waste, hazardous waste, or substance derived there from in such quantity, of such nature and duration, or under such condition that the quality, appearance or usefulness of the soil, air, or water is significantly degraded or adversely altered; or

(b) contamination of the environment to a measurable degree and adverse nature, including but not limited to hazardous substances pollutants or contaminants (as defined in Section 101(14) and (33) of CERCLA, 42 U.S.C. § 9601); hazardous waste (as defined in the Solid Waste Disposal Act, 42 U.S.C. § 6901 and 40 C.F.R. Part 261), a controlled substance (as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. § 802); or petroleum or petroleum byproducts or other toxic organic waste or toxic chemicals.

“Post-closure maintenance” means all activities undertaken at a closed solid waste facility to maintain the integrity of containment features and to monitor compliance with applicable performance standards required under this code.

“Post-closure maintenance period” shall mean the period of time following closure of a solid waste management unit during which the owner or operator must perform post-closure activities.

“Putrescible” shall mean organic matter that is capable of being decomposed by micro-organisms and that can result in the formation of foul smelling products.

“RCRA” shall mean the Resource Conservation and Recovery Act of 1976, an amendment to the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*

“Recovery” shall mean the recovery of material, byproducts, or energy from solid waste.

“Recyclable material” shall mean a solid waste material that has been segregated for recycling or converted into a raw material, substitute for a raw material, or a commodity.

“Recycle or Reuse Processing” shall mean an operation designed to separate, shred, compress, or otherwise modify a recyclable material to facilitate the transport or resource recovery of the material.

“Recycled agricultural material” shall mean agricultural waste generated by a farming operation or agricultural processing operation that is recycled or applied to soils as a nutrient or as a fertilizer at appropriate agronomic rates, or that is left in place on soils during harvesting, grazing or other similar agricultural activities. Recycled agricultural materials also include:

(a) Material, including manure, generated by any concentrated or confined animal feeding that is stored in a feedlot or waste storage structure, provided that the material is stored in a manner that is not likely to pollute the waters of the state, and recycled or applied to soils as nutrients or fertilizers; or

(b) Material, including manure, generated by any agricultural processing operation that is stored in a manner that is not likely to pollute the waters of the state, and recycled or applied to soils as nutrients or fertilizers. Recycled agricultural material does not include agricultural waste that is discarded as garbage, refuse, or other solid waste.

“Recycling” shall mean the process of collecting, sorting, cleansing, treating, recovering and reconstituting solid waste or other discarded material in order to prepare the altered form for use.

“Refuse” See Solid Waste.

“Regulated hazardous waste” shall mean a solid waste that is a hazardous waste, as defined in 40 C.F.R. Part 261, that is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b), or was not generated by a conditionally exempt small quantity generator as defined in 40 C.F.R. § 261.5. Regulated hazardous waste is not allowed to be disposed of at a solid waste facility. This code provides that conditionally exempt small quantity generator hazardous waste is not allowed to be disposed of at a solid waste facility on the Reservation, even though such waste is not regulated hazardous waste. This is a more stringent environmental standard than is required under the 40 C.F.R. Part 258 Criteria.

“Release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant). Release also means threat of release. The normal application of fertilizer is excluded.

“Remediation waste” shall mean all solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing a site remediation or response.

“Remedy or Remedial Action” shall mean those actions consistent with the permanent remedy taken in the event of a release or threatened release of a hazardous substance, pollutant or contaminant into the environment, to prevent or minimize the release so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such

actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment and, where appropriate, post-removal site control activities. The term also includes off-site transport and off-site storage, treatment, destruction, or secure disposition of hazardous substances, pollutants or contaminants and associated contaminated materials.

“Reservation,” “on the Reservation,” or “on or within the Reservation” shall mean the Standing Rock Indian Reservation, as defined by the Act of March 2, 1889, 25 Stat. 888, and includes all lands of any kind within the exterior boundaries of the Reservation.

“Rubbish” shall mean the same as Household Waste and shall also include non-putrescible solid wastes, including ashes, consisting of both combustible and non combustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, tires, or litter of any kind.

“Sanitary landfill” shall mean a solid waste disposal facility. A sanitary landfill by definition must meet all of the 40 C.F.R. Part 258 Criteria and this code.

“Scavenging” shall mean the uncontrolled and unsafe removal of solid waste materials from containers, vehicles, or any approved solid waste management facility or disposal site.

“Sewage sludge” shall mean any residue, excluding grit or screenings, removed from wastewater, whether in a dry, semi-dry, or liquid form.

“Site” shall mean a facility, as defined by this code, or the source of a release or the surrounding land, streams or wetlands impacted by a release.

“Sludge” shall mean any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

“Solid waste” shall mean any garbage, refuse, special wastes, sludge from a wastewater treatment plant, water supply treatment plant, septic system, or air pollution control facility and other discarded materials, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial mining, oil and gas exploration and production and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point

sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

“Solid Waste Management Facility” shall mean a private, industrial, commercial, government, institutional or tribal facility which is authorized to accumulate, store, treat, transfer or otherwise manage solid waste other than in approved solid waste collection containers or boxes.

“Solid Waste Vehicle” shall mean a commercial solid waste compactor or other conveyance that is easily cleanable and capable of transporting solid waste without spillage and/or littering.

“Source control” shall mean the construction or installation and start-up of those actions necessary to prevent the continued release of hazardous substances or pollutants or contaminants (primarily from a source on top of or within the ground, or in buildings or other structures) into the environment.

“Special Waste” shall mean waste that is not a Hazardous Waste as defined herein and is a waste that is designated by the DER/EPA Director as a Special Waste which requires special storage, management, transportation, handling, or disposal under this code. Such wastes may include the following:

- (a) solid waste that causes corrosion or decay or otherwise reduces or impairs the integrity of containment structures or storage containers;
- (b) solid waste that, if mixed or commingled with other solid waste, produces violent reaction, heat, pressure, fire or explosion, toxic by-products, reaction products, or otherwise pose a threat to the health of solid waste workers, handlers and/or transporters that require a higher level of containment, is a hazardous material, or impairs the integrity of containment features;
- (c) solid waste that due to its bulk, size or other handling or disposal characteristics is prohibited from disposal at a waste facility; or
- (d) solid waste that should be separated from municipal solid waste for recycling or reuse purposes.

“Storage” shall mean the confining, containing, holding or stockpiling of solid waste for a limited period of time prior to collection, treatment, transportation, utilization, processing, recovery or final disposal. When used in connection with hazardous waste, it means the containment of hazardous waste, either on a temporary basis or for a period of time, in such a manner as not to constitute disposal of such hazardous waste.

“Surface impoundment” shall mean a human-made excavation, diked area, or natural topographic depression designed to hold an accumulation of solid waste which is liquid, liquid bearing, or sludge for containment, treatment, or disposal. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

“SWDA” shall mean the Federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA") and the 1984 Hazardous and Solid Waste Amendments ("HSWA") to RCRA.

“Tank” shall mean a stationary device, designed to contain an accumulation of waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, or plastic) which provide structural support.

“TENORM” means Technically Enhanced Naturally Occurring Radioactive Material whose radionuclide concentrations are increased by or as a result of past or present human practices. TENORM does not include background radiation or the natural radioactivity of rocks or soils. TENORM does not include "source material" and "byproduct material" as both are defined in the Atomic Energy Act of 1954, as amended (AEA 42 USC §2011 *et seq.*) and relevant Codes implemented by the NRC.

“TENORM wastes” means wastes defined as solid, special or hazardous wastes that are or contain Technically Enhanced Naturally Occurring Radioactive Materials (TENORM) at concentrations greater than 185 becquerel per kilogram (5 picoCuries/gram or pCi/gm). There is no adjustment made for the background of blended waste material. The 5 pCi/gm limit is for the waste stream or material as measured using a SLT-EPA approved analytical method and procedures.

“Transfer station” shall mean a fixed, supplemental collection and transportation facility used by persons and route collection vehicles to deposit collected solid waste from off-site into a larger transfer vehicle for transport to a permanent disposal site or inter-modal facility. "Transfer station" may also include recycling facilities.

“Transporter” shall mean any person, contractor, or operator who commercially collects and transports solid waste or hazardous waste to waste management, transfer or disposal facilities on or off the Reservation.

“Treatment” shall mean, when used in connection with solid or hazardous waste, any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid or hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amendable for recovery, amendable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it non-hazardous.

“Tribal Response Program” (TRP) shall mean the Standing Rock Sioux Tribe program, as a part of the DER/EPA, that may investigate, assess, and remediate, or require a responsible party to investigate, assess or remediate a release, or threat of release, of a hazardous waste, substance, pollutant, contaminant, petroleum product, controlled substance or mining materials that may pose a threat to public health, welfare or the environment.

“Tribe” shall mean the Standing Rock Sioux Indian Tribe (SRST).

“Tribe's Waste Management Program” shall mean all the authorities, activities and procedures under this code, the Tribe's Integrated Solid Waste Management Plan, and any other tribal laws or codes that comprise the Tribe's system of permits, and prior approval and conditions for regulating the collection, handling, transportation, and disposal, treatment and storage of solid waste, including all of the location, operation, design, groundwater monitoring, corrective action, closure, post-closure and financial assurance requirements under the 40 C.F.R. Part 258 Criteria for municipal solid waste landfills.

“Tribe's Integrated Solid Waste Management Plan (ISWMP)” shall mean the formulation of Tribal policies for all solid waste collection, handling, transportation, disposal, treatment, storage, recycling and resource conservation, on the Reservation.

“Uppermost aquifer” shall mean the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer.

“Used oil” shall mean any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

“Vector” shall mean any insect, arthropod, rodent, or other animal capable of transmitting a pathogen from one organism to another, or of disrupting the normal enjoyment of life by adversely affecting the public health and well-being.

“Waste” shall mean solid waste, hazardous waste, or special waste as defined by this code.

“Waste management unit boundary” shall mean a vertical surface located at the hydraulically down-gradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

CHAPTER TWO JURISDICTION AND APPLICABLE LAWS

Section 201 Authority

(a) The Standing Rock Sioux Tribe is a sovereign federally recognized Indian Tribe with all rights, privileges and powers attendant thereto. The Tribe is organized pursuant to a duly approved Constitution approved by the adult members of the Tribe on October 1, 1969 (the “Constitution”). Pursuant to Article III, Section 1 of the Tribe's Constitution, the Standing Rock Sioux Tribal Council (herein also referred to as “the Council”) is the governing body of the Tribe. Under Article IV(c), IV(j) and IV(o), the Tribal Council has the authority to conduct the following (i) “promote and protect the health...general

welfare of the members of the Tribe;” (ii) “to manage, protect and preserve the property of the Tribe and wildlife and natural resources of the Standing Rock Indian Reservation;” and (iii) “safeguard and promote the peace, safety, morals, physical and general welfare of members of the Tribe,” respectively.

(b) This code is enacted pursuant to the sovereign tribal powers expressly delegated to the Tribal Council under the Constitution of the Tribe, which authorizes the Council to manage and otherwise deal with Tribal lands, natural resources and property; to promulgate and enforce ordinances providing for the health, safety, and welfare of the Tribe and its members and residents; to maintain law and order and to protect the environment on the Reservation; to administer justice on the Reservation; to regulate Tribal boards, agencies, and employees; and to delegate to Tribal boards, agencies, and employees, the foregoing powers, subject to review by the Council. Furthermore, the power to manage and regulate the transportation, handling, storage and disposal storage, and collection of solid and hazardous waste on the Reservation inherently resides within the retained sovereign power of the Tribe.

(c) The Tribe shall have full authority over enforcement of this code, and the Standing Rock Sioux Tribal Council places primary responsibility for the implementation and enforcement of this code with the Standing Rock Sioux Tribe Department of Environmental Regulation/Environmental Protection Agency (“DER/EPA”).

(d) The Tribal Courts shall have full authority over all civil enforcement of this code pursuant to “Title I. Courts” of the SRST Code of Justice and all formal enforcement shall be conducted in accordance with “Title II. Civil Procedure” of the SRST Code of Justice. The Standing Rock Sioux Tribal Council places primary responsibility for administrative actions, informal compliance activities and ensuring due process for all civil actions in enforcement of this code with the Standing Rock Sioux Tribe Department of Environmental Regulation/Environmental Protection Agency (“DER/EPA”).

Section 202 Jurisdiction

(a) The Tribe has inherent sovereignty to exercise civil authority and jurisdiction over the conduct of tribal members and all other persons on all lands within the exterior boundaries of the Reservation and on tribal lands and tribal indian service areas outside of the Reservation boundaries in order to maintain the environment, natural resources, public health, safety, welfare, political integrity and economic security of the Tribe.

(b) Because any violation of this code or any rule or regulation adopted thereunder will demonstrably and seriously impact the environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Tribe, this code, and any rule and regulation adopted thereunder, shall apply to the following:

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

(2) all places and lands located anywhere within the exterior boundaries of the Reservation, including all trust and non-trust lands, and notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, or any real property interest of any kind, held by any person as defined under this code; or any person or company that has entered into a consensual agreement with the Tribe or its members or where the conduct of such person threatens or has some direct effect on the political integrity, economic security, or health or welfare of the Tribe.

(c) Citation to statutory or administrative language, definitions, procedure, or provisions of federal or state law in this code does not establish jurisdiction, which otherwise does not exist, in such federal or state government.

Section 203 Applicability; Exemptions

(a) Except as otherwise provided in this section, the provisions of this code, any regulations promulgated hereunder, and all orders from the Director, DER/EPA and the Tribal Court, shall apply to all persons and all property within the exterior boundaries of the Standing Rock Indian Reservation, or other territory over which the Tribe may exercise jurisdiction. All such persons shall have consented to the civil jurisdiction of the Tribal Court, and shall be subject to civil prosecution, civil penalties, civil damages, or any other civil remedies imposed or awarded by the Tribal Court for any violations of this code, or any rules or regulations promulgated thereunder.

(b) The provisions of this code and/or regulations promulgated hereunder, in whole or in part, shall apply to any person who has submitted an application for and received a permit pursuant to this code or is otherwise subject to its provisions and to all property within the Standing Rock Indian Reservation owned or operated by such person.

(c) The provisions of this code and/or regulations promulgated thereunder, in whole or in part, shall apply to any person and to such property owned or operated by such person to such extent and under such terms and conditions as may be provided in any voluntary compliance agreement entered pursuant to this code.

(d) The on-site disposal of on-site generated solid waste from a family ranch, camp or farm is not prohibited where said disposal does not, according to the Director, create a public health or environmental hazard or public nuisance. The Director must receive prior notification of such activities and must approve such activities, in writing.

Section 204 Consent to Jurisdiction

As a condition of obtaining a permit under this code, the permittee, his/her agents, employees, lessees, sub-lessees, successors and assigns shall consent to the jurisdiction of the Tribe and shall agree to abide by all laws of the Tribe as required by this code.

Section 205 Implied Consent

Any person who is not a member of the Tribe who uses land anywhere within the exterior boundaries of the Reservation, whether trust or non-trust land, or other territory over which the Tribe has jurisdiction, or who enters into consensual relationships with the

Tribe or its members, through commercial dealings, contracts, leases, or other arrangements shall be subject to this code. Such person's use of land involving the storage, collection, transportation, and disposal of waste on the Reservation will have a demonstrably serious impact upon the environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Tribe, and its members, unless such use is in compliance with the provisions of this code, and any rules or regulations promulgated thereunder.

Section 206 Voluntary Compliance Agreement

(a) Any person to whom the provisions of this code are not otherwise applicable, may apply to the Director to enter into a voluntary compliance agreement with the Tribe with respect to any property to which the provisions of this code and/or regulations promulgated hereunder, in whole or in part, are not otherwise applicable.

(b) A proposal to enter into a voluntary compliance agreement shall be in writing, shall indicate the person and property proposed to be subject to the agreement, shall indicate the proposed term of the agreement, and shall indicate which part or parts of this code and/or regulations promulgated hereunder, in whole or in part, with which voluntary compliance is proposed.

(c) A voluntary compliance agreement shall be for a term of not less than one (1) year, and may be subject to renewal for successive terms of not less than one (1) year. A voluntary compliance agreement may not vary the requirements of this code or of any regulations promulgated pursuant to this code, except that the consent required to be given in accordance with this code shall be strictly limited to the application of this code and regulations promulgated pursuant to this code in accordance with the terms of said voluntary compliance agreement, including any renewals thereof.

(d) A voluntary compliance agreement shall not be effective unless and until final approval of the agreement is given by the Director.

(e) Except as otherwise expressly provided in the agreement, by entering into a voluntary compliance agreement, no person shall be deprived of the benefit of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property owned or operated by such person.

(f) A person may enter into a voluntary compliance agreement in accordance with this section, notwithstanding that the validity of such person's claim to be exempt from the provisions of this code has not been judicially determined, whenever the Director determines that entering into such an agreement is in the best interests of the Tribe. Entering into an agreement pursuant to this subsection shall not constitute a determination or admission by the Tribe that such claim of exemption is valid.

Section 207 Policy and Applicable Law

Compliance with this code and regulations promulgated hereunder does not relieve a person of the obligation to comply with other applicable laws and regulations. The Tribe

may be required by federal law to comply with the disposal of solid wastes on the Reservation under the Solid Waste Disposal Act ("SWDA"), as amended by Section 3001 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C.A. § 6901 *et seq.* The code incorporates, by reference, all of the Criteria contained in 40 C.F.R. Parts 257 and 258 and 262-279, as applicable. If any part of 40 C.F.R. Parts 257 and 258 and 262-279 are modified, any modifications are automatically incorporated by reference and become part of this code, and supercede any of the provisions that were modified. If any of the Parts 257 and 258 and 262-279 criteria are not actually restated in this code, they are nevertheless incorporated by reference and are applicable. Where there is a gap in the tribal law, the federal law and regulations shall be incorporated.

Section 208 Sovereign Immunity

(a) Neither this code, DER/EPA, nor any action or agreement of the Director or Commission, shall be construed as, or is intended to be, a waiver or modification of any sovereign immunity now enjoyed by the Tribe, or a consent by the Tribe to jurisdiction or suit against it.

(b) The Tribe reserves the right to contest the jurisdiction of the federal court in any citizens' suit filed against it under Section 7002 of the SWDA, except only as such jurisdiction may be expressly waived by the Tribe in such suit.

(c) The Tribe, the Council and its members; the Commission and its members; DER/EPA and its Director and employees; and all other Tribal officers, employees, representatives, or agents thereof, who are performing their duties by implementing or enforcing this code and the Tribe's solid and hazardous waste management program, are immune from suit for monetary damages in any court of law, and they do not waive any of their sovereign rights or immunities; executive privileges or right to privacy or confidentiality.

(d) The Tribe, the Commission and the Director may enter into such contracts as are authorized by the Council, for the purpose of implementing or enforcing this code and the Tribe's solid and hazardous waste management program; provided that such contracts shall not be construed to be a waiver of the sovereign rights or immunities of the Tribe, or any board, agency, entity, officer, employee, representative, or agent thereof.

Section 209 Remedies Not Exclusive

The rights of the Tribe with respect to a permittee under this code, including the right to issue compliance orders, recover civil penalties, or civil damages for clean up, abatement, corrective or remedial costs against a permittee, or revoke, suspend, or modify a permit, are not intended to be exclusive, and the Tribe reserves all other legal rights which it otherwise has against any permittee, including the right to seek injunctive relief under this code, or seek relief in any court of competent jurisdiction.

Section 210 Indemnification

Any person, vendor or permittee who contracts with the Tribe to collect, transport, distribute, or dispose of solid or hazardous waste, shall indemnify the Tribe, or any of its

members, officers, agents or employees, from any claims and liabilities of any nature whatsoever, including third party suits for personal injury, death, environmental cleanup, or property damage, which are based upon any violations of any of the provisions of this code; rules or regulations promulgated thereunder; guidance documents; environmental solid waste standards; any orders or permit conditions; or are based upon violations of any other Federal or Tribal environmental laws, and which claims or liabilities are not caused by the Tribe, or any of its members, officers, agents or employees.

Section 211 Construction

This code shall be liberally construed to carry out its purpose. The effectiveness and enforceability of this code shall not be dependent upon the adoption of any regulations unless otherwise required by law. Nothing contained in this code or regulations promulgated hereunder shall be construed to diminish, limit or otherwise adversely affect any right or remedy held or available to the Standing Rock Sioux Tribe.

Section 212 Severability

If any provisions of this code, or any application of its provisions to any person or circumstance is held invalid, the application of such provision to other persons or circumstances, and the remaining provisions of this code, shall not be affected thereby.

Section 213 Savings Clause

Nothing in this code shall be deemed to effect, modify, amend or repeal any provisions of this code or ordinance administered by the Council or any other department, board or agency of the Standing Rock Sioux Tribe, unless identified below.

Section 214 Effective Date

This code shall become effective upon enactment of this code by the Standing Rock Sioux Tribal Council.

Section 215 Repeal of Prior Ordinances/Code

This code shall repeal and replace all prior enactments of the Title XXVI: Standing Rock Solid Waste Management Ordinance/Code(s) and SRST Title XXIX: Environmental Policy Ordinance Section 29-102 (f).

Section 216 Notice of Enactment of Code

To insure that all persons and entities affected by this code are given adequate notice of the enactment of this code, public notice shall be provided of this code within fifteen (15) days of its enactment in at least one (1) regularly published newspaper at least once every week over a twelve (12) week period.

CHAPTER THREE ENVIRONMENTAL QUALITY COMMISSION

Section 301 Composition of Commission

The Environmental Quality Commission (the Commission) shall be composed and operate as specified under the SRST Title XXIX: Environmental Quality Code, Environmental Policy Ordinance (SRST-EPO) Section 29-102.

Section 302 General Duties of Commissioners

The duties and functions of the Commissioners, for the purposes of implementation and enforcement of SRST Titles XXVI and XXIX, shall include, but not be limited to, the following:

- (a) 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 102 of this code and Section 29-101 of the SRST EPO;
- (b) to implement the environmental policies of the Tribe, as provided in Section 102 of this code and Section 29-101 of the SRST EPO;
- (c) 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;
- (d) to implement and enforce this code in accordance with Section 304 and Chapters Four and Sixteen of this code;?
- (e) 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;
- (f) to present to the Tribal Council recommendations for environmental protection on the Reservation;
- (g) to enact bylaws or regulations of the Environmental Quality Commission, by which the Commission conducts its business, 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 pursuant to Section 29-102(d) of the SRST EPO.
- (h) to negotiate and enter cooperative agreements with instrumentalities or agencies of the federal, state or tribal governments, for the protection of the Reservation environment and the implementation of this code. Such agreements shall require the approval of the Tribal Council;
- (i) to request and obtain funding for the operation of the Environmental Quality Commission and to carry out the duties and functions of the Commission;

- (j) to consult with the local district councils and other community or municipal governmental agencies on the environmental instrumentalities of the Reservation;
- (k) to recommend such employees and consultants as may be necessary to carry out its functions depending on available funding and resources;
- (l) to obtain such liability insurance or bonding that it deems necessary in the event of a citizens suit depending on available funding and resources;
- (m) to perform such other duties as are delegated to the Environmental Quality Commission by the Tribal Council; and
- (n) to report to the respective Local District Council all activities of the Commission;

Section 303 Specific Duties of Commissioners

The duties and functions of the Commissioners, for the specific purposes of implementation and enforcement of this code, shall include, but not be limited to, the following:

- (a) to identify grants or other sources of funding to support the goals and objectives of this code, to include resource recovery and reuse;
- (b) to work with the Director to draft and develop an Integrated Solid Waste Management Plan (ISWMP) for the Tribe, as provided for in this code, and to seek grants or other sources of funding to support such efforts and implement the goals and objectives of the ISWMP. Submit the proposed ISWMP to the Tribal Council for consideration and adoption and report annually to the Tribal Council on the progress of the implementation of the ISWMP and recommend any revisions needed in the ISWMP;
- (c) to support the prohibition of the disposal of any solid waste at all "open dumps" on the Reservation and to take whatever action is necessary, in coordination with the Director and other tribal and federal agencies, to prevent new or additional "open dumps" on the Reservation;
- (d) to coordinate with the Director and TRP coordinator to identify and report all current and past brownfields, open dumps or other contaminated sites;
- (e) to ensure the efficient, thorough, and economical management and oversight of solid and hazardous waste management on the Standing Rock Indian Reservation;
- (f) to review and comment on SRST "Guidance Documents" developed to assist in the implementation of this code. The guidance documents may supplement federally mandated criteria. However, any criteria set forth in any SRST guidance document shall not be in conflict with any federally-mandated criteria, or contain any criteria which are less stringent than the federally mandated criteria. Guidance documents issued by the SRST DER/EPA however, may provide more stringent criteria than are required by the federally mandated criteria. SRST guidance documents shall be enforceable if they are

specifically referenced or attached, as part of, or as a condition of, any order or permit issued under this code;

(g) to assist the Director, upon request, with any applications for Federal or State financial aid, training, or technical assistance in the implementation of the Tribe's solid and hazardous waste program(s). This may include federal grants, funds, or assistance which may be available from the U.S. EPA; the U.S. Bureau of Indian Affairs; the U.S. Indian Health Service; the U.S. Department of Housing and Urban Development; the Administration for Native Americans; and any other Federal, State, or other governmental agencies or sources, including any Federal appropriations under the Indian Environmental General Assistance Program Act of 1992, P.L. 102-497;

(h) to assist the Director, upon request, in the preparation and filing of any and all required reports; and

(i) to meet quarterly, or as requested by the Director or the Tribal Council, to conduct the above activities depending on available funding and resources.

Section 304 Enforcement

(a) The Commission is authorized and directed to:

(1) enforce the provisions of this code and to issue such administrative orders as may be necessary to carry out this code, and provide for its enforcement through all appropriate administrative or judicial processes;

(2) initiate civil actions in the Standing Rock Tribal Court and other courts of competent jurisdiction to enjoin any threatened or continuing violation of this code or require compliance with an administrative order of the Commission, after the appeal and judicial review process for such order is completed;

(3) levy a civil fine, or other appropriate penalty, as may be necessary; and

(4) initiate such enforcement actions and assess fines or penalties in accordance with Chapters Four and Sixteen of this code.

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

(c) The Director shall assist the Commission in performing such duties and functions and the Commission shall support the Director in the performance of his/her compliance and enforcement duties and functions.

(d) The Commission shall review and comment on rules and regulations, as required by this code, including a system of administrative and civil fines, sanctions and penalties, for violations of this code or any policies, rules and regulations promulgated under this code. All formal comments on such rules and regulations shall be submitted to the Director and may be approved, modified or disapproved by the Director within ninety (90) days of

submission by the Commission. New or amended codes or regulations become effective upon approval by the Council;

Section 305 Variances and Exemptions

(a) Variances

After an opportunity for public comment, the Commission may authorize a variance from a requirement of this code if:

- (1) it shall not result in an unreasonable risk to human health or the environment;
- (2) the Commission develops and orders, in consultation with the Director and the violator, a schedule for compliance;
- (3) it is not otherwise contrary to federal law; and
- (4) it does not constitute an arbitrary or capricious exercise of authority.

(b) Exemptions

The Commission may exempt a person from a requirement of this code upon finding that:

- (1) due to compelling factors, including the financial resources available to the person, the person is unable to comply with the total requirements of this code;
- (2) the granting of the exemption will not result in an unreasonable risk to human health or the environment; and
- (3) the person shall submit to the Commission, within thirty (30) days of the date of the exemption, a schedule designed to attain full compliance, as soon as is feasible.

Section 306 Hearings

A person aggrieved by an adverse action of the Commission or the Director pursuant to this code shall be entitled to a hearing before the Commission in accordance with the requirements and procedures of SRST-EPO Section 29-104(b). For the purposes of this code the term "adverse action" includes but is not limited to:

- (a) the denial, revocation or amendment of a permit to operate a system or facility for the storage, collection, transportation, reuse, recycling or disposal of solid or hazardous waste;
- (b) an order issued to enforce any provision of this code; and/or
- (c) a penalty assessed due to a violation of this code.

Section 307 Judicial Review of Decisions

The 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 sixty (60) days of receipt of the hearing decision by the aggrieved party who invoked the hearing. 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.

Section 308 Sovereign Immunity

The Commission is not authorized to consent to jurisdiction, liability, or waiver of sovereign immunity.

CHAPTER FOUR
DEPARTMENT OF ENVIRONMENTAL REGULATION

Section 401 Powers, Duties and Responsibilities

The SRST Department of Environmental Regulation/Environmental Protection Agency (DER/EPA) and its Director are entrusted with the duty and responsibility of ensuring the proper treatment, storage and disposal of solid and hazardous waste on the Reservation and of ensuring compliance by all persons with this code. In carrying out the duties and responsibilities of this Code, the DER/EPA Director and staff are authorized to perform the following activities:

- (a) Study the waste stream(s) produced by persons, residents and businesses of the Reservation or other territory over which the Tribe has jurisdiction;
- (b) Assess and determine whether the creation of a waste management or disposal site on the Reservation would negatively impact the health, safety and welfare of the residents and environment of the Reservation or other territory over which the Tribe has jurisdiction;
- (c) Assess and determine whether the Tribe and/or the permittee could mitigate or control any negative impact on the health, safety and welfare of the residents and environment projected to be associated with a solid waste management or disposal site;
- (d) Propose such additional or revised codes or regulations governing solid or hazardous waste generation, collection, management, storage or disposal, as are reasonably necessary to implement and carry out the policies, requirements, and duties described in this code;
- (e) Monitor, inspect and ensure entities and persons subject to this code are in compliance to include the management, handling, treatment, storage, transfer and disposal of solid, special and hazardous waste and the investigation, assessment and remediation of actual or potential releases or contaminants;
- (f) Ensure the design, construction, operation, monitoring, closure and post-closure monitoring of solid waste facilities are in compliance with this code;
- (g) Ensure compliance with permits or orders issued by the Director or the Commission pursuant to this code and develop procedures for carrying out a permit compliance and inspection program, including but not limited to requiring operators to file reports with

the DER/EPA in order to monitor solid waste handling, treatment, storage, transfer and disposal within the Reservation;

(h) Ensure, in the event of a release or spill of a hazardous substance, pollutant or contaminant to the air, land or waters or groundwater of the Reservation resulting in a potential threat to the public health, welfare or the environment within the boundaries of the Reservation, the appropriate persons, owners, operators or other parties addresses the immediate and long term impacts of such release or spill to include all necessary containment, remediation, assessment of impacts and long term monitoring; and ensure compliance with the notification and response requirements of this code;

(i) Ensure compliance with Tribal Institutional Controls or land use restrictions resulting from contamination;

(j) Conduct community outreach and education on the requirements and means of compliance with this code;

(k) Recommend to the Commission such contracts as deemed necessary, for the accomplishment of essential compliance and enforcement services and/or for the investigation, assessment, or remediation of releases of solid or hazardous waste, hazardous substances, pollutants or contaminants within the Reservation, to include open dumping of solid waste, provided that DER/EPA manages and monitors all such contracts for the Tribe;

(l) Seek grants or other sources of funding to support such efforts, and may cause to be undertaken analyses and studies regarding the best methods for safe solid waste handling, treatment, storage, transfer or disposal within the Reservation; the investigation, assessment, or remediation of releases of solid or hazardous waste, hazardous substances, pollutants or contaminants within the Reservation, to include open dumping of solid waste. Such a program may include private sector or federal government entities participation in this effort; and

(m) Communicate with U.S. EPA regarding the Tribe's solid and hazardous waste management program and response program and make required reports to the U.S. EPA in a manner and containing such information as required, excluding any confidential or privileged information.

Section 402 DER/EPA Director

(a) The DER/EPA Director ("Director"), also referred to as the Environmental Specialist, shall perform such duties as are specifically designated by SRST Title XXIX and this code, or as may be assigned by the Council. The Director shall be responsible for the issuance, enforcement and administration of the policies and permits issued under this code. The Director shall be responsible for the daily management of the DER/EPA and shall insure compliance with this code, and with the conditions of all permits, determinations, orders, regulations, plans and other actions taken by the Director or the Commission under this code. The Director may delegate to a member of the DER/EPA

staff the authority to perform any of the powers, duties and responsibilities of the Director as provided in this code.

(b) In implementing this code the Director is authorized to perform the following actions and activities:

- (1) prescribe such guidance, policies or procedures as are necessary to carry out his/her functions under this code pursuant to the provisions of this code;
- (2) provide for the administration, supervision, monitoring, investigation and enforcement of the provisions of this code and any regulations promulgated hereunder, pursuant to the provisions of this code;
- (3) require monitoring, sampling or other studies, regarding new or improved methods of solid waste handling, treatment, and disposal and prepare and implement a solid waste management information storage and retrieval system coordinated with other information systems;
- (4) issue required permits pursuant to the provisions of this code;
- (5) assess and collect required fees required pursuant to this code on persons involved with the collection, management, storage, transportation, and disposal of solid and/or hazardous waste, provided that all monies resulting therefrom shall be deposited in the Standing Rock Sioux Tribe Treasury to the Environmental Protection Fund;
- (6) receive and record information submitted by any persons concerning any regulated activity or facility. If requested, the Director shall provide a written response to any person providing such information within sixty (60) days of the request;
- (7) collect, organize and catalog existing information and studies available from all sources, both public and private, pertaining to the management of solid and hazardous waste and past releases of hazardous substances, pollutants or contaminants within the exterior boundaries of the Standing Rock Indian Reservation;
- (8) develop such additional data and conducting studies pertaining to solid and hazardous waste and solid waste management as are necessary to accomplish the objectives of this code;
- (9) conduct investigations, inspections and tests to carry out the duties of this code pursuant to the provisions of this code;
- (10) participate in Commission hearings related to any aspect of or matter within the authority of this code and, in connection therewith, compel the attendance of witnesses and the production of records, and participate on behalf of the Tribe in such hearings;
- (11) conduct community outreach, compliance assistance, and education on the requirements and goals of this code, and solicit public comment and obtain expert advice when appropriate;
- (12) issue guidance and compliance guidelines and encourage voluntary cooperation with the provisions of this code;
- (13) seek, accept, receive and administer grants, cooperative agreements or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this code, provided that all monies resulting therefrom shall be deposited in the Standing Rock Sioux Tribe Finance Department;

- (14) prepare and implement Tribal policies for solid waste management, reuse and recycling;
- (15) conduct studies of the nature, extent, and methods of reducing and controlling litter problems on the Reservation including, but not limited to, methods of improving public education and incentives to reduce waste generation and littering, necessary additional codes, and improved methods of implementing existing laws, ordinances and codes; and
- (16) perform such other activities as the Director may find necessary to carry out his/her functions and duties under this code.

(c) In prescribing guidance, policy or regulations, or issuing permits, under this code, the Director shall consider but shall not be limited to the relevant factors prescribed by Subtitle C & D of the Resource Conservation and Recovery Act (RCRA), as amended, and the regulations thereunder, except that the regulations prescribed by the Director shall be at least as stringent as those promulgated under RCRA. All regulations promulgated under this code shall be subject to review and comment by the Commission and approval by the Tribal Council.

Section 403 DER/EPA Enforcement Agent

(a) The DER/EPA Director is hereby designated as the primary enforcement agent entrusted with the duty and responsibility of ensuring full compliance by all persons and government agencies with this code and any permits or administrative orders issued by the Director or the Commission pursuant to this code. This shall include the proper transportation, treatment, storage and disposal solid and hazardous waste on the Reservation and investigating the release, or threat of release, of a hazardous substance, pollutant or contaminant, petroleum product, controlled substance or mining materials. The Director may delegate such authority to perform any of his/her powers, duties and responsibilities as provided in Section 404.

(b) In addition to the duties and responsibilities of Sections 402 and 403 the duties of the DER/EPA enforcement agent(s), shall include, but may not be limited to:

- (1) issuing Citations, Warning Letters, Notice of Violations (NOVs) and administrative orders and assessment of civil fines and penalties to carry out the intent of this code as specified under Chapter 17;
- (2) conducting investigations and gathering information necessary for the enforcement of this code and any permits or orders issued pursuant to this code;
- (3) hold informal compliance conferences with violators;
- (4) investigate the activities of any solid or hazardous waste management or disposal facility, collection and transportation service in order to determine compliance with this code or to verify information obtained from the owner or operator;
- (5) interview persons employed in the operation of any regulated facility or service subject to the requirements of this code;

- (6) participate in Commission hearings related to any enforcement action, order or appeal of an enforcement action by an aggrieved party and, in connection therewith, compel the attendance of witnesses and the production of records, and participate on behalf of the Tribe in such hearings;
- (7) remove, render inoperative, shut down, close, modify or otherwise control the methods of any operation involved with the collection, transportation, storage and disposal of solid or hazardous waste where such operation poses a threat the public health or the environment or is in significant non-compliance with this code;
- (8) inspecting at any time any site or premises at which activities regulated under this code are conducted and make photographic, video, or other records of information obtained during the inspection and make video or photographic records of any regulated activity or facility;
- (9) entering any site or premises subject to this code, and any order or permit issued pursuant to this code, or at which records relevant to regulated activity or facility are kept and review and reproduce any records relevant to the regulated activity or facility;
- (10) obtaining any information, including records and reports, from any owner or operator of a facility or operation subject to this code, or subject to a permit or order issued pursuant to this code, necessary to determine whether the owner or operator is in compliance with this code;
- (11) conducting any independent monitoring or testing necessary to ensure that owners or operators of a facility or operation subject to this code, or subject to a permit or order issued pursuant to this code, are in compliance;
- (12) conducting any and all independent tests or samplings necessary to verify the adequacy of methods (including sampling) used by owners or operators to obtain information to determine compliance with this code, including, but not limited to, testing and inspecting any equipment used by the owner or operator to test, sample, or obtain information; and
- (13) solicit and obtain expert advice when appropriate.

Section 404 Delegation of Authority

The Director may delegate to any officer or employee of the Standing Rock Sioux Tribe DER/EPA such powers and duties under this code, except the making of regulations or the issuance of administrative orders or permits, as he/she may deem necessary or expedient (the making of regulations or the issuance of administrative orders or permits may only be delegated to the Commission). In addition, the Director may delegate to any officer or employee of the Standing Rocks Sioux Tribal Law Enforcement Police, the Standing Rock Game and Fish Departments, the Bureau of Indian Affairs (BIA) Police,

and any other tribal entity who enters into a cooperative agreement with the Standing Rock Sioux Tribe DER/EPA to enforce this code, the authority for enforcement of this code. It shall be the duty of these entities to enforce the provisions of this code fairly as to all persons within the Reservation. The Standing Rock Sioux DER/EPA Director shall be notified within seventy-two (72) hours of any citations issued or actions taken pursuant to this authority. Failure to provide timely notification to the Director shall not invalidate such citation or action.

Section 405 Governmental Cooperation

(a) The provisions of this code may be carried out by agreements between the Standing Rock Sioux Tribe and federal, state or county agencies, including but not limited to the Indian Health Service and the Bureau of Indian Affairs.

(b) The Director and the DER/EPA, jointly or individually, may:

- (1) coordinate solid waste handling, treatment, transfer or disposal with federal, state and local agencies and with persons in the solid waste industry;
- (2) assist or receive technical assistance to or from tribal, state, and local agencies and officials thereof and others involved in the planning and operation of solid or hazardous waste program and facilities, including the development and maintenance of the inspection, enforcement, training and regulatory programs;
- (3) refer or request, as necessary, any tribal or federal agency having jurisdiction, to investigate and report on any questions or matters involving solid and hazardous waste storage, collection, treatment, transportation, treatment and disposal affecting the Reservation;
- (4) organize, operate, and conduct any solid or hazardous waste enforcement activity the Commission or Director deems advisable upon the request of the governing body of the federal agency or Tribal Council, upon the appropriation for such purposes by the federal agency or Tribe of a sum adequate to compensate the DER/EPA or the Director for the full cost of that activity; and
- (5) refer criminal investigations and/or offenses to appropriate federal, state and tribal law enforcement agencies.

Section 406 Public Information Program

The Commission and the Director implement a public information program to provide information to other governments, private industry, tribal members and the general public concerning environmental protection, effective reuse of solid waste, and other solid and hazardous waste management and compliance matters as it deems appropriate.

CHAPTER 5

TRIBAL INTEGRATED SOLID WASTE MANAGEMENT PLAN

Section 501 Tribal Integrated Solid Waste Management Plan (ISWMP)

The Commission, with the assistance of the Director, shall develop and propose a comprehensive Integrated Solid Waste Management Plan (herein "ISWMP") to the Tribal Council. The ISWMP shall address the formulation of tribal policies for all solid and hazardous waste collection, transportation, handling, treatment, storage and disposal on or off the Reservation. During this process, the Commission and the Director shall consult with and carefully evaluate the recommendations of all concerned tribal members, Reservation residents, businesses and the Council.

Section 502 Approval of Plan

The ISWMP, describing the location, design, operation, maintenance and ultimate use of solid waste facilities within the Reservation, shall be submitted by the Commission to the Tribal Council for consideration and approval, subject to the review and concurrence by all appropriate tribal committees.

Section 503 Contents of Plan

The ISWMP shall, at a minimum:

- (1) Include a description of the Reservation solid waste service area(s);
- (2) Include a description of the current Tribal solid waste management program structure and any recommendations for changes and/or additions;
- (3) Include a description of the Tribe's current waste management practices and propose any recommendations for improvements;
- (4) Include a summary of the current funding for collection, management and recycling of solid waste, as well as ensuring compliance and enforcement of this code and the sustainability of such Tribal programs;
- (5) Include long term goals of the Tribe's solid waste and recycling programs;
- (6) Include a proposed implementation schedule of recommended management actions;
- (7) Estimate the volume and composition of solid waste generated on or illegally imported to the Reservation and explain the basis of the estimate;
- (8) Identify the responsibilities of other Tribal agencies and entities in the implementation of the ISWMP, the distribution of funds to the authorities responsible for development and implementation of the ISWMP, and the means for coordinating all planning and implementation under the ISWMP;
- (9) A review of the tribal regulatory systems which are necessary to implement the Tribe's solid waste disposal program, and enforce this code, and rules or regulations promulgated thereunder;

- (10) Estimate and describe the existing disposal of solid waste in open dumps within the Reservation;
- (11) Report on the plans for closing of all existing open dumps within the Reservation pursuant to this code and Federal law;
- (12) Report on extent of open burning within the Reservation;
- (13) Report on incineration within the Reservation;
- (14) Recommend if the Director should solicit, negotiate and recommend to the Tribal Council long-term contracts for the removal of solid waste to authorized or permitted solid waste facilities, the construction and operation of solid waste facilities, securing long-term markets for material and energy recovered from solid waste facilities, and conserving material or energy by reducing the volume of solid waste;
- (15) Address resource conservation or recovery and for any combination of practices as may be necessary to handle, treat, recycle, reuse solid waste in a manner that is environmentally sound and in compliance with this code and applicable federal regulations;
- (16) Establish and specify a goal of recycling the solid waste accepted by any recycling facility within the jurisdiction of the Tribe to the maximum extent possible;
- (17) Adhere to the federal guidelines for the disposal of solid waste and incorporate the recommended procedures, design, and operations described in the Code of Federal Regulations Title 40, Parts 257 and 258, as amended;
- (18) The Plan may also include any other matters which are relevant to the Tribe's solid waste management program.

Section 504 Future Solid Waste Facility Sites

In identifying and reserving areas for the establishment or expansion of future solid waste facilities, to include waste recycling, processing or recovery areas, the DER/EPA shall ensure that the land uses adjacent to or near such areas are compatible with solid waste facilities and shall consider the following:

- (1) The varying geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to prevent leachate contamination of ground and surface waters, the protection of surface waters from surface runoff contamination, and the protection of ambient air quality;
- (2) Characteristics and conditions of handling, treatment, and disposal methods, techniques, and practices, and locations of solid waste facilities where such methods, techniques, and practices are conducted, taking into account the nature of the material to be handled;

- (3) Site Specific Flexibility Requests that are compatible with 40 C.F.R. Part 258 and Tribal requirements;
- (4) Population density, distribution, and projected growth;
- (5) Geographic, geologic, climatic, and hydrologic characteristics;
- (6) The types and locations of transportation facilities;
- (7) The profiles of local industries and waste types;
- (8) The constituents and general rates of solid waste;
- (9) The political, economic, organizational, financial, and management problems affecting comprehensive solid waste management on the Reservation;
- (10) Types of resource recovery facilities and resource conservation systems that are appropriate; and
- (11) Available new and additional markets for recovered material and energy resources recovered from solid waste as well as methods for conserving such material and energy.

Section 505 Periodic Review of Plan

The Commission, with the assistance of the Director, shall review and evaluate the ISWMP at least every three (3) years to obtain maximum consistency with Tribal and federal policy. After such review and evaluation, the Commission shall propose appropriate amendments to the ISWMP for the consideration of the Tribal Council.

CHAPTER SIX RECYCLING

Section 601 Authority

The Director is authorized to create and adopt such policies and regulations as are necessary for the safe and sanitary collection, handling, transport, storage, and disposal of recycled materials, including composting, within the Reservation or other territory over which the Tribe has jurisdiction.

Section 602 Policy

Tribal policy shall be that solid wastes which are reusable shall be recycled or reused if economically feasible.

Section 603 Public Participation

In developing regulations for recycled materials, the Director shall allow for input and comment by the Commission, tribal members and other residents of the Reservation or other territory over which the Tribe has jurisdiction.

Section 604 Study

The Commission may provide input into any study regarding the recycling of solid wastes on the Reservation, as part of the Tribe's Solid Waste Management Plan. Such study shall include an analysis of technological and economically feasible systems for the collection, separation, containerization, diversion, and marketing of solid wastes that are recyclable. The study shall identify potential markets or diversions from disposal for recyclable solid wastes. If recycling is cost effective or economically feasible, the Director may issue rules and regulations for the recycling of solid wastes on the Reservation.

CHAPTER SEVEN PROHIBITED ACTIVITIES

Section 701 Littering Prohibited

It is expressly prohibited and shall be unlawful for any person to dump, deposit, drop, throw, discard, leave, cause or permit the dumping, depositing, dropping, throwing, discarding or leaving of litter upon any public or private property within the exterior boundaries of the Reservation, or upon or into any river, lake, pond, or other stream or body of water within the exterior boundaries of the Reservation, unless:

- (1) The property has been designated by the Director for the disposal of litter, and the litter is disposed of on that property;
- (2) The litter is placed into a receptacle other container intended by the owner or tenant in lawful possession of that property for the deposit of litter;
- (3) The person is the owner or tenant in lawful possession of the property or has first obtained the consent of the owner or tenant in lawful possession, or unless the act is done under the personal direction of the owner or tenant and does not create a public health or safety hazard, a public nuisance, or a fire hazard;
- (4) The person is acting under the direction of proper public officials during special cleanup days; and
- (5) The person is lawfully acting in or reacting to an emergency situation where health and safety is threatened, and removes and properly disposes of such litter when the emergency situation no longer exists.

Section 702 Littering from Motor Vehicle Prohibited

It is expressly prohibited and shall be unlawful for any person to dump, deposit, drop, throw, discard, or otherwise dispose of litter from any motor vehicle upon any public highway, upon any public or private property or body of water, nor shall any person transport by any means, garbage or refuse from any dwelling, residence, place of

business, farm, or other site to and deposit such material in, around, or on top of trash barrels or other receptacles placed on public areas within the exterior boundaries of the Reservation except as permitted by law.

Section 703 Accumulation of Litter or Solid Waste on Property Prohibited

It is expressly prohibited and shall be unlawful for any person to accumulate solid waste upon real property, of which the person charged is the owner or tenant in control, in such a manner as to constitute a public nuisance, that may be injurious to the public health, is offensive to residents of the community, or is accumulated in such a manner that the litter may be blown or otherwise carried by the natural elements onto the real property of another person.

Section 704 Unauthorized Disposal at Open Dump Site or Other Lands

It is expressly prohibited and shall be unlawful, for any person to dispose of, dump, abandon, scatter, or place, or cause to be disposed of, dumped, abandoned, scattered or placed, any solid waste, which includes special wastes as defined in this code, and any hazardous waste generated on or off the Reservation, at or near an open dump site or on any other land within the exterior boundaries of the Reservation that is not authorized to receive such waste.

Section 705 Unauthorized Disposal in Waters

It is expressly prohibited and shall be unlawful for any person to dispose of any solid waste or hazardous waste in the waters located within the exterior boundaries of the Reservation, except to the extent that such disposal, placement or disposal is authorized by SRST Law, codes or ordinances and the water pollution control laws of the United States.

Section 706 Unauthorized Open Burning

It is expressly prohibited and shall be unlawful for any person to burn any solid or hazardous waste at a waste facility, or anywhere else within the exterior boundaries of the Reservation without a permit from the DER/EPA pursuant to this code, or except as the Director may specifically authorize or permit by rule or regulation which is not prohibited by Federal law. The Director may authorize by rule and regulation or by permit pursuant to this code, the infrequent open burning of agricultural wastes, silvicultural wastes, land cleaning debris, diseased trees, or debris from emergency cleanup operations at a waste facility. The Director will coordinate the approval of burning permits with the local Police Department and Fire Department.

Section 707 Unauthorized Construction or Operation of Waste Site or Facility

It is expressly prohibited and shall be unlawful, for any person to construct, alter, manage or operate a waste management disposal site or facility without a business license and a permit, in violation of this code, or in violation of the terms and conditions of its permit.

Section 708 Commercial Collection and/or Transportation of Waste

It is expressly prohibited and shall be unlawful for any person to engage in the commercial collection and/or transportation of waste, originating or terminating at a

location within the jurisdiction of the Reservation without a business license and a permit, in violation of this code or in violation of the terms and conditions of its permit.

Section 709 Storage, Management and Disposal of Special Waste

It is expressly prohibited and shall be unlawful for any person to accumulate, store, transfer, manage or dispose of special waste within the exterior boundaries of the Reservation without full compliance with this code.

Section 710 Disposal of Hazardous Waste

It is expressly prohibited and shall be unlawful for any person to engage in the disposal of regulated hazardous waste, as defined under the code, anywhere within the exterior boundaries of the Reservation. This prohibition does not apply to household hazardous waste which is not a regulated hazardous waste, and which may lawfully be disposed of at a waste facility on the Reservation.

Section 711 Storage and Treatment of Hazardous Waste

It is expressly prohibited and shall be unlawful, for any person to engage in the treatment and storage of hazardous waste for more than ninety (90) days within the exterior boundaries of the reservation without a permit or in violation of this code or the terms and conditions of its permit. This prohibition does not apply to household hazardous waste which is not a regulated hazardous waste, and which may lawfully be disposed of at a waste facility on the Reservation.

Section 712 Collection and/or Transportation of Hazardous Waste

It is expressly prohibited and shall be unlawful for any person to engage in the commercial collection and/or transportation of hazardous waste within the exterior boundaries of the Reservation without a business license and a permit, in violation of this code or in violation of the terms and conditions of its permit. These prohibitions do not apply to household hazardous waste which is not a regulated hazardous waste, and which may lawfully be disposed of at a solid waste facility on the Reservation.

Section 713 Conditionally Exempt Small Quantity Generators

The collection, storage, transfer, transportation, and disposal off the Reservation of conditionally exempt small quantity generator hazardous waste generated on the Reservation, is subject to such rules and regulations as the Director may issue in compliance with Federal law. Any violation of such rules or regulations is expressly prohibited and unlawful.

Section 714 Nonpayment of User Fees

It is expressly prohibited and shall be unlawful for any person to not pay fees required pursuant to this code.

Section 715 Misleading Representations

It is expressly prohibited and shall be unlawful for any person to knowingly omit material information or make any false statement or representation in any label, record, report, or

other document filed maintained or used for purposes or application or compliance with this code or regulations promulgated there under.

Section 716 Scavenging

It is expressly prohibited and shall be unlawful for any unauthorized person to remove solid waste or hazardous waste at any point in the waste management system, including but not limited to, collection sites, containers, storage sites, transfer sites or disposal sites.

Section 717 Miscellaneous

It is expressly prohibited and shall be unlawful to for any person to violate any other provision, requirement or prohibition of this code, including but not limited to a regulation adopted pursuant to this code, a permit or order issued pursuant to this code, a filing, reporting or notice requirement under this code, or compliance monitoring activities pursuant to this code.

CHAPTER 8 PERMITS

Section 801 General Waste Management and Disposal Permits Required

- (a) A person is required to obtain a Waste Management or Disposal Facility Permit from DER/EPA for the following activities, except as otherwise provided for under this code:
- (1) the construction, and/or operation of a solid waste management, storage, treatment, incineration, transfer or storage facility within the Reservation, other than those facilities or practices listed in Section 802;
 - (2) the management or treatment of hazardous waste or storage of hazardous waste over 90 days within the Reservation; or
 - (3) any other solid or hazardous waste management, storage, treatment, transfer or storage facility or activities or emergencies, to include those listed in Section 802, that the Commission or the Director deems necessary to protect public health and the environment and comply with this code.
- (b) The owners/operators of existing solid waste landfill facilities are not required to have a permit, provided said facilities cease receiving waste by October 9, 1995.
- (c) Permits are not required for any remedial or corrective actions whether initiated by the owner/operator, the Director, the Tribe or U.S. EPA, however such actions may be subject to Chapter 19 of this code and/or an administrative order.

Section 802 Permits by Rule Required

- (a) A person is required to obtain a Permit by Rule from DER/EPA for the following activities, except as otherwise provided for under this code:
- (1) the burning of any solid waste, to include abandoned buildings or structures, within the Reservation;
 - (2) the commercial collection and/or transportation of solid waste within the Reservation;
 - (3) the temporary storage, treatment, transportation or other management of solid wastes (other than residential, household, institutional or commercial wastes in proper containers for regular collection), for less than 90 days;
 - (4) the demolition of a building or structure of greater than 100 Sq. Ft.;

- (5) Construction and Demolition Waste Management Permits for Prime Contractors
 - (6) Emergency or Temporary permits (less than 180 days of operation) for solid waste management or disposal not otherwise exempt under this code; and
 - (7) any other solid waste management or disposal activities or emergencies that the Commission or the Director deems necessary to comply with this code.
- (b) Permits are not required for any remedial or corrective actions whether initiated by the owner/operator, the Director, the Tribe or U.S. EPA, however such actions may be subject to Chapter 19 of this code and/or an administrative order.

Section 803 Existing Sites or Facilities

All persons with existing facilities or practices listed in 801(a) or 802(a) above, within the exterior boundaries of the Reservation, must apply for a permit within ninety (90) days of the effective date of this code to continue in operation. The Director shall promptly respond to such applications as soon as practicable, and all persons who have applied for permit may continue in operation until a final permit decision is made. If a person is not in full compliance with this code and any applicable federal requirements within ninety (90) days of the effective date of this code and/or has not applied for a permit, then such person shall be considered to be in violation of this code and must cease its operations or activities and be closed immediately upon such date.

Section 804 Consolidation of Permit Processing

- (a) Whenever a facility or activity requires more than one permit under this code or another code, processing of two or more applications for those permits may be consolidated.
- (b) The Director or the Commission may agree with the U.S. EPA Regional Administrator to consolidate draft permits whenever a facility or activity requires permits from both U.S. EPA and DER/EPA.

Section 805 General Standards for All Permits

The following shall apply to all permits issued pursuant to this Chapter:

- (a) All permit applications filed under this Chapter shall be in the format required by the Director and shall contain such information, reports or data as deemed necessary by the Director or the Commission.
- (b) An application for a permit under this Chapter may be denied or any permit issued may be terminated if the Director or the Commission finds that:
 - (1) The permittee failed to comply with any terms or conditions of a DER/EPA permit, a provision of this code or tribal or federal law or regulations or any administrative enforcement order;
 - (2) The permittee misrepresented a material fact in a permit application or any statement made as part of the application process;
 - (3) The permittee voluntarily relinquishes, in writing, the permit;
 - (4) The method or location of or manner in which the solid waste is stored, processed, transferred, transported, treated or disposed of is potentially detrimental to, may damage or pollute the environment, or adversely impact public health, welfare or natural resources of the Reservation; or

- (5) The permittee has a significant incidence or history of failing to comply with this code, other tribal ordinances, codes or laws or is deemed in significant non-compliance with a Tribal Administrative Order or its permit;
 - (6) The permittee refused or failed to disclose any information requested by the Director;
 - (7) Exhibited a history of willful disregard of any tribal, state or federal environmental law; or
 - (8) Had any permit revoked or permanently suspended for cause under any tribal, state or federal environmental law.
- (c) The Director or the Commission may require a permittee under this Chapter to provide appropriate financial assurance and/or liability insurance as a condition of permit issuance as specified under Section 832.
- (d) The Director may impose a fee(s) for the filing, processing, issuance and renewal of any permit processed or issued pursuant to this Chapter and the cost of ensuring compliance with such permits as approved by the Commission.
- (e) The Director or the Commission may add any additional conditions or requirements to a permit as need to ensure protection of the public health and the environment and meet the purposes of this Code as specified in Section 103.

Section 806 Permit by Rule Permit Applications

- (a) Any owner, operator or person subject to the Permit-by-Rule requirements of this Code shall submit the required notification and form(s) and any required fees to the Director and receive a DER/EPA permit prior to beginning such activity.
- (b) The required notification and information for a Permit by Rule shall include, at a minimum:
- (1) a Tribal building, special use, or other applicable permit(s) or lease authorizing the establishment of the facility or operation, and documentation that such permit or lease has been approved by the Bureau of Indian Affairs, if necessary;
 - (2) all form(s) or other information required by the Director;
 - (3) payment of any required fee(s) for the permit in a manner acceptable to the Director;
 - (4) documentation that all applicable tribal licenses have been obtained and all fees paid; and
 - (5) any other information required under Section 805 or by the Commission.

Section 807 Specific Permit by Rule Requirements

(a) Emergency Permits: The Director may issue an emergency Permit by Rule for one-time events based on various practical factors during emergency conditions. Any owner, operator or person seeking an emergency permit for a facility or activity listed in Sections 801 or 802 shall submit the required notification, form(s) or information and any required fees to the Director in a timely manner prior to beginning such activity or in the time period required by the Director. The DER/EPA, Director and other tribal, state and federal agencies will work together to accomplish the efficient and environmentally sound collection and transportation, storage, management and disposal of solid and/or hazardous waste and related materials so as to minimize impacts to human health, the environment and to water resources. Disposal on-site under emergency permits must be

restricted to generally inert or other solid wastes from a specific site or area and for a specific period of time.

(b) Temporary Permits: The Director may issue a Permit by Rule for temporary one-time events for up to consecutive 90 days. Any owner, operator or person seeking a temporary permit for a facility or activity listed in Sections 801 or 802 shall submit the required notification, form(s) or information and any required fees to the Director in a timely manner prior to beginning such activity or in the time period required by the Director. Any temporary waste management, storage, treatment, processing, transfer, collection or transportation system or facility must be managed and operated in an efficient and environmentally sound manner so as to minimize impacts to human health, the environment and to water resources.

(c) Open Burning Permits: The Director may authorize a Permit by Rule pursuant to this code, the infrequent open burning of agricultural wastes, silviculture wastes, land cleaning debris, diseased trees, abandoned structures or debris from emergency cleanup operations at a safe location or facility unless it is otherwise prohibited by federal law or regulation. **“Open burning”** means the burning of solid waste in an open area, field, pile, or in any other unconfined or uncontained manner. An “incineration unit” must be permitted under Section 801.

The Director will coordinate the approval of such burning permits with the local Police Department and Fire Department, the BIA and other appropriate officials or agencies.

An Open Burning Permit shall include:

- (1) specific date(s) and/or number of days allowed to burn;
- (2) specific weather conditions allowed for burning;
- (3) specific monitoring requirements;
- (4) restrictions on materials and quantities allowed to be burned;
- (5) notification requirements to inform appropriate tribal and federal officials or agencies of the exact date and time of the burning; and
- (6) emergency procedures and contacts.

(d) Commercial Collection and/or Transportation of Solid Wastes

Permit applications filed pursuant to this Section for the collection and/or transportation of waste shall include the following minimum information:

- (1) Name and Address of applicant;
- (2) An inventory of equipment for the collection and transportation service, including a description of the number and type of the vehicles and related mechanical and other equipment to be used by the applicant;
- (3) Area or areas to which the applicant seeks to provide services;
- (4) Type of waste(s) to be collected and/or transported;
- (5) Sites, facilities, communities or population to be served;
- (6) Days of operation and routes proposed for each day of operation;
- (7) A site evaluation report describing the location and physical characteristics of the place or places, including uses of adjoining properties, where the applicant will store or maintain waste collection and/or transportation vehicles and related equipment, if located on the Reservation;
- (8) An operation plan, including a description of the practices, technologies and procedures that will be employed to ensure adequate protection of the environment,

public health and welfare to include prevention of leakage, excessive noise, odors, and other releases or spillage and the capability to respond to any such releases;

(9) Assurances of the manner in which the applicant will meet the financial assurance requirements established pursuant to this code and the permit;

(10) Proof of insurance, subject to the review and approval by the Director, that addresses:

(i) response to personal injury claims, public or private property damage claims, environmental and natural resource damage claims; and

(ii) response to a release from the collection or transportation equipment that may result from the collection or transportation of wastes;

(11) Proof of a valid Standing Rock Sioux Tribe business license;

(12) A description of the training program for employees in environmental concerns in managing solid waste, addressing any releases, recognizing hazardous or improper wastes and to provide such employees with needed skills for the safe operation of the transportation equipment and related facilities; and

(13) Such other information as the Director deems necessary.

(e) Construction and Demolition Waste Management Permits: Prime contractors are required to obtain a DER/EPA Permit by Rule pursuant to this Code prior to beginning any construction or demolition work on the Reservation. The permit fee shall be payable to the DER/EPA and shall be for the sum of 1% of the total contract cost. Failure to obtain a permit prior to construction or demolition is a violation of this Code. If a construction project begins without a DER/EPA permit, the construction site will be closed down and penalties/fines along with interest will be assessed according to the number of days the construction project was in operation without a permit. Any false information given on such permit application can result in the Tribe, the Commission, the Director and/or other departments denying permits or contracts on any projects within the Reservation boundaries for that Prime contractor for a period of up to two years. Such permit application shall be provided in the form and format designated by the Director.

Section 808 Permit by Rule Issuance:

(a) All Permits by Rule required pursuant to Section 802 may be issued by the Director. However, the Director may defer a decision on a Permit by Rule issuance or denial to the Commission.

(b) All Permits by Rule may be issued for a period of up to 1 year from the effective date. An application for renewal must be submitted at least 10 days prior to the expiration of the permit. The permit shall continue to be effective and in force until the Director issues a permit renewal or denies the permit renewal. The permittee shall comply with all conditions of the existing permit until a new Permit by Rule is reissued or denied. The Director may require the permittee to stop all activities subject to the permit renewal.

(c) All Permits by Rule issued by the Director shall be reported to the Commission at regularly scheduled Commission meetings. In Addition, the Director shall notify the Commission of the issuance of an Emergency or Temporary Permit by Rule within 10 days of issuance. The Director may periodically publish a list of Permits by Rule issued for the general public. All Permits by Rule are available for public inspection and comment.

(d) A Permit by Rule issued under this Section may not be transferred from one person or permittee to another.

Section 809 Permit by Rule Denial, Modification, Suspension, or Termination

(a) If the Director decides that the Permit by Rule application is denied or the issued permit is to be terminated or revoked the Director shall send the applicant or permittee a brief written response giving a reason for the decision.

(b) A Permit by Rule may be modified, suspended or terminated by the Commission in accordance with this Chapter.

(c) A person aggrieved by an adverse action of the Director or the Commission pursuant to this section shall be entitled to a hearing before the Commission in accordance with the requirements and procedures of SRST-EPO Section 29-104(b). For the purposes of this Section the term "adverse action" includes but is not limited to:

- (1) the denial, revocation, suspension, or termination of a Permit by Rule; or
- (2) a person or party directly affected or impacted by the activity permitted by the Director under this Section.

Section 810 General Waste Management and Disposal Permit Applications

(a) Permit applications shall be submitted to the Director in the form and format required by DER/EPA and shall contain the information required under this code and in the tribal permit application form.

(b) Permit applications filed pursuant to this code for the construction, expansion, modification, management or operation a solid waste management or disposal facility must contain all of the information, tests, and data that are necessary to demonstrate that the permittee will comply with all of the provisions of this code; applicable federal law; and all applicable federal and tribal codes or regulations, technical standards or criteria, or applicable guidance documents. In addition, the Director may require that a permit applicant acquire or perform such additional information, tests or studies, as the Director deems reasonably necessary to demonstrate compliance with this code.

(c) The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. All contents and materials submitted as a permit application shall become part of the approved permit and shall be part of the operating record of the waste facility.

(d) Each person who files a permit application shall pay to the Director, at the time the permit application is filed, a filing fee, as set forth in this code and as established by the Commission.

(e) Each application filed shall be signed or notarized under oath in a form approved by the Director. The Commission and the Director shall use the information in the application, as well as public comments, testimony gathered at public hearings, or independent investigation to determine whether to issue or deny a permit.

(f) Each permit application submitted should be reviewed for completeness by the Director within thirty (30) days of its receipt, or such longer time as the Director may deem necessary. The Director may request additional information from an applicant when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete. If the Director decides that a site visit is necessary for any reason in conjunction with the

processing of an application, the applicant shall be notified and a date shall be scheduled. Upon completing the review, the Director shall notify the applicant, in writing, whether the application is complete or incomplete, and the effective date of an application is the date on which the applicant receives notification that the application is complete.

(g) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under this code.

Section 811 Contents of General Waste Management and Disposal Permit Applications

(a) The permit application for solid waste management or land disposal facilities must include the following minimum information:

- (1) the name, address, telephone number and emergency telephone number of the applicant, property owner, land status (Tribal, Trust, Fee, etc.) and responsible party for the site operation;
- (2) a description of the facilities, mechanical and other equipment, holding tanks, vehicles, and locations and means of temporary waste storage or accumulation used or to be used by the applicant;
- (3) a topographic map of the operational site drawn to a scale of 200 feet to the inch containing five foot contour intervals where the relief exceeds 20 feet and two foot contour intervals where the relief is less than 20 feet, showing the boundaries of the operational site; and the most recent full size U.S. Geological Survey topographic map, 7-½ minute series, if printed, or other recent topographic survey of equivalent detail of the area, showing the waste management or disposal facility boundary, the property boundary, surface drainage channels, flood plains, FAA facilities, existing utilities, and structures within one-fourth mile of the facility site, and the direction of the prevailing winds;
- (4) a site evaluation report describing the geographic, geologic, climatic, environmental, cultural and hydrologic characteristics of the place or places where and the manner in which the applicant will handle, treat, or dispose of the waste;
- (5) an engineering report, plans, specifications, and calculations that address:
 - (i) How the facility will meet the location standards including documentation of any demonstration made with respect to any location standard;
 - (ii) Ground water monitoring well location, design, and construction (if required); and
 - (iii) Design and location of run-on and run-off control systems.
- (6) a description of the land uses and facilities on adjoining properties;
- (7) a list of types, quantities and concentrations of waste proposed to be handled at the facility;
- (8) a description of proposed treatment, storage and/or disposal methods;
- (9) a plan of operation, including contingency plans, technologies and procedures that will be employed to ensure adequate protection of the environment, public health and welfare to include prevention of leakage, excessive noise, odors, and other releases or spillage and the capability to respond to any such releases;
- (10) the form used to record weights or volumes of wastes received, waste transferred or generated (as applicable), an inspection schedule and inspection log;

- (11) assurances of the manner in which the applicant will meet the financial assurance and liability insurance requirements established pursuant to this code and the permit, including the submittal of a financial statement;
 - (12) a description of the training program for employees in environmental concerns in managing waste, addressing any releases, recognizing and screening hazardous or improper wastes and to provide such employees with needed skills for the safe operation of the facility and related equipment;
 - (13) a closure plan for the waste management facility;
 - (14) evidence of a valid current Standing Rock Sioux Tribe business license;
 - (15) evidence of tribal building, special use, or other applicable permit(s) or lease authorizing the establishment of the facility, and documentation showing such permit or lease has been approved by the Bureau of Indian Affairs, if appropriate; or a legal description and proof of ownership, lease agreement, or other mechanism approved by the Director of the proposed site; and
 - (16) a copy of any environmental or cultural assessment conducted for the BIA or any other tribal or federal agency.
- (b) Such information the Director or the Commission may deem necessary to ensure protection of public health and the environment and meet the purposes of this Code as specified in Section 103.

Section 812 Contents of Permit Application: Solid Waste Disposal Facilities:

- (a) All information necessary to determine compliance with the location, construction, operation, closure and post closure requirements of 40 CFR Part 258 or Part 257, as applicable, and this Code. The Part 258 and 257 criteria are incorporated by reference and are applicable. The SRST DER/EPA reserves the right to be more stringent than the federal regulations cited in this Code.
- (b) In addition to the requirements of Section 811 the permit application for solid waste land disposal facilities must also include the following minimum information:
- (1) a topographic map of the proposed landfill unit(s) or cells drawn to a scale of 200 feet to the inch containing five foot contour intervals where the relief exceeds 20 feet and two foot contour intervals where the relief is less than 20 feet, showing the boundaries of the landfill unit(s), ground water monitoring wells, landfill gas monitoring points, and borrow and fill areas.
 - (2) a site evaluation report describing the geographic, geologic, climatic, environmental, cultural, and hydrologic characteristics of the place or places where and the manner in which the applicant will handle, treat, or dispose of the waste or any related operations such as leachate or runoff control or collection;
 - (3) an engineering report, plans, specifications, and calculations that address:
 - (i) How the facility will meet the location standards of 40 CFR Part 258 or 257, as applicable, including documentation of any demonstration made with respect to any location standard;
 - (ii) The basis for calculating the facility's life;
 - (iii) Cell design to include liner design and specifications, cover design, fill methods, elevation of final cover and bottom liner, and equipment requirements and availability;
 - (iv) Identification of borrow sources for daily and final cover, and for soil liners;

- (v) Interim and final leachate collection, treatment, and disposal;
- (vi) Ground water monitoring well location, design, and construction;
- (vii) Landfill gas control and monitoring;
- (viii) Design and location of run-on and run-off control systems; and
- (ix) Closure and post-closure design, construction, maintenance, and land use;
- (4) the format used to record location and volume of wastes disposal cells;
- (5) assurances of the manner in which the applicant will meet the financial assurance requirements established pursuant to this code and the permit for closure and post closure, liability insurance, including the submittal of a financial statement; and
- (6) a post-closure maintenance plan for the waste management facility.
- (c) Such information the Director or the Commission may deem necessary to ensure protection of public health and the environment and meet the purposes of this Code as specified in Section 103.

Section 813 Contents of Permit Application: Storage and Treatment of Hazardous Waste Applications filed pursuant to this Section shall be submitted to the Director in the form and format required by the Director, and shall contain information required by the DER/EPA Director and the Commission. All information provided to the US EPA for a federal hazardous waste management, treatment or storage permit shall also be provided to the Director of the DER/EPA.

Section 814 General Permit Conditions:

- (a) As a condition of obtaining a permit and/or constructing, expanding, modifying or operating a solid waste management or disposal facility, an applicant shall be subject to the following permit conditions:
 - (1) the Director shall have the right to enter the facility to conduct inspections, take samples and conduct monitoring, as provided under this code or the regulations promulgated hereunder;
 - (2) the Director shall have the right to enter any premises where records relevant to determining compliance with this code, the regulations promulgated hereunder or the requirements of the permit are kept;
 - (3) the permittee, his agents, employees, lessees, sub-lessees, successors and assigns shall consent to the jurisdiction of the Tribe and shall agree to abide by all laws of the Tribe. Each issued permit shall contain the following statement to which the permittee must agree and subscribe for the permit to be complete and as a condition precedent to the final issuance of any permit:

“Permittee consents to the jurisdiction of the Standing Rock Sioux Tribe (SRST) with respect to those activities conducted pursuant to this permit issued by the SRST pursuant to the provisions of this code. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assignees, employees and agents, including contractors and subcontractors of permittee whose activities fall within the scope of the issued permit;”

- (4) the permittee shall include the statement in 810(a)(3) as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the Reservation in connection with any permit issued by the SRST, and each party to any such contract or other agreement must agree and

subscribe to said statement, substituting the name of the party for "permittee" as appropriate.

(b) The Director or the Commission may require feasible mitigation measures identified in any Environmental Assessment or Environmental Impact Statement prepared pursuant to the National Environmental Policy Act (NEPA) 42 U.S.C. 4321 *et seq.*; 40 C.F.R. Parts 1500-1508, be incorporated as permit conditions.

(c) The Director or the Commission may add any additional conditions or requirements to a permit as need to ensure protection of the public health and the environment and meet the purposes of this Code as specified in Section 103.

Section 815 Permit Issuance:

(a) The solid and hazardous waste management and disposal permits required pursuant to Section 801 shall be subject to review and decision by the Commission and the requirements of this Chapter.

(b) The Permits by Rule required pursuant to Section 802 shall be processed and issued by the Director pursuant to Section 808 and shall be reported to the Commission at regularly scheduled Commission meetings. In addition, the Director shall notify the Commission of the issuance of an Emergency or Temporary Permit by Rule within 10 days of issuance.

Section 816 Draft General Waste Management or Disposal Facility Permit:

(a) Once an application is deemed complete, and after consultation with the Commission, the Director shall prepare a draft permit or propose to deny the permit unless in the Director's best judgment, additional time is necessary to gather additional information on the application, to conduct environmental studies related to the application, or to require further analysis related to the application.

(b) The Director may recommend permit approval, denial or modification with such terms, conditions, or modifications as it deems necessary to comply with this code and any federal requirements, and to protect the public health, welfare or interest. The recommendation to the Commission to issue or modify a permit requires a finding by the Director that the permit applicant is committed to preventing environmental damage or health threats and that the long-term protection of the environment and public health by the proposed permit is consistent with this Code, the SRST Integrated Solid Waste Management Plan, if adopted, and with the waste management standards adopted by the SRST, the Commission and the DER/EPA.

(c) If the Commission proposes to deny the permit, then he or she shall issue a notice of intent to deny. A notice of intent to deny the permit is a type of draft permit which follows the same procedure as any draft permit prepared under this Chapter. If the Commission's final decision is that the initial proposal to deny the permit application was incorrect, the Commission shall withdraw the notice of intent to deny and proceed to prepare a draft permit.

(d) If the Commission decides to prepare a draft permit the Director shall prepare a draft permit that contains the following information:

- (1) All permit conditions under this code;
- (2) All compliance schedules under this code;

- (3) All monitoring requirements under this code;
 - (4) All other information required to be in the permit under this code; and
 - (5) All conditions or requirements deemed necessary by the Commission need to ensure protection of the public health and the environment and meet the purposes of this Code as specified in Section 103.
- (e) All draft permits prepared under this Chapter shall be accompanied by a fact sheet and shall be based on the administrative record.

Section 817 Draft Permit Fact Sheet

(a) A fact sheet shall be prepared for every draft permit. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the Commission, the permit applicant and, on request, to any other person.

(b) The fact sheet shall include, when applicable:

- (1) A brief description of the type of facility or activity which is the subject of the draft permit;
- (2) The type and quantity of wastes which are proposed to be or are being managed or disposed of;
- (3) A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;
- (4) Reasons why any requested variances, exemptions or alternatives to required standards do or do not appear justified;
- (5) Name and telephone number of a person to contact for additional information;
- (6) When appropriate, a sketch or detailed description of the location or regulated activity described in the application; and
- (7) Any other information deemed appropriate by the Director or the Commission.

Section 818 Permit Administrative Record:

(a) The Director shall maintain an Administrative Record of all permit applications, documents accompanying such applications and permits issued under this Chapter. This file shall be available for public inspection and comment. If any applicant or permittee is required to submit information entitled to protection from disclosure, the applicant or permittee may submit such information separately. The Director shall also notify the public of, and the public shall have the right to review, all permit applications, renewals, modifications, and determinations.

(b) For draft permits, the administrative record shall consist of the following:

- (1) the application;
- (2) any supporting data;
- (3) the draft permit or notice of intent to deny the application or to terminate the permit;
- (4) the fact sheet;
- (5) the public notice; and
- (6) all documents cited in the fact sheet, and all other documents contained in the supporting file for the draft permit;

(c) For final permits, the administrative record shall consist of the following:

- (1) the administrative record for the draft permit;
 - (2) all comments received during the public comment period, including any extension or reopening;
 - (4) the tape or transcript and notes of any hearing(s) held and any written materials submitted at such hearing(s);
 - (5) the response to comments and any new material that the Director references in the response to comments;
 - (6) other documents contained in the supporting file for the permit; and
 - (7) the final permit.
- (d) Material readily available at the DER/EPA office or published material that is generally available, and that is included in the administrative record under these provisions, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet or response to comments.

Section 819 Public Notice, Public Comment Period & Request for Permit Hearing

- (a) Before a final determination by the Commission of a permit decision under this code, including before issuing, transferring, renewing, modifying, revoking or denying a permit, the Director shall give public notice that a draft permit has been prepared, that any interested person may submit written comments on the draft permit, and that any interested person may request a public hearing, or that the Director has scheduled a hearing.
- (b) Public notices may describe more than one permit or permit action. No public notice is required when a request is for permit re-issuances, or terminations; however, the Director may publish such requests or actions at his/her discretion, and shall provide written notice to the applicant or permittee.
- (c) The Director shall post and publish notice of the proposed or scheduled permit hearing, as provided for in Section 29-104(b) of the SRST Title XXIX: EPO, and opportunity for comment, beginning at least thirty (30) days in advance of the date scheduled for the hearing. The Director shall also post notice of the public hearing near the proposed site for a facility, viewable to the public. The Director may designate issues it deems most relevant in the public notice. The public notice shall, at a minimum, be published in one official newspaper of the district or county in which the facility is to be located, and any other method reasonably determined to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation. In addition, the Director shall also mail such notification and information of the location and availability of the permit application for review to the following persons and agencies:
- (1) the permit applicant;
 - (2) federal and tribal agencies with trust responsibility, jurisdiction over fish and wildlife resources, the Advisory Council on Historic Preservation, the Tribe Historic Preservation Department, and other appropriate agencies of affected states or Tribes, including the State or Tribal Historic Preservation Officer;
 - (3) any other unit of local government having jurisdiction over the area where the facility is proposed to be located and each tribal agency having any authority under tribal law with respect to construction or operation of such facility; and

- (4) any other agency which the Director knows has issued or is required to issue a permit for the same facility or activity;
- (d) Upon request, any person or agency shall be provided a copy of the fact sheet and the draft permit, and information of the location and availability of the permit application for review.
- (e) All public notices issued under this Section shall contain the following minimum information:
 - (1) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
 - (2) A brief description of the business to be conducted at the facility or activity described in the permit application;
 - (3) Name, address and telephone number of a DER/EPA contact from whom interested persons may obtain further information, including copies of the draft permit, the fact sheet, and the application;
 - (4) A brief description of the procedures for reaching a final decision on the draft permit; and any other procedures by which the public may participate in the final decision;
 - (5) A brief description of the comment procedures including the beginning and ending dates of the comment period and the address where comments will be received;
 - (6) The procedures for requesting a hearing (unless a hearing has already been scheduled) and the nature of that hearing and the time and place of any hearing that will be held, and other procedures by which the public may participate in the final permit decision;
 - (7) The location of the administrative record, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant are available as part of the administrative record, except data found to be confidential business information pursuant to applicable law;
 - (8) A brief description of the permitted facility site and surrounding area; and
 - (9) Any additional information required by this code, or any additional information that the Director considers necessary or appropriate.
- (f) During the public comment period, any interested person or agency may submit written comments on the draft permit, and all public comments received during the public comment period, including at any permit hearing and during any reopening of the public comment period, shall be considered in making the final decision and all significant comments shall be answered as provided in this Chapter.
- (g) Unless otherwise scheduled by the Commission, a permit public hearing may be held only if a written request for a permit hearing on such permit is filed with the Director by any interested party within the thirty (30) day comment period. A request for a permit hearing shall be in writing and shall include the following information:
 - (1) The name, address and telephone number of the individual, organization or other entity requesting a permit hearing; and
 - (2) A brief statement of the interest of the person making the request in the permit action.

(h) If a permit hearing is requested, such hearing shall be scheduled by the Commission and the Director shall publish notice of the date, time, place and subject matter of such hearing as specified under Section 29-104(b) of the SRST Title XXIX: EPO.

Section 820 Permit Hearing

(a) When the Director receives a written request for a hearing, finds significant public interest in a draft permit, or if the Commission determines that a public hearing is necessary, the Commission shall hold a permit hearing. The Commission may also hold a permit hearing at their discretion if a permit hearing may clarify one or more issues involved in the permit decision. Hearings for a permit decision shall be conducted pursuant to Section 29-104(c) of the SRST Title XXIX: EPO and in conformance with the time frames of this Chapter. Any Commission member that is the permit applicant, an officer or employee of the applicant or has a financial interest or other conflict of interest in the outcome of the permit application shall not participate as a member of the Commission in the hearing. No permit hearing is required for a Permit by Rule issued under Section 802 or for a denial of a request for modification, permit revocation or termination of a permit.

(b) The permit hearing shall be held at a time and place which facilitates attendance by interested persons and the public.

(c) The Director shall inform the hearing audience of the issues involved in the decision to be made, the considerations the Commission will take into account, the Commission's tentative determinations, if any, and the information which is particularly solicited from the public.

(d) The permit applicant and all interested parties shall have an opportunity to present relevant oral and written statements and information and be heard on whether the permit should be granted, whether there are any special conditions which should be included in such permit, or whether the permit should be denied. All permit applications, including all documentation required for such permit, shall be available for public review and inspection at the hearing. The Commission may set reasonable limits upon the time allowed for oral statements. The Commission shall allow the submission of statements in writing at the permit hearing, but the Commission shall not require a written statement in lieu of or as a condition upon making an oral statement. The public comment period shall automatically be extended to the close of any permit hearing under this Chapter. The Commission may also extend the comment period by so stating at the permit hearing.

(e) The Commission shall make reasonable efforts to accommodate requests for English to Lakota/Dakota or Lakota/Dakota to English oral translations during the permit hearing. A tape recording or written transcript shall be made of the permit hearing. At the conclusion of the permit hearing, the Commission shall forward to the Director the record of the permit hearing, including the tape recording or written transcript and any materials submitted at the permit hearing. The permit hearing record shall be made available to the public.

Section 821 Obligation to Raise Issues and Provide Information

(a) All persons, including applicants, who believe that a permit application should be granted or denied, or that any condition of a draft permit is inappropriate or inadequate, must raise all reasonably ascertainable issues and submit all reasonably available

arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period.

(b) All supporting materials shall be submitted in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding or consist of tribal or federal statutes and regulations, U.S. EPA's or the Director's documents of general applicability, or other generally available reference materials.

(c) The Director may grant additional time to comment to any person to the extent that a person desiring to comment demonstrates need for such time.

Section 822 Reopening of the Public Comment Period or Issuance of a New Draft Permit

(a) Whenever any data, information or arguments submitted during the public comment period appear to raise substantial new questions concerning the draft permit or the Director becomes aware of significant new information, the Director may take one of the following actions:

(1) Prepare a new draft permit, appropriately modified, under this code and provide public notice and opportunity to comment on the new draft permit;

(2) Prepare a revised fact sheet under this code, and reopen the public comment period; or

(3) Reopen or extend the comment period under this section to give interested persons an opportunity to comment on the information or arguments submitted.

(b) If the Director reopens the public comment period the scope of the reopening shall be limited to the substantial new questions or significant new information that caused the reopening. All persons, including applicants, wanting to comment on an issue within the scope of the reopening must submit all reasonably available legal and factual grounds supporting their position, including all supporting material, by a date set by the Director. Persons desiring to comment may request longer comment periods and a longer comment period may be granted to the extent that the Director finds it necessary to effect the purpose of the reopening.

(c) Public notice of any action taken by the Director pursuant to subsection (a) above shall be issued pursuant to this Chapter.

Section 823 Final General Permit Decision

(a) Within thirty (30) days after the close of the public comment period on a draft permit, or the public hearing, whichever is later, the Director shall issue a written final permit recommendation to the Commission based on information in the application itself, the evidence received at a hearing, and public comments.

(b) If the Commission makes a written finding that the permit will meet the requirements of this code, federal law, and is in the public interest, then the Commission shall issue the Permit. The final permit may contain such additional terms and conditions to comply with applicable tribal and federal laws and that comports with the best interests of the Tribe and its members. . The Commission shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. The notice shall include reference to the procedures for requesting a hearing or appealing the decision. For the purpose of this Section, a final permit decision shall mean a final decision to issue, deny, modify, revoke, reissue, or terminate a general waste management or disposal facility permit.

(c) A final permit decision by the Commission shall become effective thirty (30) days after the service of notice of the decision unless:

- (1) a later effective date is specified in the decision; or
- (2) if no comments requested a change in the draft permit, the Commission may make the permit effective immediately upon issuance.

(d) The Commission may deny any permit for a variety of reasons, but may also deny the permit if the Commission finds that the applicant, or any officer, director, or manager thereof, or shareholder owning twenty percent or more of its capital stock, beneficial or otherwise, or other person conducting or managing the affairs of the applicant or of the proposed permitted premises in whole or part:

- (1) has misrepresented a material fact in applying to the DER/EPA for a permit;
- (2) has been convicted of a felony or other crime involving moral turpitude;
- (3) has violated the environmental laws of any state, Tribe or the United States;
- (4) has had any permit revoked under the environmental laws of any Tribe, state or the United States; and
- (5) has otherwise demonstrated through previous actions that he/she lacks the character or competency to reliably carry out the obligations imposed by the code, inclusive.

(e) Any Commission member that is the permit applicant, an officer or employee of the applicant or has a significant financial interest or other conflict of interest in the outcome of the permit application shall not vote as a member of the Commission on the permit decision.

Section 824 Response to Comments

At the time that any final permit decision is issued, the Director shall issue a response to comments. The Director shall fully consider all comments resulting from the public comment period, including any permit hearing, conducted under this code. The response shall:

- (a) specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change;
- (b) briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing; and
- (c) be available to the public.

Section 825 Request for Rehearing

Any permit applicant or other interested party may request a rehearing and reconsideration of the Commission decision pursuant to Section 29-104(f) of the SRST Title XXIX: EPO. The Director may meet with the permit applicant or interested party to informally discuss any facts or factors that may impact the permit decision prior to the rehearing.

Section 826 Judicial Review of Decision

Any permit applicant or other aggrieved party may seek judicial review of the Commission permitting decision pursuant to Section 29-105(b) of the SRST Title XXIX: EPO. 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 permit applicant or other aggrieved party of a petition for judicial review within sixty (60) days of receipt of the Commission decision. The Tribal Court may reverse the Commission decision only if it violates this code or another environmental protection code or ordinance of the Tribe or is otherwise contrary to law, or it constitutes an arbitrary or capricious exercise of authority.

Section 827 Permit Period

- (a) General waste management or disposal permits granted by the Commission pursuant to Section 823 shall be initially valid for up to two (2) years from the date of issuance.
- (b) General waste management or disposal permits granted by the Commission pursuant to Section 823 may be renewed for up to two (2) years from the date of expiration.

Section 828 General Permit Review

Any permit issued or modified pursuant to Section 823 shall be reviewed and, if necessary, be modified by the Commission on the annual anniversary of the last issuance, modification or renewal of the permit, or on a quarterly basis, if the Commission determines such review is necessary.

Section 829 Permit Modification, Suspension, or Termination

- (a) All permits issued pursuant to this Chapter may be modified, suspended, or terminated by the Commission either at the request of any interested person (including the permittee or the Commission) or upon the Director's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request. Such application or written request shall be filed at least ninety (90) days in advance of the date when the proposed action is to take place. Under circumstances that present an immediate danger to public health, as determined by Director, the 90-day filing period may be waived. Any such action under this Section shall be subject to the review by the Commission.
- (b) If the Commission decides that the request is not justified, the Director shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, suspension, or termination are not subject to public notice, comment, or hearings except at the discretion of the Commission.
- (c) If the Commission tentatively decides to modify a permit, the Director shall prepare a draft permit incorporating the proposed changes. The Director may request additional information and may require the submission of an updated application. In a permit modification under this Section, only those conditions to be modified shall be reopened when a new draft permit is prepared. During any modification proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued. A request for permit modification shall be granted if it is demonstrated that the change is necessary to meet the requirements established by this code and is in the public interest. The permit modification shall specify the time allowed to complete the modifications.
- (d) A notice of intent to modify a permit issued pursuant to Section 801 is a type of draft permit which follows the same procedures as any draft permit prepared under this Chapter.
- (e) If the Commission tentatively decides to suspend or terminate a permit, the Commission shall issue a notice of intent to suspend or terminate. When a permit is suspended under this Section, the entire permit is reopened just as if the permit had

expired and was being reissued. During any suspension proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued. The Director may require the permittee to stop all activities subject to the permit. A permit may be suspended or terminated for any of the following reasons:

- (1) The permittee failed to comply with any terms or conditions of a permit, a provision of this code or tribal or federal law or regulations or any administrative enforcement order;
- (2) The permittee misrepresented a material fact in a permit application or any statement made as part of the application process;
- (3) The permittee voluntarily relinquishes, in writing, the permit;
- (4) The method or location of collection, transportation, or the place or manner in which the solid waste is stored, processed, transferred, treated or disposed of is potentially detrimental to, may damage or pollute the environment, or adversely impact public health, welfare or natural resources of the Reservation; or
- (5) The permittee has a significant incidence or history of failing to comply with this code, other tribal ordinances, codes or laws or is deemed in significant non-compliance with a Tribal Administrative Order or its permit.

Section 830 Transfer of Permit

- (a) A general waste management or disposal permit required under Section 801 may not be transferred from one person or permittee to another without approval from the Commission. In order to transfer a permit from one person or permittee to another, an application shall be made to the Director at least ninety (90) days prior to the change of permittee. A permit shall not be transferred from one property to another without following the appropriate permit application procedures set forth in this Chapter.
- (b) If an application for transfer from one person or permittee to another is approved by the Commission, the new permittee shall:
 - (1) Assume permit requirements, all financial responsibility, disclosure statement, and public notice and hearing requirements;
 - (2) Provide adequate documentation that the operator has or shall have ownership or control of the facility for which the transfer of permit has been requested;
 - (3) Demonstrate adequate knowledge and ability to operate the facility in accordance with the permit conditions; and
 - (4) Demonstrate adequate financial assurance and insurance as required in these regulations for the operation of the facility.
- (c) An application for permit transfer may be denied if the Commission finds that the applicant has:
 - (1) Knowingly misrepresented a material fact in the application;
 - (2) Refused or failed to disclose any information requested by the Commission or the Director;
 - (3) Exhibited a history of willful disregard of any tribal, state or federal environmental law; or
 - (4) Had any permit revoked or permanently suspended for cause under any tribal, state or federal environmental law.

Section 831 Protection of Proprietary Information

Upon the Director's approval of the written request of any person furnishing any report, notice, application, or other document required hereby, the Director shall not make available for inspection by the public those portions of such report, notice, application, or other document that contains information declared proprietary or confidential information. However, such report, notice, application, or other document or portions thereof, shall be made available to DER/EPA, the Commission, or appropriate tribal agencies and to any other government agency or agencies, provided that, the information is at all times kept confidential, and/or used for enforcement or investigative purposes. Such declaration of proprietary or confidentially is subject to review by the Tribal Court.

Section 832 Financial Assurance and Insurance for Waste Management or Disposal Facilities

(a) As a condition for the issuance, modification, or review of a solid waste management or disposal facility permit or Permit by Rule issued under this Chapter, the owner/operator shall provide assurance of adequate financial ability to:

- (1) Respond to personal injury claims, public or private property damage claims, environmental and natural resource damage claims and response to a release from the facility or equipment that may result from the construction, operation and/or closure of the facility; and
- (2) Provide for the cost of closure and post-closure maintenance in an amount equal to the estimated cost of closure and thirty years of post-closure maintenance, if required by the permit;

(b) The evidence of financial assurance shall be in the form of a trust fund into which funds shall be deposited on an annual basis in amounts sufficient to meet closure and post-closure maintenance costs when needed, or an equivalent financial instrument or insurance or combination of such instruments acceptable to the Commission. The Director shall review such evidence and seek appropriate professional and/or legal assistance in such review and make a recommendation to the Commission for approval or denial.

(c) The trust fund, or other accepted financial instrument or insurance, shall state that:

- (1) The Director or the Commission may draw upon the trust fund, in its discretion, to monitor and maintain facility before or after closure or to take any necessary remedial or cleanup actions; and
- (2) The trust fund, insurance, or other approved financial instrument may not be closed or terminated without the written approval of the Commission.

Section 833 Variances

(a) A permittee, or a person seeking a permit, may petition the Commission, in writing, for a variance from this code. The Commission may consider issuing variances for hardships caused by, but not limited to, isolation and extreme weather conditions.

(b) After an opportunity for public comment, the Commission may authorize a variance from a requirement of this code if:

- (1) it shall not result in an unreasonable risk to human health, welfare or the environment;
- (2) the Commission develops, in consultation with the Director and the permittee, a schedule for the variance;

- (3) it is not otherwise contrary to federal and/or tribal regulations and laws; and
- (4) it does not constitute an arbitrary or capricious exercise of authority.
- (c) The Commission may impose fees for the issuance of a variance.
- (d) The requirements imposed as a basis for granting or renewing a variance shall include, but not be limited to:
 - (1) a detailed plan for the completion of corrective steps needed to conform to the provisions of this code and any permit issued pursuant to this code, wherever practicable;
 - (2) a fixed term for the variance; and
 - (3) the right of the Director to make periodic inspections of the permitted facility or operation for which the variance is granted.
- (e) A holder of a variance may petition the Commission for a renewal of such variance. A petition for renewal may not be filed for more than sixty (60) days or fewer than thirty (30) days prior to the expiration of the variance. The Commission, within thirty (30) days of receipt of the petition, shall issue a decision to grant or deny the request for a renewal of the variance.
- (d) If the terms of a variance are being or have been violated, the Director may seek to revoke or suspend the variance. In such event, the Director shall serve notice of such violation on the holder of the variance, specifying the nature of the violation and the date on which a hearing will be held to determine whether the violation occurred and whether the variance should be suspended or revoked.

CHAPTER 9

FEES

Section 901 Establishment and Payment of Fees

- (a) The fees for filing, application and annual renewal of permits and other appropriate and necessary fees shall be assessed in accordance with this Chapter. Fees collected shall be utilized solely to enhance the Solid Waste Account.
- (b) The Tribe may impose fees on each permittee, as may be established by the Tribe and/or DER/EPA. The payment of such fees shall be a condition of maintaining such permit. All such fees, including subsequent revisions thereof, shall be paid by the resident and/or owner or operator of record of the facility or property served, and shall be paid to the order of the DER/EPA
- (c) The Director may impose such reasonable fees as may be necessary for the implementation of this code, subject to the approval of the Commission and the Council.
- (d) All fees required under this code shall be posted and available as the Standing Rock Sioux Tribe Solid and Hazardous Waste Management Code "Schedule of Fees". The Schedule shall be public information and available from the Director.

Section 902 Filing Fees

- (a) An initial filing fee for a permit shall accompany an application for a DER/EPA permit. The filing fee for all waste management and disposal permits, to include solid or hazardous waste, shall be established by the Director and shall also be included in the Standing Rock Sioux Tribe Solid and Hazardous Waste Management Code Schedule of Fees.
- (b) Such filing fee may be increased for complex permit applications to reflect the Tribe's costs of processing such applications, including but not limited to the cost of technical and legal assistance, preparing or reviewing an environmental assessment, attendance at the public notice and hearing, costs of technical and legal consultants to review the application, and costs to prepare the permit, exhibits, and guidance documents.
- (c) The filing fee may be waived by the Director when the application is filed by an entity under contract to the Tribe or is an entity of Tribal Government.

Section 903 Permit Fees

(a) A final determination on a permit application shall be made following administrative review and upon full payment of fees. The fee period shall begin on the first day of each year or at the time of receipt of the permit, and any such fees to be imposed by the Tribe shall be specifically referred to in each permit. The DER/EPA shall assess a fee for the issuance of all new permits and modifications and renewals of existing permits for:

- (1) a general solid or hazardous waste management or disposal facility as specified and defined in this code per Section 801; or
- (2) a Permit by Rule per Section 802.

(b) The Director or the Commission may waive such fees for waste management or disposal where such management or service is conducted pursuant to a contract agreement with the Tribe or is an entity of Tribal Government or is deemed an emergency by the Director.

Section 904 Waste Management Permit by Rule Fees for Construction or Demolition

Prime contractors are required to obtain a DER/EPA waste management Permit by Rule prior to beginning any construction or demolition work on lands held in trust by the United States for the Tribe and for members of federally recognized Indian Tribes or lands owned in fee simple by the Tribe or by members of federally recognized Indian Tribes on the Reservation; Act of March 2, 1889, §3, 25 Stat. 888 (boundaries of the Standing Rock Indian Reservation). The Permit by Rule fee shall be payable to the DER/EPA and shall be for the sum of 1% of the total contract. For the purposes of this requirement a Prime Contractor is the prime contractor for construction or demolition projects funded by a federal agency, Tribal Government, or other commercial construction. This does not apply to private residential or agricultural property construction or demolition.

Section 905 Non-payment of Fees

- (a) All unpaid fees shall become delinquent after thirty (30) days from the due date specified in such bill. The fees shall bear simple interest of 2% as a late fee to be

attached to the next billing. The Director may institute Tribal Court proceedings for the collection of delinquent fees. Delinquent fees, or any other violation of this code, shall constitute civil violation against the Standing Rock Sioux Tribe. A civil violation for failure to comply with this code shall result upon the filing of a civil complaint by the applicable agencies and a hearing held before the Tribal Chief Judge, in which the Judge will determine, by a preponderance of the evidence, if such violation occurred. Upon finding a Defendant to be delinquent, the Tribal Chief Judge shall order that the Defendant pay to the applicable agency any outstanding amount owed and to the Court Clerk a fine as is applicable. The Tribal Chief Judge may enter no other order under this subsection.

(b) Nonpayment of permit fees may result in denial or termination of a permit.

Section 906 Increases and modifications

No fees authorized in this code shall be increased or modified until the Commission has held at least one public hearing thereon and the Tribal Council has approved the change. The Director shall post notice of the hearing following the procedure set forth in this code. The Commission shall preside at all hearings concerning fee increases. Any system user or permit holder present and wishing to be heard shall have the opportunity to make a concise statement presenting his or her views.

Section 907 Solid Waste Account

All monies collected or received by the Tribe from permit fees, penalties or other sources imposed under this code shall be available solely for the administration and implementation of this code and the regulations promulgated hereunder. The Director shall promptly transmit to SRST Contracting all monies collected pursuant to this code. SRST Contracting shall deposit such monies into a duly established Solid Waste Account to be expended by the Director for use by DER/EPA, in accordance with the Solid Waste Account plan of operation pursuant to an approved budget. Any monies contained in said account at the end of the fiscal year shall not revert to the general fund and shall remain available for appropriation as provided in the Plan of Operation

CHAPTER 10

SOLID WASTE DISPOSAL FACILITY STANDARDS

Section 1001 Disposal Sites

No site for the disposal of solid waste shall be operated within the Reservation or other territory over which the Tribe has jurisdiction without a permit to operate as an approved disposal site. Disposal of hazardous waste is prohibited within the exterior boundaries of the Standing Rock Reservation.

Section 1002 Statutory and Regulatory Requirements

(a) Any person or owner or operator of a solid waste disposal facility shall be required to comply with this code, any rule or regulation promulgated thereunder, all tribal and federal environmental codes, regulations, standards and criteria, as applicable, all relevant guidance documents, all permit conditions, all orders issued by the Director or DER/EPA

under authority of this code, and all applicable federal or tribal laws, environmental in nature or otherwise.

(b) A disposal facility may include any site or facility where the discharge, abandonment, deposit, injection, dumping, or placing of any solid waste or hazardous waste into or on any land or water, including surface waters or ground waters.

(c) All municipal or other solid waste landfill facilities, other than inert waste landfill facilities, shall comply with the criteria of 40 CFR Part 258, this Code and any permit issued under this Code at a minimum.

(d) All "inert waste" landfill facilities, to include appropriate construction and demolition wastes, shall comply with the criteria of 40 CFR Part 257, this Code and any permit issued under this Code at a minimum.

(e) The Director or the Commission may specify landfill requirements more stringent than 40 CFR Parts 257 or 258.

(f) The Director may authorize alternative solid waste landfill standards to the extent consistent with 40 CFR Parts 257 or 258.

Section 1003 Responsibility and Liability of Owner or Operator

(a) The owner or operator of a waste disposal facility that is regulated under this code is responsible in perpetuity for the solid waste and liable in perpetuity for any pollution or other detrimental effect caused by the storage, treatment, or disposal solid waste at the facility.

(b) No person may dispose of solid waste within the Reservation or other territory over which the Tribe has jurisdiction until the owner or operator of the solid waste disposal facility executes an agreement or permit with the Tribe acknowledging such perpetual responsibility and liability for the solid waste.

(c) No person shall make any significant change in the design or operation of any solid waste disposal facility except in conformity with the terms and conditions of the permit issued to such person.

Section 1004 Existing Landfills

(a) All solid waste landfills that received waste on or after October 9, 1993 must comply with all requirements of these regulations unless otherwise specified.

(b) These regulations do not apply to solid waste landfills that stopped receiving waste on or before October 9, 1991.

(c) Solid waste landfills that received waste after October 9, 1991, but stopped receiving waste before October 9, 1993 are exempt from all the requirements of these regulations except the final cover requirements. The final cover must have been installed within six months of last receipt of wastes and the cover must be maintained pursuant to the criteria existing at the time of closure. Owners and operators who failed to complete the cover installation within the six month period are subject to all the requirements of these regulations including closure, ground water monitoring, financial assurances and post-closure care.

(d) An extension of the effective compliance date for closure/cover and permit requirements may be sought under the variance provision of this Code.

Section 1005 General Disposal Requirements

- (a) Disposal of hazardous wastes are not permitted within the exterior boundaries of the Reservation.
- (b) Disposal of solid wastes, to include municipal or special waste, shall be permitted only at waste facilities that have been approved and permitted by the Commission in accordance with this Code.
- (c) Disposal of solid wastes in a landfill permitted as a "Construction or Demolition Waste" or "Inert Waste" shall only include inert wastes shall not include any hazardous waste or hazardous substances.

Section 1006 Location Restrictions

- (a) New and existing waste disposal landfills, as well as modifications to a waste disposal landfill facility shall subject to the siting restrictions consistent with 40 CFR Parts 257 or 258, or other SRST or federal siting criteria as applicable.
- (b) All other new and existing waste disposal facilities, as well as modifications to a waste disposal facility shall subject to the siting restrictions consistent with the appropriate federal or SRST siting criteria to include cultural impacts.
- (c) The facility shall be located so that it does not create a public nuisance or potential hazard to public health, welfare or the environment.
- (d) The location of the facility shall conform to the most stringent of applicable water quality standards established in accordance with or effective under the provisions of applicable Tribal or Federal water pollution control ordinances or statutes. The facility shall be located in such a manner as to provide adequate protection to ground and surface water appropriate to its use.
- (e) Any disposal landfill or other facility shall be sited in compliance with the National Environmental Policy Act (NEPA) 42 U.S.C. 4321 *et seq.*; 40 C.F.R. Parts 1500-1508.

Section 1007 Design Criteria

- (a) The uniform landfill design criteria contained in 40 C.F.R. § 258.40 are incorporated by reference for new solid waste landfill facility units and lateral expansions of an existing solid waste landfill facility. The SRST reserves the right to impose more stringent requirements.
- (b) All other disposal practices or facilities shall be subject to the appropriate federal design criteria and/or any criteria imposed by the SRST.
- (c) The design of the facility shall conform to the most stringent of applicable water quality standards established in accordance with or effective under the provisions of applicable Tribal or Federal water pollution control ordinances or statutes. The facility shall be designed in such a manner as to provide adequate protection to ground and surface water appropriate to its use.
- (d) The facility shall be designed in an aesthetically acceptable manner.

Section 1008 General Operating Criteria

- (a) The facility shall be operated so that it does not create a public nuisance or potential hazard to public health, welfare or the environment.
- (b) Operating criteria for landfills in 40 C.F.R. §§ 258.20 through 258.29 are incorporated by reference herein.

- (c) Operating criteria for other solid waste disposal facilities shall be based upon any applicable federal criteria or other criteria required by the SRST.
- (d) The operation of the facility shall conform to the most stringent of applicable water quality standards established in accordance with or effective under the provisions of applicable Tribal or Federal water pollution control ordinances or statutes. The facility shall be operated in such a manner as to provide adequate protection to ground and surface water appropriate to its use.
- (e) All disposal facility owners/operators shall utilize the principles of environmental engineering to confine the solid waste to the smallest practical area and to reduce it to the smallest practical volume.
- (f) Upon the discovery of the receipt of material known or suspected to be unacceptable or prohibited solid, hazardous or infectious waste, the operator shall record the incident and:
 - (1) Notify the Director, the transporter and the generator within 24 hours;
 - (2) Restrict the area, container or wastes from public access and facility personnel not involved in managing the waste; and
 - (3) Assure proper containment, transport and disposal of the waste at an appropriate facility.
- (g) The operation of the facility shall conform to the most stringent of applicable water quality standards established in accordance with or effective under the provisions of applicable Tribal or Federal water pollution control ordinances or statutes. The facility shall be operated in such a manner as to provide adequate protection to ground and surface water appropriate to its use.
 - (1) If a Spill Prevention Control and Countermeasures (SPCC) Plan is required by the U.S. EPA a copy of the Plan shall be provided to the Director and be available on site.
 - (2) If a SPCC Plan is not required by the U.S. EPA, an equivalent SPCC Plan may be required by the Director and be available on site.
- (h) Each facility shall have accessible emergency communication for employees during operating hours.
- (i) Unloading and re-loading of wastes shall be confined to as small an area as possible and conducted in designated areas only.
- (j) The operator of any disposal facility, or his designee, shall be present during all hours of operation.
- (k) An effective litter control plan is required. Measures shall be taken to minimize windblown litter to include portable litter fences or other devices in appropriate locations. At least daily, litter shall be removed from the fences. Wastes that are easily moved by wind shall be covered, as necessary to prevent their becoming airborne and scattered to include dust control as needed.
- (l) Clearly post signs to indicate the hours of operation, delivery instructions, prohibition of scavenging, prohibited wastes and provide emergency telephone numbers.
- (m) Fencing shall be provided around the entire waste management facility, and barriers must be used to prevent unauthorized access by the public and entry by large animals or livestock to the facility.
- (n) Provide adequate means to prevent and extinguish fires.

- (o) On site vegetation shall be cleared only when necessary. Natural windbreaks, such as green belts, shall be maintained where they will improve the appearance and operation of the facility and improve dust control. Buffer strips shall be planted and/or berms constructed as necessary.
- (p) Implement a Waste Acceptance and Screening Plan including recordkeeping to inspect loads or take other steps as approved by the Director that will prevent the delivery of prohibited or restricted wastes or improper management of wastes. The plan shall require at a minimum:
 - (1) inspection frequency and inspection of loads suspected of containing prohibited or restricted wastes;
 - (2) inspection in a designated area or at a designated point in the delivery or management process;
 - (3) a training program for the facility employees in identification of prohibited or restricted waste; and
 - (4) maintaining written records of all inspections, signed by the inspector.
- (q) Have appropriate equipment manuals, telephone/cell phone, spare parts lists and critical spare parts readily available at the facility.
- (r) Provide and maintain in good repair access roads at the facility. Access roads shall be so designed and constructed that traffic will enter and exit the site safely, flow smoothly and will not be interrupted by inclement weather. Provide sufficient delivery, unloading or shipping areas.
- (s) Have a safety plan to address accident prevention and emergency response. Have and maintain adequate first-aid and appropriate spill response supplies at the facility site.
- (t) Prepare and maintain an Operations Manual of current policies and procedures. A copy of the Manual shall be maintained at the site. The Operations Manual shall include all information that would enable supervisory and operating personnel and persons evaluating facility operation to determine what sequence of operation, plans, diagrams, policies, procedures, permit and legal requirements must be followed for orderly and successful operation on a daily and yearly basis.
- (u) The owner or operator of a solid waste disposal facility shall notify the Director in writing of any proposed change of responsibility for operation of a disposal facility prior to the effective date of the change in accordance with the requirements of Chapter 8.

Section 1009 Record Keeping and Reports

- (a) The operator of a disposal facility shall make and maintain on-site an operational record for each day that solid waste is received, processed and disposed and each day that construction, monitoring, closure or post-closure activity occurs pursuant to the permit.
- (b) The daily operational record shall include at a minimum:
 - (1) The quantity and type of waste received;
 - (2) The origin of the waste;
 - (3) The transporters of the waste;
 - (4) A copy of any manifest;
 - (5) A description of waste handling problems, emergency activities and resulting remediation; and
 - (6) A record of approved deviations from the originally permitted operational plans.
- (c) Owners/operators shall submit reports to the Director as required by the permit.

(d) Owners/operators shall submit an annual report to the Director within forty five (45) days of the end of the calendar year in a format required by the permit and the Director. The report shall include at a minimum:

- (1) A summary of reports required by the permit to include the quantity and types of wastes received and disposed;
- (2) Any change in land status or use that may affect the owner's/operator's rights and responsibilities; and
- (3) A description of emergency actions or methods approved by the Director and used by the owner/operator, which are not described in the permit.

(e) All records and plans required by these codes or a permit must be furnished upon request and made available at all reasonable times for inspection by the Director or his/her designee.

Section 1010 Contingency Plan

- (a) All owners/operators of a waste disposal facility must have a contingency plan. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions or any unplanned sudden or non-sudden release of contaminants or hazardous waste constituents to air, soil, surface water or ground water.
- (b) The provisions of the plan are subject to the approval of the Director and shall be carried out immediately whenever there is a fire, explosion or release of contaminants or hazardous waste constituents which could threaten human health or the environment.
- (c) A copy of the approved contingency plan, and all revisions to the plan, must be maintained at the facility and submitted to all local police departments, fire departments, hospitals, state and local emergency response teams.

Section 1011 Facility Closure and Post Closure

- (a) Prior to beginning closure of a disposal facility, the owner or operator must notify the Director as required under the permit.
- (b) At the end of operation of a disposal unit or facility it shall be closed in accordance with the permit and the following requirements:
 - (1) All rats and other vermin shall be exterminated by qualified individuals prior to closing;
 - (2) All waste materials not disposed of must be removed and transported to an off-Reservation federal, state or county permitted solid waste facility or landfill;
 - (3) Temporary grading of the site shall be accomplished to promote proper drainage and to avoid ponding of surface water; and
 - (4) Post closure shall be implemented as specified in the permit.
- (c) Following closure of a unit or the facility, the owner or operator shall notify the Director that a certification, signed by an independent professional engineer or approved by the Director, verifying that closure has been completed in accordance with the closure plan and the permit.
- (d) Following closure of a waste disposal facility, the owner or operator must record a notation on the deed or other appropriate land title records to the facility property, or some other instrument that is normally examined during title search or property transfer or change in status, and notify the Director, that the notation has been recorded. Copies shall be given to the Commission, the Council, and the Bureau of Indian Affairs. The

notation on the deed or other appropriate land title records must in perpetuity notify any potential purchaser or leasee of the property that:

- (1) The land has been used as a waste disposal facility; and/or
 - (2) Its use may be restricted by Tribal Council Resolution, the Commission or the Director. The notation shall include general types of waste disposed at the facility.
- (e) The owner or operator may request permission from the Director to remove the notation from the deed or other land title records if all wastes and any waste residuals are removed from the facility.
- (f) Post closure and post closure maintenance shall be conducted as required under the permit.

Section 1012 Financial Assurance and Insurance

- (a) The owner or operator of a solid waste disposal facility shall comply with the financial assurance requirements for closure, post closure and remediation of releases as specified in Chapter 8 and the permit.
- (b) The owner or operator of a waste disposal facility shall have and maintain liability insurance in the amount of at least \$XXX.

CHAPTER 11

SOLID WASTE TRANSFER STATIONS

Section 1101 Solid Waste Transfer Station

- (a) No site for the collection and transfer of solid waste or hazardous waste shall be operated within the Reservation or other territory over which the Tribe has jurisdiction without a permit to operate as an approved transfer station. This Chapter does not apply to those storage containers placed for individual or clusters of residences and institutional, commercial, recreational or industrial establishments that service exclusively those establishments.
- (b) Owners and Operators of a waste transfer station shall comply with, as applicable, the requirements set forth in Chapter 13, and any other applicable federal or tribal requirements.
- (c) The owner or operator of a waste transfer station facility that is regulated under this code is responsible in perpetuity for the solid waste, if applicable, and liable in perpetuity for any pollution or other detrimental effect caused by the storage, collection, transportation and transfer of solid waste, if applicable.
- (d) No final disposal of solid waste or hazardous waste may be conducted at a transfer station. The abandonment of wastes at a transfer station by the owner or operator of the transfer station may be considered as disposal for purposes of determining compliance with this code.
- (e) Financial Assurance

- (c) The owner or operator of a waste transfer facility shall comply with the financial assurance requirements for closure and remediation of releases as specified in the permit.
- (d) The owner or operator of a waste disposal facility shall have and maintain liability insurance in the amount of at least \$XXX.

Section 1102 General Design and Location Requirements

(a) The facility shall be designed and operated at all times in an aesthetically acceptable manner.

(b) Locate the facility so that it does not create a public nuisance or potential hazard to public health, welfare or the environment.

Section 1103 General Operation Requirements

(a) Operate the facility so that it does not create a public nuisance or potential hazard to public health, welfare or the environment and in a manner to control disease vectors and odors.

(b) Containers used shall be designed or equipped to prevent leakage and spillage. Solid waste, bulky waste and demolition or construction solid waste, shall be stored in areas, structures or containers that are designed and constructed to contain such waste. The operator shall be responsible for accurate characterization of solid waste, including determinations of whether solid waste will be compatible with containment features and other solid waste at the facility and whether solid waste is required to be managed as hazardous waste. At any transfer station:

- (1) Containers shall be removed or emptied at least once every month or more frequently as conditions warrant;
- (2) Containers shall use hinged lids or removable covers during transportation; and
- (3) If applicable, recyclable material shall be placed directly into appropriate containers or in approved designated areas clearly identified for that purpose.

(c) Liquid waste or semi-solid waste, other than sewage sludge, shall not be stored at a transfer facility unless permitted to do so by the Director.

(d) Only solid waste shall be accepted at any transfer station. However other waste, including special or hazardous waste, may be accepted upon approval by the Director. Upon the discovery of the receipt of material known or suspected to be prohibited hazardous or infectious waste, the operator shall record the incident and:

- (1) Notify the Director, the transporter and the generator within 24 hours;
- (2) Restrict the area, container or wastes from public access and facility personnel not involved in the incident; and
- (3) Assure proper containment, cleanup, transport and disposal of the waste.

(e) All containment structures at transfer facilities shall have a foundation capable of providing support for the structure and capable of withstanding hydraulic pressure

gradients to prevent failure due to settlement, compression, or uplift. A registered civil engineer or certified engineering geologist shall certify that a containment structure meets the requirements of this Chapter. Such certification shall be placed in the operating record.

(f) The location, design, construction, and operation of the transfer station shall conform to the most stringent of applicable water quality standards established in accordance with or effective under the provisions of applicable Tribal or Federal water pollution control ordinances or statutes. The transfer station shall be located, designed, constructed, and operated in such a manner as to provide adequate protection to ground and surface water used as drinking water supplies.

(g) Each transfer station shall have accessible emergency communication for employees during operating hours.

(h) Unloading and re-loading of wastes shall be confined to as small an area as possible and conducted in designated areas only.

(i) The operator of any transfer station, or his designee, shall be present during all hours of operation.

(j) An effective litter control plan is required. Measures shall be taken to minimize wind blown litter to include portable litter fences or other devices in appropriate locations. At least daily, litter shall be removed from the fences. Wastes that are easily moved by wind shall be covered, as necessary to prevent their becoming airborne and scattered.

(k) Clearly post signs to indicate the hours of operation, disposal instructions, prohibition of fires, scavenging, prohibited wastes and provide emergency telephone numbers.

(l) Fencing shall be provided around the entire solid waste facility, and barriers must be used to prevent unauthorized access by the public and entry by large animals or livestock to the facility.

(m) Provide adequate means to prevent and extinguish fires. Ensure direct deposit and storage of hot waste or ashes to a location at the facility remote from the operating area or designated by permit for such purpose. The hot waste shall be immediately spread out for cooling and extinguished if on fire. The hot waste shall not be mixed with the solid waste stream until it reaches a temperature that will not cause combustion of solid waste material.

(n) On site vegetation shall be cleared only when necessary. Natural windbreaks, such as green belts, shall be maintained where they will improve the appearance and operation of the facility. Buffer strips shall be planted and/or berms constructed as necessary.

(o) Implement a plan including recordkeeping to inspect loads or take other steps as approved by the Director that will prevent the disposal of prohibited wastes or improper management of special wastes. The plan shall require at a minimum:

- (1) inspection frequency and inspection of loads suspected of containing prohibited or special wastes;
- (2) inspection in a designated area or at a designated point in the transfer process;
- (3) a training program for the facility employees in identification of prohibited or special waste; and
- (4) maintaining written records of all inspections, signed by the inspector.

(p) Have appropriate equipment manuals, telephone/cell phone, spare parts lists and critical spare parts readily available at the facility.

(q) Provide and maintain in good repair access roads at the facility. Access roads shall be so designed and constructed that traffic will enter and exit the site safely, flow smoothly and will not be interrupted by inclement weather. Provide sufficient unloading areas.

(r) Have a safety plan to address accident prevention and emergency response. Have and maintain adequate first-aid and spill response supplies at the facility site.

(s) Prepare and maintain an Operations Manual of current policies and procedures. A copy of the Manual shall be maintained at the site. The Operations Manual shall include all information that would enable supervisory and operating personnel and persons evaluating facility operation to determine what sequence of operation, plans, diagrams, policies, procedures, permit and legal requirements must be followed for orderly and successful operation on a daily and yearly basis.

Section 1104 Recordkeeping and Reports

(a) The operator of a facility shall make and maintain on-site an operational record for each day that solid waste is received, stored, processed or transferred.

(b) The daily operational record shall include at a minimum:

- (1) The quantity of solid waste received;
- (2) The origin of the solid waste;
- (3) The transporters of the solid waste;
- (4) A description of waste handling problems, emergency activities and resulting remediation; and
- (5) A record of approved deviations from the originally permitted operational plans.

(c) Owners/operators shall submit monthly reports to the Director within fifteen (15) days of the end of the month in a format required by the Director. The report shall include a summary of the daily record to include the quantity and types of wastes received in each month.

(d) Owners/operators shall submit an annual report to the Director within forty five (45) days of the end of the calendar year in a format required by the Director. The report shall include:

- (1) A summary of the monthly reports to include the quantity and types of wastes received in each month;
- (2) Any change in land status or use that may affect the owner's/operator's rights and responsibilities; and
- (3) A description of emergency actions or methods approved by the Director and used by the owner/operator, which are not described in the permit.

(e) All records and plans required by these codes or a permit must be furnished upon request and made available at all reasonable times for inspection by the Director or his/her designee.

Section 1105 Contingency Plan

(a) All owners/operators of solid waste transfer facility must have a contingency plan. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions or any unplanned sudden or non-sudden release of contaminants or hazardous waste constituents to air, soil, surface water or ground water.

(b) The provisions of the plan are subject to the approval of the Director and shall be carried out immediately whenever there is a fire, explosion or release of contaminants or hazardous waste constituents which could threaten human health or the environment.

(c) A copy of the approved contingency plan, and all revisions to the plan, must be maintained at the facility and submitted to all local police departments, fire departments, hospitals, state and local emergency response teams.

Section 1106 Transfer Station Closure

(a) At the end of operation a transfer station shall be closed in accordance with the permit and the following requirements:

- (1) All rats and other vermin shall be exterminated by qualified individuals prior to closing;
- (2) Any fires shall be extinguished before final cover of soil is applied;
- (3) All waste materials must be removed and transported for disposal at an off-Reservation state or county permitted solid waste landfill prior to final grading and cover;
- (4) Final grading shall be accomplished to promote proper drainage and to avoid ponding of surface water; and
- (5) The area shall be planted with native grass or other approved vegetation.

(b) Prior to beginning closure of a transfer station, the owner or operator must notify the Director.

(c) Following closure, the owner or operator shall notify the Director that a certification, signed by an independent professional engineer or approved by the Director, verifying that closure has been completed in accordance with the closure plan.

(d) Following closure of a waste transfer facility, the owner or operator must record a notation on the deed or other land title records to the facility property, or some other instrument that is normally examined during title search, and notify the Director, that the notation has been recorded. Copies shall be given to the Commission, the Council, and the Bureau of Indian Affairs. The notation on the deed or other land title records must in perpetuity notify any potential purchaser or leasee of the property that:

- (1) The land has been used as a waste transfer facility; and/or
- (2) Its use may be restricted by Tribal Council Resolution, the Commission or the Director. The notation shall include general types of waste managed at the facility.

(e) The owner or operator may request permission from the Director to remove the notation from the deed or other land title records if all wastes are removed from the facility.

CHAPTER 12

TREATMENT AND STORAGE FACILITIES

Section 1201 General Waste Storage or Treatment Requirements

(a) No person shall construct or operate a facility for the storage or treatment of solid waste or hazardous waste within the Reservation or other territory over which the Tribe has jurisdiction without a SRST permit to operate pursuant to Chapter 8. This Chapter does not apply to those storage containers placed for individual or clusters of residential, institutional, commercial, recreational or industrial establishments that service exclusively those establishments or any temporary containers addressed in Chapter 13.

(b) Owners and Operators of a solid or hazardous waste storage or treatment facility shall comply with, as applicable, the requirements of any other applicable federal, state, or tribal laws, codes, regulations or policies.

(c) The owner or operator of a solid or hazardous waste storage or treatment facility that is regulated under this code is responsible in perpetuity for the solid or hazardous waste stored or treated on the facility, if applicable, and liable in perpetuity for any pollution or other detrimental effect caused by the storage or treatment of solid waste, if applicable.

(d) No final disposal of solid waste or hazardous waste may be conducted at a storage or treatment facility. The abandonment of wastes at a storage or treatment facility by the owner or operator of the facility may be considered as disposal for purposes of determining compliance with this code.

(e) Financial Assurance

(a) The owner or operator of a waste storage or treatment facility shall comply with the financial assurance requirements for closure and remediation of releases as specified in Chapter 8 and the permit.

(b) The owner or operator of a waste storage or treatment facility shall have and maintain liability insurance in the amount of at least \$XXX.

Section 1202 General Design and Location Requirements

- (a) The facility shall be designed and operated at all times in an aesthetically acceptable manner.
- (b) Locate the facility so that it does not create a public nuisance or potential hazard to public health, welfare or the environment.
- (c) A solid waste facility shall meet the location criteria specified under 40 CFR §257.3. The Director or the Commission may specify more stringent site requirements, restrictions or criteria.
- (d) A hazardous waste facility shall meet the location criteria under 40 CFR Part 264. The Director or the Commission may specify more stringent site requirements, restrictions or criteria.

Section 1203 General Operation Requirements

- (a) The owner or operator of the facility shall operate and manage the facility in accordance with the permit issued pursuant to Chapter 8.
- (b) Operate the facility so that it does not create a public nuisance or potential hazard to public health, welfare or the environment and in a manner to control disease vectors and odors.
- (c) Any Containers or storage areas used shall be designed or equipped to prevent leakage and spillage.
- (d) The owner or operator shall be responsible for accurate characterization of solid waste, including determinations of whether solid waste will be compatible with containment features and other waste at the facility and whether solid waste is required to be managed as hazardous waste.
- (e) Upon the discovery of the receipt of material known or suspected to be unacceptable or prohibited solid, hazardous or infectious waste, the operator shall record the incident and:
 - (1) Notify the Director, the transporter and the generator within 24 hours;
 - (2) Restrict the area, container or wastes from public access and facility personnel not involved in managing the waste; and
 - (3) Assure proper containment, transport and disposal of the waste at an appropriate facility.
- (f) All containment or treatment structures shall have a foundation capable of providing support for the structure and capable of withstanding hydraulic pressure gradients to prevent failure due to settlement, compression, or uplift. A registered civil engineer or certified engineering geologist shall certify that a structure meets the requirements of this Chapter. Such certification shall be placed in the operating record.

(g) The location, design, construction, and operation of the facility shall conform to the most stringent of applicable water quality standards established in accordance with or effective under the provisions of applicable Tribal or Federal water pollution control ordinances or statutes. The facility shall be located, designed, constructed, and operated in such a manner as to provide adequate protection to ground and surface water appropriate to its use. If a Spill Prevention Control and Countermeasures (SPCC) Plan is required by the U.S. EPA a copy of the Plan shall be provided to the Director and be available on site. If a SPCC Plan is not required by the U.S. EPA, an equivalent SPCC Plan shall be provided to the Director and be available on site.

(g) Each facility shall have accessible emergency communication for employees during operating hours.

(h) Unloading and re-loading of wastes shall be confined to as small an area as possible and conducted in designated areas only.

(i) The operator of any facility, or his designee, shall be present during all hours of operation.

(j) An effective litter control plan is required. Measures shall be taken to minimize wind blown litter to include portable litter fences or other devices in appropriate locations. At least daily, litter shall be removed from the fences. Wastes that are easily moved by wind shall be covered, as necessary to prevent their becoming airborne and scattered to include dust control as needed.

(k) Clearly post signs to indicate the hours of operation, delivery instructions, prohibition of scavenging, prohibited wastes and provide emergency telephone numbers.

(l) Fencing shall be provided around the entire waste management facility, and barriers must be used to prevent unauthorized access by the public and entry by large animals or livestock to the facility.

(m) Provide adequate means to prevent and extinguish fires.

(n) On site vegetation shall be cleared only when necessary. Natural windbreaks, such as green belts, shall be maintained where they will improve the appearance and operation of the facility and improve dust control. Buffer strips shall be planted and/or berms constructed as necessary.

(o) Implement a Waste Acceptance and Screening Plan including recordkeeping to inspect loads or take other steps as approved by the Director that will prevent the delivery of prohibited or restricted wastes or improper management of wastes. The plan shall require at a minimum:

- (1) inspection frequency and inspection of loads suspected of containing prohibited or restricted wastes;

- (2) inspection in a designated area or at a designated point in the delivery or management process;
 - (3) a training program for the facility employees in identification of prohibited or restricted waste; and
 - (4) maintaining written records of all inspections, signed by the inspector.
- (p) Have appropriate equipment manuals, telephone/cell phone, spare parts lists and critical spare parts readily available at the facility.
- (q) Provide and maintain in good repair access roads at the facility. Access roads shall be so designed and constructed that traffic will enter and exit the site safely, flow smoothly and will not be interrupted by inclement weather. Provide sufficient delivery, unloading or shipping areas.
- (r) Have a safety plan to address accident prevention and emergency response. Have and maintain adequate first-aid and appropriate spill response supplies at the facility site.
- (s) Prepare and maintain an Operations Manual of current policies and procedures. A copy of the Manual shall be maintained at the site. The Operations Manual shall include all information that would enable supervisory and operating personnel and persons evaluating facility operation to determine what sequence of operation, plans, diagrams, policies, procedures, permit and legal requirements must be followed for orderly and successful operation on a daily and yearly basis.

Section 1204 Recordkeeping and Reports

- (a) The operator of a facility shall make and maintain on-site an operational record for each day that solid waste is received, stored, processed, treated or transferred.
- (b) The daily operational record shall include at a minimum:
- (1) The quantity and type of waste received;
 - (2) The origin of the waste;
 - (3) The transporters of the waste;
 - (4) A copy of any manifest;
 - (5) A description of waste handling problems, emergency activities and resulting remediation; and
 - (6) A record of approved deviations from the originally permitted operational plans.
- (c) Owners/operators shall submit reports to the Director as required by the permit.
- (d) Owners/operators shall submit an annual report to the Director within forty five (45) days of the end of the calendar year in a format required by the permit and the Director. The report shall include at a minimum:
- (1) A summary of reports required by the permit to include the quantity and types of wastes received and/or treated;
 - (2) Any change in land status or use that may affect the owner's/operator's rights and responsibilities; and

(3) A description of emergency actions or methods approved by the Director and used by the owner/operator, which are not described in the permit.

(e) All records and plans required by these codes or a permit must be furnished upon request and made available at all reasonable times for inspection by the Director or his/her designee.

Section 1205 Contingency Plan

(a) All owners/operators of a waste storage or treatment facility must have a contingency plan. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions or any unplanned sudden or non-sudden release of contaminants or hazardous waste constituents to air, soil, surface water or ground water.

(b) The provisions of the plan are subject to the approval of the Director and shall be carried out immediately whenever there is a fire, explosion or release of contaminants or hazardous waste constituents which could threaten human health or the environment.

(c) A copy of the approved contingency plan, and all revisions to the plan, must be maintained at the facility and submitted to all local police departments, fire departments, hospitals, state and local emergency response teams.

Section 1206 Facility Closure

(a) Prior to beginning closure of a facility, the owner or operator must notify the Director.

(b) At the end of operation a storage and/or treatment facility shall be closed in accordance with the permit and the following requirements:

- (1) All rats and other vermin shall be exterminated by qualified individuals prior to closing;
- (2) Any fires or other artificial heat sources shall be extinguished;
- (3) All waste materials must be removed and transported to an off- Reservation federal, state or county permitted solid waste facility or landfill;
- (4) Final grading of the site shall be accomplished to promote proper drainage and to avoid ponding of surface water; and
- (5) The area shall be planted with native grass or other approved vegetation.

(c) Following closure, the owner or operator shall notify the Director that a certification, signed by an independent professional engineer or approved by the Director, verifying that closure has been completed in accordance with the closure plan and the permit.

(d) Following closure of a waste storage or treatment facility, the owner or operator must record a notation on the deed or other appropriate land title records to the facility property, or some other instrument that is normally examined during title search or property transfer or change in status, and notify the Director, that the notation has been recorded. Copies shall be given to the Commission, the Council, and the Bureau of Indian Affairs. The notation on the deed or other appropriate land title records must in perpetuity notify any potential purchaser or leasee of the property that:

- (1) The land has been used as a waste management facility; and/or

(2) Its use may be restricted by Tribal Council Resolution, the Commission or the Director. The notation shall include general types of waste managed at the facility.

(e) The owner or operator may request permission from the Director to remove the notation from the deed or other land title records if all wastes and any waste residuals are removed from the facility.

Section 1207 Composting Facilities

All solid waste composting facilities (excluding individual residential composting) shall comply with all requirements of this Chapter, the DER/EPA Permit, other applicable parts of this Code and the following Sections.

(a) All composting facilities require a permit approved by the Director except a composting facility which occupies less than one (1) acre, uses only water or an inoculant as an additive and utilizes no more than 50% manure in the final mix, and does not compost treated sewage sludge, special wastes or other unapproved solid waste.

(b) The permit application shall contain the following additional information:

- (1) Detailed plans and specifications for the entire composting facility, including manufacturer's performance data for equipment, grade of site, run-off retention, run-off filtering or treatment plans, depth of groundwater at site and proximity of site to surface water;
- (2) The method of measuring, shredding, mixing and proportioning input materials;
- (3) A description of temperature monitoring equipment and location of all temperature and other type of monitoring points and frequency of monitoring;
- (4) A description of any amendments, including quantity, quality and frequency of use;
- (5) Special precautions or procedures for operation during wind, heavy rain, snow and freezing conditions to minimize flooding and run-on and run-off;
- (6) Estimated composting time duration;
- (7) For windrow systems, the windrow construction, including width, length and height;
- (8) The method of aeration, including turning frequency or mechanical aeration equipment and aeration capacity;
- (9) A description of the use for the compost, method for site-removal and a plan for disposal of compost not used in the expected manner; and
- (10) For in-vessel composting systems, a process flow diagram of the entire process, including all major equipment and flow streams.

(c) The following additional operational requirements apply to composting facilities:

- (1) Daily operational records including temperature and quantity of material processed;
- (2) All waste piles collected must be processed within two years;
- (3) All materials not destined for processing must be disposed of properly;
- (4) If windrowed, construction and turning frequency must be sufficient to maintain aerobic conditions and to produce a compost product in the desired time frame;
- (5) The finished compost must be sufficiently stabilized so that it can be stored or applied to land without producing a public health or environmental hazard;

- (6) The finished compost must contain no sharp objects; and
- (7) Any records pertaining to the composting facility shall be made available to the Director upon request.

(d) Closure Requirements: Within thirty (30) calendar days of closure, all composting facilities shall:

- (1) Remove all windrows and in-vessel compost material;
- (2) Remove or re-vegetate compacted compost material; and
- (3) Drain ponds or leachate collection systems, re-contour and properly dispose of any remaining materials.

(e) Post-Closure Care: Post-closure care shall include:

- (1) Ground water monitoring; and
- (2) Inspection and maintenance of cover material.

(f) Post-Closure Care Period. The post-closure care period for composting facilities shall be thirty (30) years. The Director may decrease the post-closure period if the owner/operator demonstrates that a reduced period is sufficient to protect human health and the environment. The Director may extend post closure care if the extended period is necessary to protect human health and the environment.

CHAPTER 13

HOUSEHOLD WASTE STORAGE, COLLECTION AND CONTROL

Section 1301 Household Waste Storage, Collection, and Control

(a) The storage, collection and transportation of household solid waste and household hazardous waste shall take place in accordance with the provisions of this Section.

(b) Solid Waste may be temporarily stored at residences, businesses, tribal offices or other premises within the Reservation or other territory over which the Tribe has jurisdiction, as approved by the Director. In no case shall such wastes be stored for more 30 days without written permission from the Director.

(c) Any person storing solid waste must store the solid waste in a DER/EPA approved type of container or in a manner that will confine the waste in one area, and not create a public nuisance or threat to public health. Bulky rubbish such as tree trimming, newspaper, weeds and large cardboard boxes shall be handled as directed by the Director. Where waste separation is not required, containers for the storage of mixed rubbish and garbage shall meet the requirements specified by the Director.

Section 1302 Operating Requirements

(a) Each operator/owner of a storage, collection and transportation business shall comply with applicable federal and tribal requirements. Permits shall be contingent upon the owner/operator's demonstrated capability to comply with requirements of tribal law and regulations and to use equipment that is safe and sanitary.

(b) Each operator/owner shall demonstrate adequate financial resources and experience to properly conduct the operation, which may include but not be limited to the following:

- (1) the filing of a performance bond or equivalent security with the Director in a reasonable amount as set forth by the Director, except when the provider is the Tribe or a tribally- owned or controlled entity; and
- (2) liability insurance \$XXX

(c) The storage, collection and transportation service shall utilize the types of storage containers, collection containers and bulky waste containers approved by the Director. Each of these containers will only accept the type of waste specified herein and all types of containers must have the written approval of the Director. In locating such containers in the service areas, the Director shall consult with the residents of such service areas to minimize noise, traffic, aesthetic and other problems on the property and for the general public.

(d) Collection containers shall accept residential, commercial and institutional, compactable solid waste.

(1) These containers will only accept:

- (i) Household garbage;
- (ii) Floor sweepings;
- (iii) Yard trimmings,
- (iv) Household recyclables; and
- (v) Tree trimmings-with the maximum limb size of 1/2" inch diameter and no more than 35" inches in length, bundled in a maximum of 16" inch diameter bundles.

(2) These containers will not accept bulky waste to include;

- (i) large household appliances;
- (ii) furniture;
- (iii) construction waste;
- (iv) hazardous and toxic waste;
- (v) large automobile parts;
- (vi) dead animals;
- (vii) tree limbs and stumps not otherwise specified;
- (viii) demolition rubble; or
- (ix) recently burned or burning material.

(e) Bulky waste storage may be in fenced areas, structures or containers designated and approved by the Director. Fenced areas or structures shall have controlled access and appropriate vector and fire controls. Containers will have the capacity to handle twenty (20) or more cubic yards of solid waste.

(1) These containers may accept bulky waste such as:

- (i) Large household appliances;
- (ii) Furniture; and
- (iii) Small quantities of demolition and construction waste from homeowners; and
- (iv) Tree limbs with a maximum length of 5 feet, large limbs must be trimmed.

(2) The waste generated by contractors and special demolition and construction projects shall not be stored or otherwise disposed of in such containers without the issuance of a permit from the Director.

(f) Containers shall be identified with the name and telephone number of the operator.

(g) All equipment used for the storage, collection and/or transportation of solid waste shall be durable, easily cleanable, designed for safe handling, and constructed to minimize noise and prevent loss of solid waste from the equipment during collection or transportation. If equipment is used to collect or transport garbage, other wet or liquid producing solid waste, or solid waste composed of fine particles, such equipment shall be maintained in good condition and cleaned in a frequency and manner adequate to prevent the propagation, harborage, or attraction of vectors and the creation of nuisances.

(h) Each vehicle used for refuse transport shall be operated, covered or secured to minimize releases of waste materials and made available for inspection as requested by the Director.

Section 1303 Waste Receptacles

The owner, agent, occupant or person in control of any property, including every dwelling, business establishment or other premises, shall cause to be placed and maintained suitable and approved receptacles for the deposit of solid waste, of sufficient volume and in sufficient numbers to contain the solid waste which can be expected to be generated by the numbers of people coming onto or using the property. Such owner, agent, occupant or person shall be responsible for the safe and sanitary storage of all solid waste accumulated until it is removed. All receptacles must comply with the following:

- (1) Approved receptacle shall be maintained in a manner consistent with this code and acceptable to the Director. Receptacles that are broken or otherwise fail to meet the requirements of this code shall be replaced;
- (2) Drop-box receptacles shall be periodically disinfected, and shall be steam cleaned and painted as deemed necessary by the Director; and
- (3) Approved individual receptacles shall be stored off the ground on racks or stands and easily accessible for collection by the authorized agent, contractor or other SRST representatives.

Section 1304 Collection and Transportation of Household Waste

All Reservation residents shall be required to subscribe to a refuse collection service. However, Reservation residents may take their own household waste to a tribal or state permitted disposal or transfer site. Any person transporting household waste within, on or through the Reservation or other territory over which the Tribe has jurisdiction shall cover, tie, or otherwise secure such solid waste so no waste will be blown or dropped from the transport vehicle.

Section 1305 Collection Service

Collection of solid waste shall be on a timely basis but no less than once every seven days.

Section 1306 Collection Service Fees

A fee for the collection of the household solid wastes may be imposed for the collection service. This fee will be determined by and approved by the Commission and the Director and is subject to public notice and a hearing in accordance with the SRST Title XXIX, EPO before it is imposed.

All residents of the Reservation will be assessed a monthly solid waste fee. Fees for transfer, recycling, collection of special or bulky wastes or other special services shall be set and collected as prescribed. All solid waste fees will be set by the Commission based upon the cost of services of a competitive bid process for franchise(s).

Section 1307 Non-payment of Fees

Non-payment of any tribal collection or transfer fees, after (90) ninety days, shall, be a violation of this code and result in action being taken by the Director. Action may include the discontinuation of other utilities provided by the SRST and/or other actions provided for under this code.

Section 1308 Private Collection Vehicles

Private vehicles used for collection and transportation of refuse shall be loaded and moved in such a manner that the contents, including ashes, will not fall, leak or spill from vehicles. Open top vehicles or vehicles with attached or towed open top containers shall be covered with a tarp or other covering while in transit on public roads to ensure load security and prevent the release any debris or liquids. Any releases, littering or spillage from such vehicles are the responsibility of the vehicle owner or operator and must be cleaned up within 24 hours of such release or spillage.

Section 1309 Permitted Collection Vehicles

(a) Tribally permitted vehicles used for the collection and transportation of solid waste, garbage or refuse shall have covered, watertight, metal bodies of easily cleanable construction shall be cleaned frequently to prevent a nuisance, and shall be maintained in good repair. Any releases, littering or spillage from such vehicles are the responsibility of the vehicle owner or operator and must be cleaned up within 24 hours of such release or spillage.

(b) Every vehicle operated by the transporter is to be conspicuously marked or placarded to identify the solid waste transported and its principal hazard. Any such vehicle shall be marked in a like manner with the full name or legally registered trade names or names of the transporter and the number of the Tribal solid waste collection and/or transportation permit(s) issued pursuant to this code. Every vehicle and driver must be appropriately licensed in the States of South Dakota or North Dakota and must comply with all safety and insurance requirements of the States of North Dakota, South Dakota or the Tribe;

(c) The collector or transporter must submit an annual (or as otherwise conditioned in the permit) written report to the Director via certified U.S. Mail, indicating the number and type of containers collected, the volume (and weight if available) and nature of solid waste collected and/or transported of, the place and manner in which such solid waste was finally disposed, the number and nature of any releases or spillage and responses taken, and such other information as the permit may require. A copy of the report shall be provided to the Director. A renewal of the permit may be denied by the Director for failure to properly and timely file such annual report.

Section 1310 Collection Standards

Solid Waste shall be deposited, stored and collected in a manner that prevents spillage and littering. Should spillage and/or littering occur, the waste shall be cleaned up by the responsible person within 24 hours and returned to the vehicle or appropriate facility or container. Property owners, residents and home owners are the responsible person for releases, littering or spillage of solid waste from their residence or property until such wastes are collected by the authorized collection service.

Section 1311 Pets and Animals

Pets and animals shall be controlled by property owners, residents and home owners to provide for the safety of the collector and prevent interference with collection service or littering of solid wastes. Control of dogs must also be maintained in accordance with SRST Title 22.

Section 1312 Access

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

Section 1313 Load Rejection

The Director or the Collection Service reserves the right to refuse any and all materials at the collection sites, transfer stations, or any other solid waste facility.

Section 1314 Material Separation

The Director or the Collection Service reserves the right to require separation of any materials deemed necessary prior to collection or acceptance at a solid waste management or transfer facility.

CHAPTER 14 SPECIAL WASTE STANDARDS

Section 1401 Designation of Special and Industrial Wastes

A specific type of solid waste may be designated as a Special or Industrial Waste by the Director and subject to the requirements of this code, or other specific storage, management or disposal requirements. Every person, commercial establishment, government agency or facility or industrial facility who generates or stores special or industrial waste as described below within the boundaries of the Reservation shall comply with this code.

Section 1402 Management of Special and Industrial Wastes

The following special or industrial wastes, that are not hazardous waste as defined above, shall be managed as specified below and may be not stored, transferred, disposed of or discharged within the boundaries of the Reservation except at a designated and permitted land disposal or transfer, treatment, storage or recycling facility specifically approved by the Director. Special Waste collection, transportation, management, storage permits may be required or disposal fees may be assessed by the Tribe for such wastes services provided within the Reservation.

Section 1403 Agricultural Wastes

Agricultural waste may be disposed of on the farm or ranch land from which it is generated or at an alternative approved site by prior arrangement with the Director. The Director shall be notified of such approved site(s). Agricultural waste and products shall be stored as to minimize nuisance, flies, rodents and odor, and shall not result in the contamination of ground or surface water sources.

Section 1404 Animal Carcasses

(a) It shall be unlawful to place any dead animals, including livestock and pets, or parts thereof, in a storage container, solid waste facility, stream, lake or any roadway within the Standing Rock Indian Reservation without the express written permission from the Director. This prohibition shall not apply to food scraps from restaurants, cafes, residential, or other food preparation institutions. Dead animals must be removed in a timely manner, but not to exceed 72 hrs. from time of death, and be managed by renderers, disposed of at a permitted solid waste landfill or at an alternative location designated by the Director. Private commercial animal removal companies should be used for removal and disposal of all livestock carcasses. Household pets shall be buried on a person's own property, or must be taken to a tribally approved transfer or disposal site.

(b) During an emergency, potentially large numbers of livestock may need to be managed as rapidly and as efficiently as possible. The Director may issue an emergency permit for one-time disposal events based on various practical factors during emergency conditions. The DER/EPA, the Director and other local, state and federal agencies will work together with livestock owners to accomplish the efficient and environmentally sound disposal of animal carcasses and related materials so as to minimize impacts to human and animal health and to water sources. Disposal under emergency permits must be restricted to dead animals and associated, generally inert waste, unless otherwise authorized.

Section 1405 Asbestos and Asbestos Containing Materials

(a) Asbestos and Asbestos Containing Materials must be disposed of outside of the Reservation at a state approved landfill facility. Asbestos disposal must be coordinated with the landfill owner/operator. Friable asbestos-containing material must be disposed into landfills that have agreed to accept the material and have appropriate facilities, procedures, equipment and training for managing such waste.

(b) Prior to shipping, friable asbestos-containing material must be wetted. Friable asbestos-containing material must be placed in leak-tight containers and be properly labeled. Containers should be carefully handled. Handling of regulated asbestos-containing material must be performed by certified asbestos personnel.

(c) Removal, transportation and disposal of Asbestos and Asbestos Containing Materials (ACM) must be conducted in compliance with the applicable requirements of this code, the Clean Air Act, 42 U.S.C. 7401-7671q, 40 CFR Part 61 Subpart M and follow U.S. Environmental Protection Agency rules, regulations and guidelines and a copy of all required forms and reports must be submitted to the SRST DER/EPA. For the purposes of this Section transportation includes movement of a house or structure with ACM beyond the property boundary. Demolition of a building or structure that contains Asbestos or ACMs must be permitted as required under § 26-710.

Section 1406 Bulky Wastes

(a) Large bulky items of solid waste, such as household appliances, large automobile parts, scrap metal, furniture, trees and stumps and other oversized wastes may not be collected or transported for disposal to any facility within the boundaries of the Reservation, unless the facility is permitted or given express permission by the Director to receive such items. If permitted, the facility must be in full compliance with this code and must have a provision for intermediate storage and recycling of these materials and all such materials are appropriately segregated for recycling.

(b) The owner or resident of the property is responsible for proper storage or disposal of the item(s) as required under this code, and must remove such items from their property within thirty (30) days notice by the Director.

(c) Refrigeration or air conditioning units must have the refrigerant (i.e. freon) removed by a certified technician in conformance with applicable U.S. EPA and state regulations prior to disposal or recycling.

Section 1407 Wrecked, Junked or Unserviceable Vehicles

(a) It shall be unlawful for any person to store on one single property, or within or outside the villages and communities, any wrecked, junked, unregistered or unserviceable vehicles in a quantity of more than four (4). If such vehicles are accumulated in a quantity of more than four (4) on a single property, such property shall be considered to be a commercial salvage operation and subject all applicable requirements and fees for such a waste management operation provided in this code. It shall be unlawful for a person to store on leased property any wrecked, junked, unregistered or unserviceable vehicles in a quantity of more than four (4) or the amount allowed under the lease, whichever is less.

(b) Any currently unlicensed and abandoned vehicles on tribal and/or public facilities such as roads, streets, alleys, highways, or public parking areas for more than forty-eight (48) hours shall be considered junk shall be impounded and towed away at the direction

of the Director or the Tribal law enforcement department to an impoundment area. Any person claiming such vehicle shall give proof of ownership and pay any towing and storage charges. Vehicles not claimed within thirty (30) days of impoundment shall be declared abandoned, advertised, and sold at auction by the law enforcement department to pay for towing and storage charges. All remaining income from the sale of the vehicle shall be remitted to the Tribe.

Section 1408 Commercial Salvage Yard Waste

Any commercial operation that has cause to maintain an accumulation of used farm equipment, industrial equipment or used motor vehicles for salvage purposes shall obtain a permit from the Commission to maintain a Salvage Yard. Salvage Yards shall be fenced with locking gates and maintained in a manner to prevent environmental, community health or nuisance hazards. All Salvage Yards shall be inspected quarterly, or as needed, by the Director to assure compliance with this code and the permit. All solid, special and hazardous wastes shall be properly contained and managed in conformance with this code and the permit.

Section 1409 Construction and Demolition Wastes

(a) All construction or demolition wastes and debris must be properly disposed in accordance with this code. Construction and demolition wastes shall not be disposed of in residential collection containers or boxes, on the construction or demolition site or any other site on the Reservation not specifically authorized by the Tribe.

(b) Prime contractors are required to obtain a DER/EPA permit pursuant to this Code prior to beginning any construction or demolition work on the Reservation

Section 1410 Infectious Wastes and Biological/Medical Wastes

(a) All Infectious institutional wastes and/or Biological/Medical wastes, including but not limited to, mortuary waste, emergency room waste, laboratory wastes, surgical operating room pathological specimens and disposal fomites, must be bagged in bio/medical waste bags or containers obtained from the Indian Health Service or the Tribe.

(b) Regulated infectious waste may not be subject to mechanical stress or compaction during loading, unloading, and transit. Transportation of such waste within the boundaries of the Reservation must be conducted by a tribal or state permitted transporter for such wastes.

(c) Emergency room wastes and mortuary wastes may not be disposed of within the boundaries of the Reservation unless such wastes are first incinerated in an incinerator approved and permitted by the Commission, and applicable federal authority, and disposed of at a solid waste disposal site approved by the Tribe or the State.

Section 1411 Lead Acid Batteries

(a) No person shall place a used lead acid battery in mixed household or municipal solid waste, discard or otherwise dispose of a lead acid battery, except by delivery to an

automotive battery retailer or wholesaler, to a collection or recycling facility authorized under this code or the State of North Dakota or South Dakota, or to a secondary lead smelter permitted by the U.S. EPA.

(b) No automotive battery retailer shall dispose of a used lead acid battery except by delivery to the agent of a battery wholesaler, to a battery manufacturer, to a collection or recycling facility authorized under this code or the laws of North Dakota or South Dakota, or to a secondary lead smelter permitted by the U. S. EPA.

(c) Each battery improperly disposed of shall constitute a separate violation.

(d) A person selling lead acid batteries at wholesale, retail or offering lead acid batteries for retail sale within the boundaries of the Reservation shall:

(1) Accept, at the point of transfer, in a quantity at least equal to the number of new batteries purchased per year, used lead acid batteries from customers, if offered by customers;

(2) Post written notice which shall be at least eight and one-half (8 1/2) inches by eleven (11) inches in size and shall contain the universal recycling symbol and the following language:

(i) "It is illegal to discard a motor vehicle battery or other lead acid battery";

(ii) "Recycle your used batteries;" and

(iii) "Tribal Acts require us to accept used motor vehicle batteries or other lead acid batteries for recycling in exchange for new batteries purchased."

(3) Failure to post the required notice shall be a violation of this code; and

(4) Any person accepting batteries in transfer from an automotive battery retailer shall be allowed a period not to exceed one hundred twenty (120) days to remove batteries from the retail point of collection.

Section 1412. Liquid Waste.

Bulk or non-containerized liquid waste may not be placed in a roll-off or other solid waste collection containers or boxes for disposal in a municipal solid waste landfill. However, liquids may be deposited within approved one (1) gallon or less containers or Roll-off Sites if the waste is a household waste, other than septic waste, and the container is a small container similar in size to that normally found in household waste and the container is designed to hold liquids for use other than storage.

Section 1413 Mobile Homes or Trailers.

Mobile homes or trailers that are an unsafe structure, unfit for habitation, junked, partially disassembled, wrecked or non-operative and which are abandoned or not inhabited for more than one hundred and eighty (180) days may be declared a solid waste by the Director or the Director and must be managed accordingly and in full compliance with this code.

Section 1414 Oil Field Waste, Cement Kiln Dust, Mining Waste, Uranium Waste and Utility Waste

(a) Cement kiln dust, mining waste, oil and gas drilling muds and oil production brines, phosphate rock mining, beneficiation, and processing waste, uranium waste, and utility waste (i.e., fossil fuel combustion waste) may not be dumped, spilled, leaked, burned or otherwise improperly disposed of within the boundaries of the Reservation.

(b) Such Wastes shall be collected and/or transported for disposal to a waste collection, transfer or storage unit or facility off the Reservation, or to an on-Reservation facility that is in full compliance with this code until such wastes are transported off the Reservation.

Section 1415 Pesticide and Herbicide Wastes

(a) Agricultural waste and products shall be stored as to minimize nuisance, flies, rodents and odor, and shall not result in the contamination of ground or surface water sources and in accordance with this Title. Every person, commercial or industrial facility who handles surplus agricultural pesticides or herbicides and/or pesticide or herbicide containers shall comply with this code and 40 C.F.R. Part 262. Surplus pesticides or herbicides may not be discarded within the boundaries of the Reservation in any manner which endangers humans, animals, and/or the environment. Pesticide and herbicide containers must be drained or emptied according to label directions and power or triple-rinsed before processing or disposal.

(b) A farmer or rancher within the Reservation boundaries disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with this Section for those wastes provided he triple rinses each emptied pesticide container in accordance with 40 C.F.R. § 261.7(b)(3) and disposes of the pesticide residues on the farm or ranch owned by the farmer or rancher in a manner consistent with the disposal instructions on the pesticide label, applicable federal regulations and does not endanger human health or the environment. A farmer or rancher operating on land leased from the Tribe must dispose of pesticide or herbicide wastes as directed by the Director.

Section 1416 Septic Tank Waste

Septic tank pumpings and sewage sludge and other sanitary wastes shall only be disposed of at a tribally designated land disposal or tribally approved sewage treatment facility in compliance with this code and 40 C.F.R. Parts 257 and 503, as applicable, and after payment of any applicable permit and/or discharge fees. A permit for the disposal of septic wastes by a commercial septic pumping service on the Reservation must be obtained from the DER/EPA. No disposal of septic tank waste shall be made at the transfer stations or any other unauthorized location on the Reservation.

Section 1417 Tire Storage and Hauling

(a) No tires may be disposed of at any location other than a facility or site approved or permitted under this code. Used tires may not be delivered to a facility or location within the boundaries of the Reservation that is not in compliance with this code or abandoned upon any street, alley, highway, public place or private premises.

(b) Any person hauling used or scrap tires to unapproved disposal sites (ravines, coulees, dumps, gravel pits, tree rows, streams, rivers, etc.) is in violation of this code and subject

to enforcement action. If scrap tires are taken to a location which comes under enforcement action, the transporter and/or the original generator(s) may be liable for cleanup costs. Tires must be transported to an end-user who will process, recycle and/or dispose the materials in a manner that complies with the laws of the Tribe or the State or the governmental jurisdiction having authority over waste management activities.

(c) No more than twenty (20) tires may be stored on residential property for private use. Commercial businesses, public/tribal agencies and tire dealers may store the equivalent of a semi-truck load of whole or shredded scrap tires for transport to a recycling or disposal facility subject to the following conditions:

- (1) Storage must not create a public nuisance;
- (2) Access to the storage area must be controlled;
- (3) The storage area must be accessible to fire control equipment; and
- (4) Funds must be set aside for disposing or recycling the stored scrap tires (proof of availability of such funds must be available upon request by the Director).

(d) Storage of larger quantities of tires requires a formal solid waste storage permit from the DER/EPA pursuant to this code. Individuals or businesses accepting scrap tires are subject to enforcement action if the activity:

- (1) creates a nuisance;
- (2) endangers public health or safety, including harboring disease vectors or insects;
- or
- (3) presents a threat to environmental resources.

Section 1418 Used Oil

Used motor or lubrication oil is designated as a special waste, and may not be dumped, spilled, leaked, burned or otherwise improperly disposed of within the boundaries of the Reservation. Used oil and lubrication oil shall be collected and/or transported for disposal to a waste collection, transfer or storage unit or facility that is in full compliance with 40 C.F.R. Part 279 and this code. Such waste collection, transfer or storage unit or facility shall have provisions for intermediate storage and recycling of these materials, to include spill prevention and containment and fire control, and all such materials shall be appropriately segregated for recycling.

Section 1419 Technically Enhanced Naturally Occurring Radioactive Materials (TENORM)

Wastes that are or contain Technically Enhanced Naturally Occurring Radioactive Materials (TENORM) at concentrations greater than 185 becquerel per kilogram (5 picoCuries/gram or pCi/g) may not be dumped, spilled, leaked, burned or otherwise improperly disposed of within the boundaries of the Reservation. TENORM includes naturally occurring radioactive material whose radionuclide concentrations are increased by or as a result of past or present human practices. TENORM does not include background radiation or the natural radioactivity of rocks or soils. TENORM does not include "source material" and "byproduct material" as both are defined in the Atomic Energy Act of 1954, as amended (AEA 42 USC §2011 *et seq.*) and relevant Codes

implemented by the NRC. Such wastes shall be collected and/or transported for disposal off of the Reservation.

CHAPTER 15 HAZARDOUS WASTE STANDARDS

Section 1501 General

(a) All hazardous waste, as defined in this code and is not excluded from regulation as a hazardous waste under 40 C.F.R. §261.4(b) and exhibits any of the characteristics of hazardous waste identified in 40 C.F.R. Part 261 Subpart C to include: ignitability; corrosivity; reactivity; or toxicity; or it is listed in 40 C.F.R. Part 261 Subpart D; and has not been excluded from the lists in Subpart D under 40 C.F.R. §§260.20 and 260.22 shall be generated, managed, stored, treated or transported within the boundaries of the Reservation in compliance with this code and applicable federal law.

(b) All hazardous waste generated, managed, stored, treated or transported or disposed of within the boundaries of the Reservation must comply with the applicable requirements of 40 C.F.R. Parts 262 thru 279, as applicable, pursuant to 3001 of the Solid Waste Disposal Act, 42 U.S.C. 6901 *et seq.*, as amended by the Resource Conservation and Recovery Act (RCRA) of 1980, and any subsequent amendments. Any violation of these regulations will be considered a violation of this code and subject to enforcement under this code.

(c) Hazardous waste shall be treated, stored or managed only at a site approved and permitted by DER/EPA and federally approved and permitted by the Environmental Protection Agency where a permit is required pursuant to the above regulations.

(d) The Tribe reserves the right to regulate any waste as solid or hazardous that has been exempted from federal regulation under 40 C.F.R. Parts 262 thru 279 or 3001 of the Solid Waste Disposal Act, 42 U.S.C. 6901 *et seq.*, as amended by the Resource Conservation and Recovery Act (RCRA) of 1980, and any subsequent amendments.

Section 1502 Household Hazardous Waste

The Tribe's Solid Waste Management Plan shall include a study regarding the disposal of household hazardous wastes on the Reservation. Such study shall include an analysis of the economic feasibility of the separate collection of household hazardous wastes, and disposal of household hazardous wastes at duly authorized facilities other than at a waste management facility on the Reservation. If economically feasible, the Director may issue rules and regulations for the collection and lawful disposal of household hazardous wastes generated on the Reservation other than at a waste management facility on the Reservation.

Section 1503 Generators

(a) A generator who treats, stores, or disposes of hazardous waste on-site must comply with 40 C.F.R. Part 262 with respect to that waste to include:

- (1) §262.11 for determining whether or not it is a hazardous waste;
- (2) §261.5 for conditionally exempt small quantity generators;
- (3) §262.12 for obtaining an EPA identification number;
- (4) §262.34 for accumulation and temporary storage of hazardous waste;
- (5) §262.40 (c) and (d) for recordkeeping;
- (6) §262.43 for additional reporting; and
- (7) §262.70 for farmers.

(b) A generator must submit reports to DER/EPA at least once every two (2) years. Such reports shall contain the following information:

- (1) The quantities and nature of hazardous waste generated during the year;
- (2) The disposition of all hazardous waste reported under this subsection;
- (3) The efforts undertaken during the year to reduce the volume and hazardous characteristics of hazardous waste generated; and
- (4) The changes in volume and hazardous characteristics of waste actually achieved during the year reported in comparison with previous years.

Section 1504 Transportation and Collection

(a) Persons or operators transporting regulated quantities of hazardous waste within or through the exterior boundaries of the Reservation must comply with the standards and requirements of 40 C.F.R. Part 263, if the transportation requires a manifest under 40 C.F.R. Part 262. Such information shall immediately be filed with the Director upon receipt.

(b) If any hazardous waste, other than household hazardous waste, originating from a location within the boundaries of the Reservation is collected and transported, the person or operator shall obtain a waste transportation permit.

Section 1505 Treatment and Storage

The standards of 40 C.F.R. Part 264 apply to owners and operators of all facilities which treat or store hazardous waste, except as specifically provided otherwise in this code or 40 C.F.R. Part 261. Hazardous Waste shall be appropriately labeled and stored in a manner not accessible to the public and in an area where the waste is not harmful to the public or the environment. Hazardous waste may not be stored more than ninety (90) days and shall be stored or temporarily deposited only at a site or facility approved by the Director. Such storage shall be in compliance with this code and 40 C.F.R. § 262.34.

Section 1506 Disposal

The disposal of hazardous waste is prohibited within the exterior boundaries of the Standing Rock Indian Reservation, or on land subject to the jurisdiction of the Tribe.

Section 1507 Reuse and Recycling of Hazardous Waste

(a) The following specific hazardous wastes that are recycled or reused shall comply with 40 C.F.R. Part 266 and this code:

- (1) Recyclable Materials Used in a Manner Constituting Disposal;
- (2) Recyclable Materials Utilized for Precious Metal Recovery;

- (3) Spent Lead-Acid Batteries Being Reclaimed; and
- (4) Hazardous Waste Burned in Boilers and Industrial Furnaces;

Section 1508 Universal Hazardous Waste

Universal wastes, to include batteries, pesticides, mercury containing equipment or lamps as described in 40 C.F.R. Part 273, must be managed in compliance with 40 C.F.R. Part 273 and this code.

CHAPTER 16

COMPLIANCE MONITORING

Section 1601 Compliance Monitoring

In order to monitor compliance with the requirements of this code, the Director, or any of his/her authorized agents or designees, shall have the right to perform the following actions which may be relevant to determine whether a person or permittee is in compliance with solid and hazardous waste requirements, including but not limited to the requirements listed in this code, any condition contained in a permit, any rules or regulations promulgated under this code, any guidance documents, any Notice of Violation or Administrative Orders issued pursuant to this code, or any applicable federal or tribal environmental laws:

- (1) Obtain any and all information from any permittee under this code, including but not limited to records and technical reports or studies, whether contained in the permittee's operating record or not;
- (2) Conduct any independent monitoring, sampling, testing or review necessary to ensure that persons, permittees or owners or operators are in compliance with this code. Such sampling, monitoring or testing shall incorporate appropriate chain of custody and quality assurance procedures to ensure that the results of any monitoring, sampling or testing shall be admissible as evidence in any proceeding before the Director, the Commission or Tribal Court;
- (3) Enter any site or premises subject to any tribal permit program, or in which records relevant to the operating of regulated facilities or activities are kept as required by the provisions of this code;
- (4) Review and reproduce any records relevant to the regulated activity or facility;
- (5) Make video or photographic records of any regulated activity or facility;
- (6) Inspect at any time any site or premises at which regulated activities are conducted and make photographic, video, or other records of information obtained during the inspection;
- (7) Investigate the activities of any solid waste disposal facility or solid waste storage, collection and transportation service in order to determine compliance with this code or to verify information obtained from the owner or operator;
- (8) Conduct any and all independent tests or samplings necessary to verify the adequacy of methods (including sampling) used by owners or operators to provide information to the Director or determine compliance with this code, including, but not limited to, testing and inspecting any equipment used by the owner or operator to test, sample, or obtain information;

- (9) Interview persons employed in the operation of any regulated facility or service subject to the requirements of this code; and
- (10) Receive and record information submitted by any persons concerning any regulated activity or facility. If requested the Director shall provide a written response to any person providing such information to the Director within sixty (60) days of the request.

Section 1602 Record-keeping, Inspections, Monitoring and Entry

(a) The Director may require, by order or permit, any owner or operator of a solid waste management facility, or any other person who is subject to any requirement of this code, to:

- (1) establish and maintain records;
- (2) prepare and submit reports;
- (3) install, use and maintain monitoring equipment, and use audit procedures or methods;
- (4) monitor and sample emissions or discharges (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Director shall prescribe);
- (5) submit compliance certifications in accordance with subsection (b) of this Chapter; and
- (6) provide such other information as the Director may reasonably require to demonstrate compliance with this code.

(b) Whenever the Director has reasonable cause to believe that any person has violated or is in violation of any requirement of this code or of any regulation hereunder or any requirement of a permit or order issued pursuant to this code, he/she may request in writing that such person produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with such requirements.

(c) Any records, reports or information obtained under subsections (a) or (b) of this section shall be available to the public, except that upon a showing satisfactory to the Director by any person that records, reports or information, or any portion thereof would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Director shall consider such record, report, information or portion thereof confidential, except that such material may be disclosed to other officers, employees or authorized representatives of the Tribe and of the United States concerned with carrying out this code or when relevant to any proceeding under this code.

CHAPTER 17

ENFORCEMENT ACTIONS

Section 1701 Enforcement Authorities

The Commission and the Director are entrusted with the duty and responsibility of ensuring the proper treatment, storage and disposal of solid and hazardous waste on the Reservation and of ensuring compliance by all persons with this code. In order to carry

out these duties and responsibilities:

(a) The Director of the DER/EPA is hereby designated as the primary enforcement agent of this code. The Director of the DER/EPA and the designated Enforcement Agent(s) of the DER/EPA shall have the powers, duties, and responsibilities as provided for in this Chapter, Chapters Four of this code and SRST Title XXIX. As the primary enforcement agent the Director shall initiate all enforcement actions and shall issue orders and assess fines and penalties for minor or moderate violations of this code. All major violations shall be referred to the Commission for appropriate action.

(b) The Commission is authorized and directed conduct oversight of the overall enforcement of this code and to issue such administrative orders and assess fines and/or penalties for all major violations of this code as directed under this code and SRST Title XXIX; and to conduct hearings properly requested by a person aggrieved by an adverse action of the Commission, the Director, or his/her agents, pursuant to this code.

Section 1702 Classes of Violations

Any violations of this code shall be evaluated based upon the environmental policies of the Tribe, as provided in Section 102 of this ordinance and Section 29-101 of SRST Title XXIX, the potential for harm that has been or could be caused by the violation and the extent of deviation from the requirements of this code. For the purposes of the enforcement of this code violations shall be classified as follows:

(a) MAJOR: The violation poses or may pose a substantial risk of exposure of humans or other environmental receptors to hazardous waste or substances; and/or the actions of the violator have or may have a substantial adverse effect on the regulatory purposes of this code. This may also include repeated moderate violations;

(b) MODERATE: The violation poses or may pose a potential risk of exposure of humans or other environmental receptors to hazardous, special or solid waste or substances; and/or the actions have or may have a significant adverse effect on the regulatory purposes of this code. This may also include repeated minor violations;

(c) MINOR: The violation poses or may pose a relatively low risk of exposure of humans or other environmental receptors to hazardous, special or solid waste or constituents; and/or the actions have or may have a small adverse effect on the regulatory purposes of this code.

Section 1703 Actions on Complaints

(a) If the Director receives a complaint concerning the violation of applicable tribal or federal environmental or solid and hazardous waste laws, regulations, permits or administrative orders, the Director shall investigate to ensure proper consideration of the complaint. The Director's investigation may include the inspection of the facility or transportation vehicle/container to determine whether any applicable tribal or federal law,

regulation, code, ordinance, permit or order has been or is being violated. The Commission may refer complaints or reports of code violations to the Director.

(b) If the Director receives a complaint concerning a solid or hazardous waste facility, collection system, spill, release, or other activity that poses a threat to public health or the environment, and the Director is not able or authorized to take action concerning the complaint, the Director shall refer the complaint within ten days of receipt to the appropriate state or federal agency having appropriate jurisdiction and authority.

(c) If the Director receives a complaint concerning a solid or hazardous waste facility, collection system, release, spill or other activity that poses a threat to public health or the environment, and the Director does not refer it to another agency, or if the Director receives a complaint referred to it by another agency, and a violation of this code is observed or documented, the Director shall either take appropriate compliance or enforcement action concerning that person, facility or transporter or provide the person who filed the complaint with a written statement within thirty (30) days explaining what action was taken and why a compliance or enforcement action would not be appropriate.

Section 1704 Informal Compliance and Enforcement Action

The Director may initiate informal actions to inform a party of violations of this code, and correct such violations, where such violations do not pose an imminent risk to public health or the environment or are not habitual in nature. Such informal actions may include a verbal warning, an informal compliance conference and/or a written Warning Letter. Failure of a party or person to take timely action or achieve complete compliance with this code, or where such violations pose an imminent risk to public health or the environment or are habitual in nature, may result in further enforcement action pursuant to this code.

Section 1705 Citations for Minor Violations

The Director, SRST Enforcement Agents and designees, pursuant to Sections 26-403 and 26-404, may issue citations for minor violations of this code and assess fines pursuant to this code and the SRST Title XXVI Penalty Policy. The Director may assess an alternate penalty in lieu of a monetary fine pursuant to Section 26-1707 and the SRST Penalty Policy. Such citations shall be in the form designated by the Director.

Section 1706 Notice of Violation

(a) Whenever, on the basis of any information, the Director determines that any person has violated or is in violation of this code or any permit issued pursuant this code, and informal compliance actions have failed to resolve or correct the violations in a satisfactory and timely manner the Director may issue a Notice of Violation ("NOV") that includes at a minimum:

- (1) the act(s) or omission(s) with which the person, government agency or permittee is charged and citations of the permit terms or conditions, codes, rules, or regulations that is alleged to have been violated;
- (2) a listing of any previous communications and/or informal actions taken by the Director or his/her assignees for the cited violations pursuant to §1604;

- (3) the specific action(s) and nature of any compliance or corrective action required to be taken by the violator;
- (4) a compliance schedule for the correction any violation of a permit issued pursuant to this code or any other violation of this code, or other action necessary to demonstrate compliance with this code that cannot be corrected or performed immediately;
- (5) notification of potential civil fines or penalties;
- (6) notification of issuance of an administrative order or additional or subsequent enforcement actions that may result from failure to comply with the requirements and timeframes specified in the NOV;
- (7) notification of the procedures and time frame(s) to notify or demonstrate to the Director full compliance with the NOV;
- (8) notification of a right to an informal review or compliance conference with the Director as soon as practicable; and
- (9) notification of the right to appeal an adverse action by the Director to the Commission in accordance with the procedures of this code and SRST Title XXIX.

(b) The NOV and all accompanying documents shall be delivered to the violator personally or by certified mail, return receipt requested to the person, government agency or permittee determined to be in violation of this code and/or a permit issued pursuant to this code and a copy shall provided to the Commission.

(c) A NOV issued by the Director shall become final and enforceable unless a written request is filed with the Director for an informal hearing within thirty (30) days of receipt of the NOV. A permittee shall have all procedural rights at any hearing held before the Director, including the right to appeal any adverse actions or decisions of the Director to the Commission and subsequent judicial review granted under this code.

Section 1707 Administrative Orders

Whenever the Commission or the Director determines that any person has violated or is in violation of this code, or any permit issued under this code, or is causing a threat to public health, welfare or the environment, and an informal compliance action or NOV has failed to achieve full compliance, the Commission or the Director may initiate a formal enforcement action. A formal enforcement action is commenced by the issuance of an Administrative Order.

(a) The Commission, upon the recommendation by the Director, shall issue administrative orders for major class violations. The Director shall issue administrative orders for moderate class of violations.

(b) An administrative order shall include a brief and concise explanation of the violation(s) and attach a copy of any previous NOV(s) for the cited violation(s). It shall order the violator to remedy the violation(s) within a specified time period, assess a penalty or civil fine, or both. The time period specified for compliance shall be reasonable for the violation, the threat to human health and the remedial efforts previously undertaken by the violator, if any.

(c) Any fines or penalties shall be assessed in accordance with Chapter 17 of this code and the SRST Penalty Policy.

(d) An administrative enforcement order shall include a statement that the violator may request a hearing or a formal appeal before the Commission or Tribal Court on the alleged violation(s), pursuant to this code and SRST Title XXIX.

(e) Any person may bring a civil action for injunctive relief in the Standing Rock Tribal Court against a person on the Reservation which violates a provision of this code, 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.

(f) The Commission may review of all orders issued pursuant to this code and provide recommendations to the Director;

(g) An administrative order issued pursuant to this code may be a:

(1) Compliance Order:

Whenever, on the basis of any information, the Commission or the Director determines that any person has violated or is in violation of this code or any permit issued under this code, the Director may issue an administrative order assessing a civil penalty and/or fine for any past or current violation, requiring compliance immediately or within a specified time period, or both; or the Commission may commence a civil action, with fine or penalty, in the Standing Rock Sioux Tribal Court in accordance with the SRST Code of Justice Title I and Title II.

(2) Cease and Desist Order:

The Commission or the Director is authorized to issue a Cease and Desist Order for the immediate closure of a facility or waste management operation, or the cessation of operations if the Commission or Director determines that any owner, operator or person is committing an act or failing to take action, or threatening either, inclusive, and which will cause substantial pollution, the harmful effects of which cannot be remedied immediately thereafter and/or such facility or operation poses an imminent and substantial danger to public health or the environment. Such order may compel any owner, operator or person to stop, avoid, moderate, or perform the cessation of the act so that it is in compliance with this code, inclusive, or so that the substantial pollution or harm will not occur. The order is effective immediately upon receipt by the person to whom it is directed, unless the Commission or Director directs otherwise. If the order is not complied with in a timely manner, the Director may take such action as is necessary to contain and recover pollutants to limit or prevent pollution or injury to public health or welfare. Upon issuing a Cease and Desist Order, the order shall specify a place and time for a hearing before the Director, not later than five (5) days thereafter, unless the person to whom the order is directed

shall request a later time. The Director may deny a request for a later time if the Director finds that the person to whom the order is directed is not complying with the order. The person has all rights to appeal such order to the Commission and to Tribal Court as specified in this code and SRST title XXIX.

(3) Corrective/Remedial Action Order:

Whenever, on the basis of any information, the Commission determines that an activity or a release of a hazardous waste, substance, pollutant or contaminant poses an imminent threat to public health, life or the environment or there is or has been a release of a hazardous waste, substance, pollutant or contaminant into the environment from a facility or site permitted to operate under this code, and such release does not require immediate or emergency action, the Commission may issue an order requiring corrective or remedial action or such other response measure as the Commission deems necessary to protect human health or the environment. In the event that such release does require immediate or emergency action, the Director may issue an order requiring immediate corrective or remedial action or such other response measure as the Director deems necessary to protect human health or the environment. Such corrective or remedial action shall be conducted as directed by the Commission, the Director and the requirements of Chapter 19 of this code. In addition, the Commission may commence a civil action in the Standing Rock Sioux Tribal Court for appropriate relief, including a temporary or permanent injunction in accordance with the procedures specified under SRST Code of Justice Title I and Title II.

(h) Any order issued under this code may include a suspension or revocation of:

- (1) a permit issued pursuant to this code; or
- (2) an authorization to operate a facility under this code.

(i) An administrative order issued pursuant to this Chapter shall include a compliance schedule for any violation of a permit issued pursuant to this code or any other violation of this code that cannot be corrected immediately. The compliance schedule shall assure that diligent progress shall be made by the responsible person, government agency or permittee to bring the facility, transporter or other activity or situation into compliance with the minimum standards of this code and any applicable permit within a specific period of time determined by the Commission or the Director. If the person, permittee, government agency, facility or transporter is not in compliance within the period specified the violator may be subject to a civil penalty for each day each violation(s) continues uncorrected or may, if such violation(s) continues, revoke, suspend, or modify the permit until such time as the violation(s) are remedied.

(j) Any administrative order issued under this code shall become final unless, no later than thirty (30) days after the order is served, the person or persons named therein requests a hearing before the Commission or the Director. All civil actions shall be conducted in accordance with the procedures specified under SRST Code of Justice Title I and Title II.

Section 1708 Criminal Enforcement Actions

Until such time that DER/EPA adopts regulations regarding criminal enforcement actions, DER/EPA shall refer any criminal enforcement action or portion of such action to the appropriate SRST, U. S. BIA, U.S. EPA, or other appropriate federal or state entities.

Section 1709 Informal Review

If the Commission or the Director issues an enforcement action pursuant to this code the aggrieved party may request review and reconsideration of the decision or action, in writing, within ten (10) days after the aggrieved party receives formal written notice of the decision or enforcement action. The Director shall provide a written response informing the applicant or aggrieved party of his/her decision within seven (7) days after receipt of such request.

Section 1710 Formal Hearing

(a) A person aggrieved by an adverse action of the Commission or the Director pursuant to this code shall be entitled to a hearing before the Commission in accordance with the requirements and procedures of SRST-EPO Section 29-104(b). For the purposes of this code the term "adverse action" includes but is not limited to:

- (1) the denial, revocation or amendment of a permit to operate a system or facility for the storage, collection, transportation, reuse, recycling or disposal of solid or hazardous waste;
- (2) an administrative order issued to enforce any provision of this code; and/or
- (3) a fine or penalty assessed due to a violation of this code.

(b) The aggrieved person shall request a hearing in writing within ten (10) days of the date of the adverse action of the Commission or the Director. Requests for hearing shall be transmitted to the Director, 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 Director, whichever occurs earlier.

(c) The hearing shall be held within sixty (60) days of the date of the adverse action or at the next scheduled Commission meeting at the discretion of the Commission. The hearing shall be noticed, conducted, and a decision rendered, in accordance with the requirements of this code and SRST Title XXIX: Environmental Policy Ordinance Section 29-104.

(d) The Commission may affirm or reverse the enforcement decision or action, but shall only reverse such decision if the Commission states with particularity the grounds thereof and finds that the decision or action is arbitrary, capricious or otherwise unsupported by substantial credible evidence.

(e) The decision of the Commission shall be final, subject to appeal to the Tribal Court in accordance with the procedures specified under SRST Title XXIX and the SRST Code of Justice Title I and Title II.

(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) 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 Director, excepting other Commissioners.

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

Section 1711 Judicial Review

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 violator. The Tribal Court may reverse the Commission's decision only if it violates this code or is otherwise contrary to law, or it constitutes an arbitrary or capricious exercise of authority. Any person challenging an enforcement action must follow the procedures specified under SRST Code of Justice Title I and Title II.

CHAPTER 18 FINES AND PENALTIES

Section 1801 General

Any person who violates any provision of this code, or a permit issued pursuant to this code, may be subject to administrative civil fines and/or penalties imposed by the Commission or the Director, in accordance with this code and any penalty policy adopted by the Council, or may be subject to civil and criminal fines and penalties imposed by the Tribal Court in addition to remedies specifically provided for any violation. Any penalties or damages imposed under this code are in addition to, and do not supersede or limit any other administrative, civil or criminal remedies which may be available to the Tribe.

Section 1802 Civil Fines

(a) Any person who violates any requirement of this code, or a permit issued pursuant to this code, shall be liable to the Standing Rock Sioux Tribe DER/EPA for an administrative or civil penalty in an amount not to exceed Ten Thousand Dollars (\$10,000) for each such violation. Each day of such violation shall, for purposes of this code, constitute a separate violation.

(b) Any civil fines shall be based upon the environmental policies of the Tribe, as provided in Section 102 of this code and Section 29-101 of SRST Title XXIX, any approved Title XXVI penalty policy, the potential for harm that has been or could be caused by the violation and the extent of deviation from the requirements of this code. For the purposes of the assessment of such fines violations shall be classified as follows: