

**NORTHERN CHEYENNE
TRIBE SOLID WASTE CODE**

TABLE OF CONTENTS

CHAPTER ONE—GENERAL PROVISIONS	1
Section 1-1: Short Title.....	1
Section 1-2: Definitions.....	1
Section 1-3: Purpose	11
Section 1-4: Findings	12
Section 1-5: Jurisdiction and Applicability.....	12
Section 1-6: The Tribe's Sovereign Immunity.....	13
Section 1-7: Consensual Relationship between Non-Members, The Tribe, And Tribal Members.....	14
CHAPTER TWO--TRIBAL ADMINISTRATION	14
Section 2-1: The Tribe's Environmental Protection Department	14
Section 2-2: The Environmental Protection Department's Compliance Officer.....	17
Section 2-3: The Tribe's Solid Waste Department.....	18
CHAPTER THREE--THE TRIBE'S INTEGRATED SOLID WASTE MANAGEMENT PLAN ..	19
Section 3-1: Integrated Solid Waste Management Plan	19
CHAPTER FOUR—PROHIBITIONS AND SPECIAL WASTES	20
Section 4-1: Prohibition on Dumping of Solid Waste.....	20
Section 4-2: Prohibition on Disposal of Regulated and Conditionally Exempt Small Quantity Generator Hazardous Waste.....	21
Section 4-3: Prohibition on Burning of Solid Waste and Hazardous Waste.....	22
Section 4-4: Other Prohibitions on Disposal at MSWLFs.....	22
Section 4-5: Construction and Demolition Debris.....	23
Section 4-6: Agricultural Waste.....	24
Section 4-7: Septic Tanks	25
Section 4-8: Liquids	25
Section 4-9: Carcasses	25

Section 4-10: Wrecked, Junked, or Unserviceable Vehicles	25
Section 4-11: Abandoned Buildings, Mobile Homes, and Trailers	26
Section 4-12: Scrap Tires	27
Section 4-13: Asbestos.....	27
Section 4-14: Medical Wastes	28
Section 4-15: Used oil and lead-acid batteries.....	28
Section 4-16: White goods.....	29
Section 4-17: Household Wastes.	29
Section 4-18: Other Special Wastes.....	29
Section 4-19: Scavenging	29
CHAPTER FIVE--PERMITS	30
Section 5-1: Permits Required.	30
Section 5-2: Permits for the Construction and/or Operation of MSWLFs.	30
Section 5-3: Permits for the Collection and/or Transportation of Solid Waste.	34
Section 5-4: Public Hearing On Applications for Construction and Operation Permits.	35
Section 5-5: Oath And Application Filing Fees.....	35
Section 5-6: Other Fees.....	36
Section 5-7: Revocation, Suspension, and Modification of Permits	36
Section 5-8: Compliance Monitoring.....	37
CHAPTER SIX--OPERATING CRITERIA FOR MSWLFs	37
Section 6-1: In General.	37
Section 6-2: Procedures for Excluding the Receipt of Regulated Hazardous Waste.	38
Section 6-3: Daily Cover Material Requirements.....	38
Section 6-4: Disease Vector Control.....	39
Section 6-5: Explosive Gases Control.	39
Section 6-6: Air Criteria.....	39
Section 6-7: Access Requirements.....	40

Section 6-8: Run-On/Run-Off Control Systems.....	40
Section 6-9: Surface Water Requirements.....	40
Section 6-10: Liquids Restrictions.....	41
Section 6-11: Recordkeeping Requirements.....	41
CHAPTER SEVEN—MSWLF DESIGN CRITERIA	42
Section 7-1: In General.....	42
Section 7-2: Design Criteria for MSWLFs	43
CHAPTER EIGHT—MSWLF GROUNDWATER MONITORING AND CORRECTIVE ACTION	43
Section 8-1: In General.....	43
Section 8-2: Groundwater Monitoring and Corrective Action.....	43
CHAPTER NINE—MSWLF CLOSURE, POST-CLOSURE, AND FINANCIAL ASSURANCES.....	44
Section 9-1: Closure of MSWLFs.....	44
Section 9-2: Post-Closure Care Requirements.....	46
Section 9-3: Financial Assurance Requirements.....	47
CHAPTER TEN—SOLID WASTE STORAGE AND COLLECTION.....	47
Section 10-1: Tribal Solid Waste Storage Containers	47
Section 10-2: Storage of Solid Waste on Private Property	48
Section 10-3: Solid Waste Collection.....	49
Section 10-4: Recycling.....	49
Section 10-5: Solid Waste Collection Vehicles	49
Section 10-6: Load Rejection.....	50
Section 10-7: Material Separation	50
Section 10-8: Service Fees for Solid Waste Services	50
Section 10-9: Contracts for Solid Waste Services	50

CHAPTER ELEVEN—INVESTIGATIONS AND ENFORCEMENT	51
Section 11-1: Investigations and Warrants.	51
Section 11-2: Enforcement Orders.....	52
Section 11-3: Civil Damages and Penalties.	53
Section 11-4: Criminal Penalties.	54
Section 11-5: Compliance Schedules.....	54
Section 11-6: Enforcement Against Non-Members.....	54
CHAPTER TWELVE—ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW	55
Section 12-1: Administrative Hearings.....	55
Section 12-2: Final Decision.....	57
Section 12-3: Judicial Review	57
Section 12-4: Intervention.....	59
CHAPTER THIRTEEN--PUBLIC PARTICIPATION.....	59
Section 13-1: Public Complaints.	59
Section 13-2: Public Hearings.	59
CHAPTER FOURTEEN--INDEMNIFICATION.....	61
Section 14-1: Indemnification.....	61
CHAPTER FIFTEEN—INTERPRETATION, SEVERANCE, AND APPLICABILITY OF PART 258 CRITERIA.....	61
Section 15-1: Interpretation.	61
Section 15-2: Severability.....	61
Section 15-3: Applicability of Part 258 Criteria.	61

1 **CHAPTER ONE—GENERAL PROVISIONS**

2 **Section 1-1: Short Title.**

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

4 **Section 1-2: Definitions.**

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

- 6 (a) "Active life" means the period of operation beginning with initial receipt of solid waste
7 and ending at completion of closure activities in accordance with 40 C.F.R. § 258.60.
- 8 (b) "Active portion" means the part of a facility or unit that has received or is receiving solid
9 waste and that has not been closed in accordance with 40 C.F.R. § 258.60.
- 10 (c) "Administrator" means the Administrator of the United States Environmental Protection
11 Agency or his or her authorized representative.
- 12 (d) "Aquifer" means a geological formation, group of formations, or portion of a formation
13 capable of yielding groundwater to wells or springs.
- 14 (e) "BIA" means the United States Bureau of Indian Affairs.
- 15 (f) "Closure" means the termination of the receiving, handling, recycling, treatment,
16 composting, or disposal of solid waste at a solid waste facility and includes all operations
17 necessary to prepare the facility for post-closure maintenance.
- 18 (g) "Code" means this Solid Waste Management Code, including any amendments hereof or
19 supplements hereto adopted by the Tribal Council.
- 20 (h) "Collection" means the act of collecting solid waste or hazardous waste at the place of
21 generation by an approved collection agent and does not mean "removal".
- 22 (i) "Collection vehicle or equipment" means any vehicle or equipment used in the collection
23 of solid waste.
- 24 (j) "Commercial solid waste" means all types of solid waste generated by stores, offices,
25 restaurants, warehouses, and other nonmanufacturing activities, excluding residential and
26 industrial wastes.

- 1 (k) “Compliance Officer” means the Environmental Protection Department’s Compliance
2 Officer appointed pursuant to Section 2-2 of this Code and any person with authority to
3 act on behalf of the Compliance Officer pursuant to this Code.
- 4 (l) "Construction" means the erection or building of new structures and the acquisition,
5 replacement, expansion, remodeling, alteration, modernization, or extension of existing
6 structures.
- 7 (m) “Construction and demolition debris” or “C&D debris” means uncontaminated solid
8 waste resulting from the construction, remodeling, repair, and demolition of utilities,
9 structures and roads; and uncontaminated solid waste resulting from land clearing. Such
10 waste includes but is not limited to bricks, concrete, other masonry materials, soil, rock,
11 wood (including painted, treated, and coated wood and wood products), land clearing
12 debris, wall coverings, plaster, drywall, plumbing fixtures, non-asbestos insulation,
13 roofing shingles and other roof coverings, asphaltic pavement, glass, plastics that are not
14 sealed in a manner that conceals other wastes, empty buckets ten gallons or less in size
15 and having no more than one inch of residue remaining on the bottom, electrical wiring
16 and components containing no hazardous liquids, and pipe and metals that are incidental
17 to any of the above. Solid waste that is not C&D debris (even if resulting from the
18 construction, remodeling, repair and demolition of utilities, structures and roads and land
19 clearing) includes, but is not limited to asbestos waste, garbage, corrugated container
20 board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or
21 transformers, fluorescent lights, carpeting, furniture, appliances, tires, drums, containers
22 greater than ten gallons in size, any containers having more than one inch of residue
23 remaining on the bottom, and fuel tanks. Specifically excluded from the definition of
24 C&D debris is solid waste (including what otherwise would be C&D debris) resulting
25 from any processing technique, other than that employed at a C&D debris processing
26 facility approved pursuant to this Code, that renders individual waste components
27 unrecognizable, such as pulverizing or shredding.

- 1 (n) "Cover material" means soil or other material suitable for use in covering compacted
2 solid waste in a sanitary landfill. A material is suitable for use as a cover material if,
3 when properly used, it will prevent (1) the propagation, harborage, or attraction of
4 vectors; (2) the progress of fires; (3) the escape of odor; (4) excess infiltration of surface
5 water runoff; and (5) erosion.
- 6 (o) "Daily cover" means cover material spread and compacted on the entire surface of the
7 active face of a sanitary landfill at the end of each operating day. 40 CFR Sec. 258.21
8 requires that solid waste must be covered with six inches of earthen material at the end of
9 each operating day.
- 10 (p) "Director of the Environmental Protection Department" means the Director of the Tribe's
11 Environmental Protection Department and any other person with authority to act on
12 behalf of the Director of the Environmental Protection Department pursuant to this Code.
- 13 (q) "Director of the Solid Waste Department" means the Director of the Tribe's Solid Waste
14 Department and any other person with authority to act on behalf of the Director of the
15 Solid Waste Department pursuant to this Code.
- 16 (r) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing
17 of any solid waste or hazardous waste into or on any land or water so that such solid
18 waste or hazardous waste or any constituent thereof may enter the environment or be
19 emitted into the air, or discharged into any surface waters or groundwaters.
- 20 (s) "EPA" means the United States Environmental Protection Agency.
- 21 (t) "Existing MSWLF" means any municipal solid waste landfill that is receiving solid
22 waste.
- 23 (u) "Facility" means all contiguous land and structures, other appurtenances, and
24 improvements on the land used for the disposal of solid waste.
- 25 (v) "Fomite" means any substance that may harbor or transmit pathogenic organisms.
- 26 (w) "Groundwater" means water below the land surface in a zone of saturation.

- 1 (x) "Guidance document" means a document issued by the Director of the Environmental
2 Protection Department that supplements criteria under the Code. A guidance document
3 may provide specific technical direction regarding the manner in which an owner or
4 operator shall comply with the Part 258 Criteria. Guidance documents may be referred to
5 or attached as conditions to permits. Such technical direction must either conform to the
6 Part 258 Criteria or be more stringent. A guidance document may also provide direction
7 as to how the Director of the Environmental Protection Department interprets the Tribe's
8 solid waste permit program consistent with Tribal law and federal law.
- 9 (y) "Hazardous waste" means any waste substance, material, smoke, gas, particulate matter,
10 or combination thereof that:
- 11 (1) because of its quantity, concentration, or physical, chemical, or infectious
12 characteristics, may either cause or significantly contribute to an increase in
13 mortality or serious irreversible or incapacitating illness or pose a substantial
14 present or potential hazard to human health, living organisms, or the environment
15 when improperly handled, treated, stored, transported, or disposed of;
- 16 (2) is specifically defined to be hazardous or toxic by the Federal Comprehensive
17 Environmental Response, Compensation, and Liability Act of 1980 or the
18 Resource Conservation and Recovery Act of 1976, as either act may be amended
19 from time to time, and by any regulations promulgated thereunder, including but
20 not limited to any substance, material, smoke, gas, particulate matter, or
21 combination thereof containing asbestos, petroleum or its byproducts, or
22 polychlorinated biphenyls ("PCBs"); or
- 23 (3) is hazardous, toxic, ignitable, reactive, or corrosive and is defined and regulated
24 as such by the Tribe or the United States of America.
- 25 (z) "Household hazardous waste" means hazardous waste discarded by households.
- 26 (aa) "Household waste" means any solid waste (including garbage, trash, and sanitary waste
27 in septic tanks) derived from households (including single and multiple residences, hotels

1 and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds,
2 and day-use recreation areas).

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

12 (cc) "Infectious waste" means:

- 13 (1) Laboratory wastes, including but not limited to cultures of etiologic agents,¹
14 which pose a substantial threat to health due to their volume and virulence.
- 15 (2) Pathologic specimens, including but not limited to human or animal tissues, blood
16 elements, excreta, and secretions that contain etiologic agents, and attendant
17 disposable fomites.
- 18 (3) Surgical specimens including but not limited to human or animal parts and tissues
19 removed surgically, or at autopsy that, in the opinion of the attending physician or
20 veterinarian, contain etiologic agents and attendant disposable fomites.
- 21 (4) Human dialysis waste materials including but not limited to arterial lines and
22 dialysate membranes.
- 23 (5) Carcasses of animals infected with etiologic agents that may present a substantial
24 hazard to public health if improperly managed.

¹ NOTE TO COUNCIL: "Etiologic agents" are microscopic organisms such as bacteria or viruses, which can cause disease.

- 1 (6) Equipment, instruments, utensils, or any other material that is likely to transmit
2 etiologic agents.
- 3 (7) Any other material that is likely to transmit etiologic agents or presents a
4 significant danger of infection because it is contaminated with, or may reasonably
5 be expected to be contaminated with, etiologic agents.
- 6 (dd) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing
7 MSWLF.
- 8 (ee) "Leachate" means any liquid formed by the drainage of liquid from solid waste or by the
9 percolation or flow of liquid through solid waste including but not limited to any
10 constituents extracted from the solid waste and dissolved or suspended in the liquid.
- 11 (ff) "Liner" means a continuous layer of natural or artificial material or a continuous
12 membrane of artificial material installed beneath or on the sides of a solid waste facility
13 which acts as a barrier to vertical or lateral fluid movement.
- 14 (gg) "Liquid waste" means any waste material which contains free liquid that is defined by
15 Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating
16 Solid Wastes, Physical/Chemical Methods" (EPA Pub. No. SW-846).
- 17 (hh) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive
18 gases in air that will propagate a flame at 25 degrees Celsius and atmospheric pressure.
- 19 (ii) "Municipal solid waste landfill" or "MSWLF" means a discrete area of land or an
20 excavation that receives household waste and other types of RCRA Subtitle D waste and
21 is not a land application unit, surface impoundment, injection well, or waste pile as
22 defined in 40 CFR Sec. 257. An MSWLF may be publicly or privately owned. Unless
23 otherwise specified, the term MSWLF includes new MSWLFs, existing MSWLFs, and
24 lateral expansions.
- 25 (jj) "New MSWLF" means any municipal solid waste landfill that has not received waste.
- 26 (kk) "Nuisance" means a condition that occurs as a result of the handling, treatment,
27 composting, or disposal of solid waste that (1) is injurious to human health or is indecent

- 1 or offensive to the senses and interferes with the comfortable enjoyment of life or
2 property, and (2) adversely affects an entire community or neighborhood or any
3 considerable number of persons.
- 4 (ll) "100-year flood" means a flood that has a one percent or greater chance of being equaled
5 or exceeded in a one-year period based on criteria established by the Director of the
6 Environmental Protection Department.
- 7 (mm) "Open burning" means the combustion of solid waste without:
- 8 (1) Control of combustion air to maintain adequate temperature for efficient
9 combustion,
- 10 (2) Containment of the combustion reaction in an enclosed device to provide
11 sufficient residence time and mixing for complete combustion, and
- 12 (3) Control of the emission of the combustion products.
- 13 (nn) "Open dump" means any facility or site on the Reservation where solid waste has been
14 disposed of that is not a sanitary landfill authorized under the Code and under 40 CFR
15 Parts 257 or 258.
- 16 (oo) "Operator" means the person(s) responsible for the overall operation of an MSWLF or
17 part of an MSWLF.
- 18 (pp) "Owner" means the person(s) who owns any interest in an MSWLF or part of an
19 MSWLF.
- 20 (qq) "Part 258 Criteria" means the environmental criteria contained in 40 CFR Part 258 for the
21 location, operation, design, groundwater monitoring, corrective action, closure, post-
22 closure care, and financial assurance requirements for MSWLFs.
- 23 (rr) "Permit" means an authorization and license issued by the Compliance Officer for the
24 collection and/or transportation of solid waste or construction and/or operation of an
25 MSWLF on the Reservation.

- 1 (ss) "Permittee" means a person who is authorized by a permit issued by the Compliance
2 Officer to collect and/or transport solid waste or construct and/or operate an MSWLF in
3 compliance with this Code.
- 4 (tt) "Permit documents" means permit applications, draft and final MSWLF permits, other
5 documents that include applicable design and management conditions in accordance with
6 40 CFR Part 258, and the technical and administrative information supporting permit
7 conditions such as guidance documents.
- 8 (uu) "Person" means any individual, trust, firm, association, partnership, corporation or other
9 business entity, and any political subdivision, government agency, municipality, public
10 corporation, or other governmental entity, and includes the Tribe and its
11 instrumentalities,² members of the Tribe, non-member Indians, and non-Indians.
- 12 (vv) "Pollution" means the unauthorized disposal of any solid waste or hazardous waste into
13 the air, land, surface water, or groundwater.
- 14 (ww) "Post-closure maintenance" means all activities undertaken at a closed MSWLF to
15 maintain the integrity of containment features and to monitor compliance with applicable
16 performance standards required under the Code.
- 17 (xx) "Post-closure maintenance period" means a period of at least thirty (30) years after
18 closure of an MSWLF.
- 19 (yy) "RCRA" means the Resource Conservation and Recovery Act of 1976 as amended.
- 20 (zz) "Recovery" means the recovery of material, byproducts, or energy from solid waste.
- 21 (aaa) "Recycling" means the process of sorting, cleansing, treating, and reconstituting solid
22 waste or other discarded material in order to prepare an altered form for use.
- 23 (bbb) "Regional Administrator" means an EPA Regional Administrator.
- 24 (ccc) "Regulated hazardous waste" means a solid waste that is a hazardous waste as defined in
25 40 CFR Part 261 that is not excluded from regulation as a hazardous waste under 40 CFR

² NOTE TO COUNCIL: "Instrumentalities" is a broad term commonly used in statutes that, in this context, encompasses anyone who is working on behalf of the Tribe, including employees, contractors, volunteers, and any other agents of the Tribe.

- 1 Sec. 261.4(b) or was not generated by a conditionally exempt small quantity generator as
2 defined in 40 CFR Sec. 261.5.
- 3 (ddd) "Removal" means the act of taking solid waste or hazardous waste from the place of
4 generation either by a permitted collection agency or by the owner of the solid waste or
5 hazardous waste.
- 6 (eee) "Reservation" means the Northern Cheyenne Indian Reservation and all lands of any kind
7 within the exterior boundaries of the Reservation as established by the Presidential
8 Executive Orders of November 26, 1884, and March 19, 1900, and any other lands which
9 now or hereafter are subject to the jurisdiction of the Tribe.
- 10 (fff) "Resource recovery system" means a solid waste management system that provides for
11 collection, separation, recycling, and recovery of solid waste including disposal of
12 nonrecoverable waste residue.
- 13 (ggg) "Rules and regulations" means any rules and regulations, not inconsistent with this Code,
14 promulgated by the Director of the Environmental Protection Department, in consultation
15 with the Director of the Solid Waste Department, and approved by the Tribal Council,
16 regulating the collection, transportation, or disposal of solid waste on the Reservation that
17 implement or supplement any provision of the Code.
- 18 (hhh) "Run-off" means rainwater, leachate, or other liquid that drains over land from any part
19 of an MSWLF.
- 20 (iii) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any
21 part of an MSWLF.
- 22 (jjj) "Sanitary landfill" means a disposal facility employing a method of disposing of solid
23 waste on land without creating a nuisance, pollution, or a hazard to public health or
24 safety, by using methods to confine the solid waste to the smallest practical area, reduce
25 it to the smallest practical area, reduce it to the smallest practical volume, and cover it
26 with a layer of suitable cover material at specific designated intervals. A sanitary landfill

1 by definition must meet all of the Part 258 Criteria. An MSWLF under the Code is a
2 sanitary landfill.

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

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

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

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

1 (ooo) "Tribal Council" or "Council" means the governing body of the Northern Cheyenne
2 Tribe.

3 (ppp) "Tribal Court" means the courts of the Tribe.

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

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

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

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

19 **Section 1-3: Purpose**

20 This Code is enacted to provide for the establishment of a comprehensive solid waste collection
21 and disposal system and to regulate the generation, storage, collection, disposal, treatment, and
22 management of solid waste on the Reservation in order to protect public health and the
23 environment. This Code is intended to:

24 (a) Protect the health, welfare, political integrity, and economic security of the Tribe, its
25 members, and residents and other persons living on the Reservation;

26 (b) Protect the historical and cultural values and traditions of the Tribe and ensure
27 preservation of the Reservation as a permanent Tribal homeland;

- 1 (c) Prevent the deterioration of the natural environment on the Reservation by minimizing
2 impacts from the improper disposal of solid waste to the air, surface water, groundwater,
3 wildlife, and land resources;
- 4 (d) Reduce littering and eliminate disposal of waste in open dumps through regulation of the
5 storage, collection, transportation, and disposal of solid waste on the Reservation by
6 persons subject to the jurisdiction of the Tribe;
- 7 (e) Encourage the development of a Reservation-wide system for curbside solid waste
8 pickup and recycling;
- 9 (f) Encourage solid waste source reduction on the Reservation; and
- 10 (g) Comply with the requirements of federal law relating to the generation, storage,
11 transportation, treatment, and disposal of solid waste on the Reservation.

12 **Section 1-4: Findings**

13 The Council makes the following findings and declarations in support of the Code:

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

25 **Section 1-5: Jurisdiction and Applicability**

- 26 (a) This Code is adopted pursuant to the authority vested in the Tribal Council under Article
27 IV of the Constitution of the Tribe as amended.

1 (b) The Tribe has inherent sovereignty to exercise civil authority and jurisdiction over the
2 conduct of Tribal members and all other persons on all lands within the exterior
3 boundaries of the Reservation to maintain the environment, natural resources, health,
4 safety, welfare, political integrity, and economic security of the Tribe.

5 (c) Because any violations of this Code or any rules or regulations adopted thereunder will
6 demonstrably and seriously impact the environment, natural resources, public health,
7 safety, welfare, political integrity, and economic security of the Tribe, this Code, and any
8 rules and regulations adopted thereunder, shall apply to (1) all persons within the exterior
9 boundaries of the Reservation including but not limited to Tribal members, Indians who
10 are members of other Indian Tribes, non-Indians, and any other person as defined in the
11 Code; (2) all persons, households, commercial businesses, schools, governmental
12 facilities, farmers, ranchers, private contractors, and all other entities and/or facilities that
13 operate within the Reservation or impact the storage, collection, disposal, or treatment of
14 solid waste on the Reservation; and (3) all places and lands located anywhere within the
15 exterior boundaries of the Reservation, including all trust and non-trust lands,
16 notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, or any real
17 property interest of any kind, held by any person as defined under the Code.

18 **Section 1-6: The Tribe's Sovereign Immunity.**

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

1 (b) The Tribe reserves the right to contest the jurisdiction of the federal courts in any citizens'
2 suit filed against it or its instrumentalities, officials, employees, or agents under Section
3 7002 of the SWDA.

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

8 **Section 1-7: Consensual Relationship between Non-Members, The Tribe, And Tribal**
9 **Members.**

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

18 **CHAPTER TWO--TRIBAL ADMINISTRATION**

19 **Section 2-1: The Tribe's Environmental Protection Department**

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

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

- 1 (c) The Director of the Environmental Protection Department, in consultation with the
2 Director of the Solid Waste Department, shall develop and periodically review and revise
3 the Tribe's Integrated Solid Waste Management Plan pursuant to Chapter 3 of this Code.
- 4 (d) The Director of the Environmental Protection Department may, subject to approval by
5 the Council, expend available funds to perform any cleanup, abatement, or remedial work
6 necessary to remedy violations of permits issued pursuant to Chapter 5 of this Code, any
7 other part of this Code, or any rule, regulation, or guidance document adopted under this
8 Code.
- 9 (e) The Director of the Environmental Protection Department, in consultation with the
10 Director of the Solid Waste Department, may propose to the Tribal Council rules and
11 regulations to implement or enforce any provision or requirement of the Code and, upon
12 approval thereof by the Tribal Council, promulgate such rules and regulations, which
13 shall enforceable as Tribal law.
- 14 (f) The Director of the Environmental Protection Department, in consultation with the
15 Director of the Solid Waste Department, may issue guidance documents as part of the
16 Tribe's solid waste program, which may prescribe specific technical or scientific criteria
17 for implementing the location, construction, design, operational, closure, or post-closure
18 requirements for MSWLFs. Guidance documents may supplement the Part 258 Criteria,
19 but any criteria set forth in any guidance document shall not be in conflict with any Part
20 258 Criteria or contain any criteria which are less stringent than the Part 258 Criteria.
21 Guidance documents issued by the Director of the Environmental Protection Department,
22 however, may provide more stringent criteria for MSWLFs than are required by the Part
23 258 Criteria. Guidance documents shall be enforceable if they are specifically referenced
24 or attached as part of, or as a condition of, any permit issued under the Code.
- 25 (g) The Director of the Environmental Protection Department, in consultation with the
26 Director of the Solid Waste Department, shall apply, as soon as practicable, for federal
27 and state financial aid, training, and technical assistance for development of the Tribe's

1 Integrated Solid Waste Management Plan and to implement the Tribe's solid waste
2 program. This shall include seeking grants available from EPA's Regional Office as may
3 be authorized under the SWDA and any other grants, funds, or assistance which may be
4 available from the EPA, BIA, the U.S. Indian Health Service, the U.S. Department of
5 Housing and Urban Development, the Administration for Native Americans, and any
6 other agency or public or private source.

7 (h) The Director of the Environmental Protection Department, in consultation with the
8 Director of the Solid Waste Department, shall prepare and file an annual report with the
9 Council no later than July 1 of each year which shall review the progress achieved under
10 the Tribe's solid waste program and shall include any additional reports requested by the
11 Tribal Council. The Director of the Environmental Protection Department may
12 recommend in the annual report or on other occasions specific actions that should be
13 taken by the Council regarding the Tribe's solid waste program.

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

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

18 (k) The Director of the Environmental Protection Department may, subject to available
19 funding and approval of the Council, hire additional Environmental Protection
20 Department staff to help ensure implementation and enforcement of the Code.

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

25 (m) Without diminishing the responsibilities or authorities of the Director of the
26 Environmental Protection Department, he or she may in writing delegate duties and

1 responsibilities assigned to the Director of the Environmental Protection Department in
2 this Code to any employee, agent, or representative of the Tribe or agent of EPA.

3 **Section 2-2: The Environmental Protection Department's Compliance Officer.**

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

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

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

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

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

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

6 (g) The Compliance Officer shall investigate, upon his or her own motion or receipt of a
7 credible complaint submitted pursuant to Section 13-1 of this Code, any suspected
8 violation of a permit issued pursuant to Chapter 5 of this Code, or any suspected violation
9 of any part of this Code or any rule, regulation, or guidance document adopted under the
10 Code.

11 **Section 2-3: The Tribe's Solid Waste Department**

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

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

25 (c) The Solid Waste Department and its Director shall comply with all directives issued by
26 the Director of the Environmental Protection Department relating to implementation or
27 enforcement of this Code. The Tribal Council may remove any employee or officer of

1 the Solid Waste Department, including the Director of the Solid Waste Department, upon
2 finding that such employee or officer has failed to comply with a directive issued by the
3 Director of the Environmental Protection Department or has otherwise failed to
4 adequately implement this Code.

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

7 **Section 3-1: Integrated Solid Waste Management Plan**

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

- 11 (1) Identify and plan for the closing of all open dumps within the Reservation, subject
12 to available funding, in accordance with the SWDA and Part 258 Criteria.
- 13 (2) Formulate Tribal policies for the collection, transportation, handling, treatment,
14 and disposal of solid waste on the Reservation. To the extent feasible, the Plan
15 shall include a program for Reservation curbside solid waste pickup, a program
16 for recycling of solid wastes, and a program for the disposal of household
17 hazardous wastes other than in an MSWLF on the Reservation.
- 18 (3) Estimate the volume and composition of all solid waste which is generated on the
19 Reservation and the volume and composition of solid waste from sources outside
20 the Reservation that may be disposed of in any MSWLF on the Reservation
21 pursuant to any intergovernmental agreement that the Tribal Council may
22 authorize.
- 23 (4) Identify the responsibilities of any other Tribal agencies and entities involved in
24 the implementation of the Tribe's solid disposal waste program and the
25 distribution of Federal or State funds to the Tribal authorities responsible for
26 development and implementation of the Tribe's solid waste disposal program.

- 1 (5) Review and advise the Council on Tribal regulatory systems necessary to fully
2 implement the Tribe's solid waste disposal program and enforce the Code and
3 rules or regulations promulgated thereunder.
- 4 (6) Review any contracts or other arrangements for the closing of open dumps on the
5 Reservation and the removal of solid waste disposed of at open dumps on the
6 Reservation and assess the costs of fulfilling such contracts or arrangements.
- 7 (7) Identify preferred locations on the Reservation for the establishment of new
8 MSWLFs.
- 9 (8) Evaluate how solid waste will be disposed of on or off the Reservation in
10 compliance with the Part 258 Criteria, including an assessment of costs for
11 constructing and operating MSWLFs and transfer stations on the Reservation and
12 an assessment of costs for the collection and transportation of solid waste on or
13 off the Reservation.
- 14 (9) The Plan may also include any other matters which are relevant to the Tribe's
15 solid waste disposal program.
- 16 (b) Within thirty (30) days of presentation of an Integrated Solid Waste Management Plan by
17 the Director of the Environmental Protection Department to the Council pursuant to
18 paragraph (b) of this Section, the Director of the Environmental Protection Department
19 shall publicize the existence of the Plan and make it widely available to all interested
20 persons. Within sixty (60) days of its presentation, the Director of the Environmental
21 Protection Department shall hold public hearings in the Reservation Districts to permit
22 interested parties to comment on the proposed Plan. The Plan, as revised following such
23 public hearings, shall go into effect upon approval by the Tribal Council.

24 **CHAPTER FOUR—PROHIBITIONS AND SPECIAL WASTES**

25 **Section 4-1: Prohibition on Dumping of Solid Waste.**

- 26 (a) It is unlawful for any person to dispose of any solid waste or hazardous waste anywhere
27 on the Reservation except as expressly permitted in this Code, the Tribe's Integrated

1 Solid Waste Management Plan approved by the Council, or regulations promulgated by
2 the Director of the Environmental Protection Department and approved by the Council
3 pursuant to this Code.

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

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

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

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

15 **Section 4-2: Prohibition on Disposal of Regulated and Conditionally Exempt Small**
16 **Quantity Generator Hazardous Waste.**

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

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

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

1 **Section 4-3: Prohibition on Burning of Solid Waste and Hazardous Waste.**

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

9 **Section 4-4: Other Prohibitions on Disposal at MSWLFs**

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

- 12 (1) Radioactive wastes.
- 13 (2) Regulated hazardous wastes.
- 14 (3) Infectious biomedical wastes which includes human tissue or human anatomical
15 remains.
- 16 (4) Animals or bedding exposed to infective agents.
- 17 (5) Sharps, needles and lancets which have not been contained for disposal in leak-
18 proof, rigid, puncture-resistant containers such as cartons or metal cans which are
19 taped closed or tightly lidded to preclude loss of contents under severe compaction
20 conditions.
- 21 (6) Bulk quantities of infectious-type wastes including blood, blood products, and
22 body fluids.
- 23 (7) Any materials containing asbestos.
- 24 (8) Human waste, sewage, or sewage sludge.
- 25 (9) Bulk liquids of any kind.
- 26 (10) Polychlorinated biphenyls (PCBs).
- 27 (11) Car batteries.

- 1 (12) Used oil.
- 2 (13) 55 gallon drums.
- 3 (14) Explosives.
- 4 (15) Tires.
- 5 (16) Oil or gas exploration wastes.

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

16 **Section 4-5: Construction and Demolition Debris**

17 (a) Every construction, demolition, and renovation project within the Reservation that is
18 1,000 square feet or greater (“Covered Projects”) shall comply with this Section.
19 Compliance with the provisions of this Article shall be listed as a condition of approval
20 on building or demolition permits issued for a Covered Project, if any such permits are
21 required.

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

- 26 (1) the estimated volume or weight of project C&D debris, by materials type, to be
27 generated;

- 1 (2) the estimated maximum volume or weight of such materials that can feasibly be
- 2 diverted via reuse;
- 3 (3) the estimated maximum volume or weight of such materials that can feasibly be
- 4 diverted via recycling;
- 5 (4) the vendor and/or facility that the Applicant proposes to use to collect or receive
- 6 said materials; and
- 7 (5) the estimated volume or weight of C&D materials that will be landfilled.

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

- 12 (1) Return the WMP application to the Applicant marked “denied” along with a
- 13 statement of reasons for the denial and notification to the Applicant that he or she
- 14 is not authorized to commence any building or demolition activities on the subject
- 15 property, or
- 16 (2) Return the WMP application to the Applicant marked “Further Explanation
- 17 Required.”

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

22 **Section 4-6: Agricultural Waste**

23 Every person who handles surplus agricultural pesticides and/or pesticide containers shall
24 comply with this Code and applicable federal law. Surplus pesticides or herbicides may not be
25 discarded within the exterior boundaries of the Northern Cheyenne Reservation in any manner
26 which that endangers humans, animals, Reservation Waters, and/or the environment. Pesticide

1 and herbicide containers must be drained or emptied according to label directions and power or
2 triple-rinsed before processing or disposal.

3 **Section 4-7: Septic Tanks**

4 Septic tank waste shall only be disposed of at approved facilities in accordance with 40 C.F.R. §
5 503 and in coordination with the Northern Cheyenne Tribal Utilities Commission, which accepts
6 septic waste from septic tank trucks and or portable toilets.

7 **Section 4-8: Liquids**

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

10 **Section 4-9: Carcasses**

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

18 **Section 4-10: Wrecked, Junked, or Unserviceable Vehicles**

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

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

- 1 (c) Any wrecked, junked, or unserviceable vehicles accumulated in a quantity of more than
2 four (4) on a single Reservation property shall be considered to be a junkyard and shall
3 subject to all applicable requirements and fees for junkyards;
- 4 (d) Any vehicle abandoned on Tribal and/or public facilities such as roads, streets, alleys,
5 highways, or public parking areas for more than 48 hours may be impounded and towed
6 away at the direction of the Compliance Officer or Tribal or BIA law enforcement to an
7 impoundment area. Any person claiming such vehicle shall give proof of ownership and
8 pay any towing and storage charges. Vehicles not claimed within 30 days of
9 impoundment may be declared abandoned, and may be sold at auction by the impounding
10 authority to pay for towing and storage charges. All remaining income from the sale of
11 the vehicle shall be remitted to the Tribe.

12 **Section 4-11: Abandoned Buildings, Mobile Homes, and Trailers**

- 13 (a) Any building, mobile home, or trailer on the Reservation that is not-inhabited for more
14 than 120 days and is unsafe, unfit for habitation, junked, partially disassembled, wrecked,
15 non-operative, may be declared a solid waste by the Compliance Officer and must be
16 managed as such in full compliance with this Code.
- 17 (b) Before any action is taken pursuant to paragraph (a) of this Section, the Compliance
18 Officer shall, pursuant to Section 11-2 of the Code, serve on the landowner where the
19 abandoned or uninhabited building, mobile home, or trailer is located, and the owner (if
20 known and applicable) of the abandoned or uninhabited mobile home or trailer, an order
21 directing the repair, removal, and/or disposal of the building, mobile home, or trailer in
22 accordance with this Code and any other applicable Tribal and federal laws within thirty
23 (30) days or such other period as the Compliance Officer may authorize in writing. The
24 recipient of such an order may request a hearing on the order and avail himself or herself
25 of the other applicable procedural rights under Chapters 11 and 12 of the Code.

1 **Section 4-12: Scrap Tires**

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

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

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

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

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

23 **Section 4-13: Asbestos**

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

26 (b) Removal, storage, transportation, of asbestos and asbestos-containing materials or items
27 must be conducted pursuant to a permit issued under Chapter 5 of this Code, and must be

1 conducted in compliance with the applicable requirements of this Code, the Clean Air
2 Act (42 U.S. C. §§ 7401-7671q), the SWDA, and EPA regulations and guidelines.

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

6 (d) Handling of asbestos or asbestos-containing materials or items must be performed by
7 certified asbestos personnel.

8 **Section 4-14: Medical Wastes**

9 (a) Waste from medical and dental clinics, including infectious wastes, on the Reservation
10 shall be stored in containers with the disposable plastic liners with special identification
11 and stored in a manner not accessible to the public and in an area not harmful to the
12 environment.

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

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

19 **Section 4-15: Used oil and lead-acid batteries**

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

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

1 **Section 4-16: White goods**

2 (a) No white goods may be disposed of within the Reservation without written authorization
3 by the Compliance Officer.

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

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

9 **Section 4-17: Household Wastes.**

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

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

19 **Section 4-18: Other Special Wastes**

20 All dangerous materials and substances on the Reservation shall be rendered harmless prior to
21 collection and/or disposal on the Reservation in accordance with Tribal and federal law.

22 **Section 4-19: Scavenging**

23 Scavenging at solid waste collection sites, storage facilities, transfer sites, disposal facilities, or
24 collection vehicles on the Reservation is prohibited.

1 **CHAPTER FIVE--PERMITS**

2 **Section 5-1: Permits Required.**

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

6 **Section 5-2: Permits for the Construction and/or Operation of MSWLFs.**

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

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

- 17 (1) A legal description and area map of the site of the proposed facility.
18 (2) A title report showing ownership of the site of the proposed facility and all
19 encumbrances, covenants, conditions, restrictions, reservations to title, easements,
20 and rights of way on or across the site.
21 (3) Proof that (A) the applicant is the owner or otherwise holds a sufficient leasehold
22 or other interest in the proposed site or other lawful authorization from the owner
23 of the site authorizing use of the site for purposes set forth in the application; (B)
24 any taxes, fees, lease, and other payments with respect to the site are current; (C)
25 the applicant has received approval of the proposed use of the site from the Tribal
26 Council; and (D) if the site is trust or restricted land, the applicant has received all
27 legally-required approvals of any leasehold or other use rights in the site from the

1 Secretary of Interior or his authorized delegate. The applicant shall include in the
2 application a certified copy of such lease or other use authorization with all
3 exhibits and attachments.

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

9 (5) A report describing the following:

10 (A) The population and area to be served by the proposed site;

11 (B) The life expectancy of the facility;

12 (C) The geological formation, aquifer characteristics, and groundwater
13 elevations below the site and reliable data on existing groundwater quality
14 within 2,000 feet of the site;

15 (D) The source and characteristics of cover material to be used;

16 (E) Topography of the site and drainage patterns; and

17 (F) Location of the 100-year flood plain as approved by the Compliance
18 Officer in relation to the site.

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

- 1 (7) A financial statement estimating the cost of construction, operation, closure, and
2 post- closure of the MSWLF. The financial statement shall also explain the
3 applicant's financial condition, the applicant's net worth, and the ability of the
4 applicant to fund the continued operation, closure, and post-closure maintenance
5 of the site in compliance with the Code and the requirements of 40 CFR Part 258.
- 6 (8) An identification statement certified as to its truth and accuracy signed by the
7 applicant and notarized containing the following information:
- 8 (A) The name, address, social security number, and phone number of all
9 persons owning or holding an interest in the applicant company of 5% or
10 more;
- 11 (B) The name, address, social security number, and phone number of all
12 officers, directors, or partners of the applicant company;
- 13 (C) A statement that no officer, director, partner, or holder of an interest of 5%
14 or more of the applicant company has ever been convicted of a felony and
15 that no felony charges are currently pending;
- 16 (D) A statement that discloses in detail any charge, complaint, fine, order,
17 decree, statement, or finding of "no contest" for violation of any tribal,
18 federal, state, county or municipal environmental or health laws,
19 regulations, permits, or conditions against any officer, director, partner or
20 holder of an interest of 5% or more within the past five (5) years.
- 21 (E) A description of any judgments rendered against any officer, director,
22 partner, or holder of an interest of 5% or more in the applicant in the five
23 (5) years preceding the date of the application.
- 24 (F) A description of any bankruptcy or insolvency proceedings instituted by
25 any officer, director, partner, or holder of an interest of 5% or more in the
26 applicant occurring in the five (5) years preceding the date of the
27 application.

- 1 (c) The Compliance Officer shall not issue a solid waste construction and/or operation
2 facility permit under this Section unless the Tribe and any other owner of the site has
3 leased or otherwise made available the site to the proposed facility operator for the
4 proposed operation in accordance with Tribal and federal law.
- 5 (d) The Compliance Officer may issue a solid waste construction and/or operation facility
6 permit under this Section only if he or she finds, on the basis of information contained in
7 the application and otherwise available to the Compliance Officer, and only after
8 conducting a public hearing as specified in Section 13-2 of the Code, that the applicant
9 will comply with the Code; the 40 CFR Part 258 Criteria; and all applicable Tribal and
10 federal law, rules, regulations, technical standards, criteria, guidance documents, and
11 permit conditions.
- 12 (e) The Compliance Officer may issue a solid waste construction and/or operation facility
13 permit under this Section only if he or she finds that the applicant has the financial and
14 technical ability to construct and/or operate, close, and post-close the MSWLF as
15 required by the Code.
- 16 (f) In issuing any permit under this Section, the Compliance Officer may impose permit
17 conditions that are more stringent than those required in the Code or federal law if
18 reasonably necessary. The Compliance Officer shall not issue a solid waste construction
19 and/or operation facility permit unless he or she is convinced that the permittee will
20 ensure long-term protection of the Tribe's public health, environment, and natural
21 resources.
- 22 (g) A solid waste operation facility permit shall be valid for the operation, closure, and post-
23 closure period designated and required for such MSWLF, but such permit is subject to
24 revocation, suspension, or modification as provided in Section 5-7 of this Chapter. Any
25 conditions imposed on any solid waste construction and/or operation facility permit
26 issued by the Compliance Officer may only be modified after a public hearing that is duly
27 noticed regarding modification of such permit.

1 **Section 5-3: Permits for the Collection and/or Transportation of Solid Waste.**

- 2 (a) Any person authorized to conduct business on the Reservation may submit an application
3 to the Compliance Officer for a permit to collect and transport solid waste on the
4 Reservation, which must demonstrate that the applicant will comply with the Code, the
5 rules and regulations promulgated thereunder, applicable Tribal and federal
6 environmental standards and criteria, relevant guidance documents, permit conditions,
7 and applicable orders issued under authority of the Code. The burden of proof shall rest
8 on the applicant to demonstrate compliance with all Tribal solid waste criteria and
9 requirements.
- 10 (b) As a condition for the issuance of a permit under this Section, the Compliance Officer
11 shall require every vehicle operated by the collector/transporter to collect and/or transport
12 solid waste to be conspicuously marked to identify the solid waste transported, the trade
13 name of the collector/transporter, and the number of the solid waste transportation permit
14 issued pursuant to this Section. The Compliance Officer shall also require, as a condition
15 of a permit issued under this section, that all vehicles and drivers permitted to collect
16 and/or transport solid waste be licensed by the State of Montana and comply with all
17 safety and insurance requirements of the State of Montana.
- 18 (c) Permits for the collection and/or transportation of solid waste issued under this Section
19 shall be subject to annual renewal by the Compliance Officer.
- 20 (d) As a condition for the issuance of a permit under this Section, the Compliance Officer
21 shall require each permittee to make an annual report by December 1 of each year to the
22 Compliance Officer that discloses the number and type of installations emptied or
23 cleaned, the volume and nature of solid waste disposed of, the place and manner in which
24 such solid waste was finally disposed, and such other information as the Compliance
25 Officer may require. The Compliance Officer may deny a permit renewal if the permittee
26 fails to properly and timely file the annual report required in this paragraph.

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

9 **Section 5-4: Public Hearing On Applications for Construction and Operation Permits.**

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

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

22 **Section 5-5: Oath And Application Filing Fees.**

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

25 (b) Each application submitted to the Compliance Officer pursuant to this Chapter shall be
26 accompanied by a reasonable filing fee established by the Compliance Officer to reflect
27 the Tribe's costs of processing the application, preparing an environmental assessment,

1 publishing and distributing the public notice, conducting the hearing, retaining technical
2 and legal consultants to review the application and the environmental assessment,
3 preparation of the permit and its attachments, and other costs reasonably related to
4 permitting required under this Chapter.

5 **Section 5-6: Other Fees.**

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

12 **Section 5-7: Revocation, Suspension, and Modification of Permits**

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

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

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

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

24 (b) An order issued pursuant to paragraph (a) of this section shall become final and
25 unreviewable unless the suspected violator submits to the Director of the Environment
26 Protection Department a written request for a hearing within thirty (30) days of service of

1 the order. A hearing requested under this paragraph shall be conducted in accordance
2 with Section 12-1 of the Code.

3 **Section 5-8: Compliance Monitoring.**

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

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

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

22 **CHAPTER SIX--OPERATING CRITERIA FOR MSWLFs**

23 **Section 6-1: In General.**

24 40 CFR Secs. 258.20 through 258.29 are incorporated by reference herein. All owners/operators
25 of MSWLFs on the Reservation shall comply with the Part 258 Criteria in addition to the
26 requirements of the Code, rules or regulations promulgated under the Code, guidance documents,
27 orders issued pursuant to the Code, and other applicable Tribal or federal law.

1 **Section 6-2: Procedures for Excluding the Receipt of Regulated Hazardous Waste.**

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

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

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

25 **Section 6-3: Daily Cover Material Requirements.**

26 40 CFR Sec. 258.21 is incorporated by reference herein. An owner/operator of an MSWLF on
27 the Reservation must cover disposed solid waste with six inches of earthen material at the end of

1 each operating day, or at more frequent intervals if necessary, to control disease vectors, fires,
2 odors, blowing litter, and scavenging.

3 **Section 6-4: Disease Vector Control.**

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

9 **Section 6-5: Explosive Gases Control.**

10 40 CFR Sec. 258.23 is incorporated by reference herein. There must be methane gas monitoring
11 at all MSWLFs on the Reservation in compliance with 40 CFR Sec. 258.23. The Compliance
12 Officer must approve any methane gas monitoring plan for each MSWLF. An owner/operator
13 must immediately notify the Compliance Officer if the concentration of methane gas exceeds the
14 lower explosive limit for methane in facility structures or at the facility property boundary. An
15 owner/operator must also within seven days place in the operating record documentation of the
16 methane gas levels detected and a description of the interim steps taken to protect human health.
17 An owner/operator must also implement a remediation plan for methane gas releases within 60
18 days of detection, as approved by the Compliance Officer, and such remediation plan must be
19 placed in the operating record.

20 **Section 6-6: Air Criteria.**

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

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

4 **Section 6-7: Access Requirements.**

5 40 CFR Sec. 258.25 is incorporated by reference herein. Owners or operators of all MSWLFs on
6 the Reservation must control public access and prevent unauthorized vehicular traffic and illegal
7 dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect
8 human health and the environment.

9 **Section 6-8: Run-On/Run-Off Control Systems.**

10 40 CFR Sec. 258.26 is incorporated by reference herein. Owners or operators of all MSWLFs on
11 the Reservation must design, construct, and maintain:

- 12 (a) A run-on control system to prevent flow onto the active portion of the landfill during the
13 peak discharge from a 25-year storm;
- 14 (b) A run-off control system from the active portion of the landfill to collect and control at
15 least the water volume resulting from a 24 hour, 25-year storm; and
- 16 (c) Run-off from active portions of MSWLFs must be handled in accordance with 40 CFR
17 Sec. 258.27(a).

18 **Section 6-9: Surface Water Requirements.**

19 40 CFR Sec. 258.27 is incorporated by reference herein. MSWLFs on the Reservation shall not:

- 20 (a) Cause a discharge of pollutants into waters of the United States, including wetlands, that
21 violate any requirements of the Clean Water Act, including, but not limited to, the
22 National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to
23 section 402 of the Clean Water Act.
- 24 (b) Cause the discharge of a nonpoint source of pollution to waters of the United States,
25 including wetlands, that violate any provisions of the Clean Water Act, or any Tribal
26 water quality laws.

1 **Section 6-10: Liquids Restrictions.**

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

- 4 (1) The waste is permitted household waste other than septic waste; or
5 (2) The waste is leachate or gas condensate derived from the MSWLF and the
6 MSWLF, whether it is a new or existing MSWLF, or lateral expansion, is
7 designed with a composite liner and leachate collection system as described in 40
8 CFR Sec. 258.40(a)(2).

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

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

- 16 (1) The container is a small container similar in size to that normally found in
17 household waste;
18 (2) The container is designed to hold liquids for use other than storage; and
19 (3) The waste is household waste.

20 **Section 6-11: Recordkeeping Requirements.**

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

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

- 1 (2) Inspection records, training procedures, and notification procedures required
- 2 under 40 CFR Sec. 258.20;
- 3 (3) Gas monitoring results from monitoring and any remediation plans required by 40
- 4 CFR Sec. 258.23;
- 5 (4) Any MSWLF design documentation for placement of leachate or gas condensate
- 6 in an MSWLF under 40 CFR Sec. §258.28(a)(2);
- 7 (5) Any demonstration, certification, finding, monitoring, testing, or analytical data
- 8 required under 40 CFR Secs. 258.50 through 258.58;
- 9 (6) Closure and post-closure care plans and any monitoring, testing, or analytical data
- 10 as required under 40 CFR Secs. 258.60 and 258.61; and
- 11 (7) Any cost estimates and financial assurance documentation required by 40 CFR
- 12 Secs. 258.70 through 258.75; and
- 13 (8) Any information demonstrating compliance with the small community exemption
- 14 as required by 40 CFR 258.1(f)(2).
- 15 (b) The owner or operator of an MSWLF on the Reservation must notify the Compliance
- 16 Officer when documents from paragraph (a) of this Section have been placed or added to
- 17 the operating record. All information contained in the operating record must also be
- 18 furnished upon request to the Compliance Officer and shall be made available at all
- 19 reasonable times for inspection by the Compliance Officer.

20 **CHAPTER SEVEN—MSWLF DESIGN CRITERIA**

21 **Section 7-1: In General.**

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

1 **Section 7-2: Design Criteria for MSWLFs**

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

6 **CHAPTER EIGHT—MSWLF GROUNDWATER MONITORING AND CORRECTIVE**
7 **ACTION**

8 **Section 8-1: In General.**

9 The groundwater monitoring and corrective action criteria contained in 40 CFR Secs. 258.50
10 through 258.58 are incorporated by reference herein and apply to all existing MSWLFs, new
11 MSWLFs, and lateral expansions of MSWLFs on the Reservation.

12 **Section 8-2: Groundwater Monitoring and Corrective Action.**

13 (a) All existing MSWLFs, new MSWLFs, and lateral expansions of MSWLFs on the
14 Reservation must comply with all of the groundwater monitoring and corrective action
15 rules of subpart E of 40 CFR Part 258 including those contained in 40 CFR Secs. 258.51
16 through 258.58. All existing MSWLFs, new MSWLFs, and lateral expansions of
17 MSWLFs on the Reservation must be in compliance with the groundwater monitoring
18 requirements on or before certain specified dates as determined by the Compliance
19 Officer based upon the Part 258 Criteria. Once groundwater monitoring is established at
20 an MSWLF on the Reservation, such monitoring shall be conducted throughout the active
21 life, closure, and post-closure care period.

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

1 and chemical testing procedures, and all groundwater monitoring requirements in 40 CFR
2 Part 258 are incorporated by reference herein.

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

- 7 (1) 40 CFR Sec. 258.51 regarding groundwater monitoring systems;
- 8 (2) 40 CFR Sec. 258.53 regarding groundwater sampling and analysis requirements;
- 9 (3) 40 CFR Sec. 258.54 regarding detection monitoring programs;
- 10 (4) 40 CFR Sec. 258.55 regarding assessment monitoring programs;
- 11 (5) 40 CFR Sec. 258.56 regarding assessment of corrective measures;
- 12 (6) 40 CFR Sec. 258.57 regarding selection of remedy; and
- 13 (7) 40 CFR Sec. 258.58 regarding implementation of the corrective action program.

14 **CHAPTER NINE—MSWLF CLOSURE, POST-CLOSURE, AND FINANCIAL** 15 **ASSURANCES**

16 **Section 9-1: Closure of MSWLFs.**

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

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

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

- 1 (3) An estimate of the maximum inventory of wastes ever on-site over the active life
2 of the landfill facility; and
- 3 (4) A schedule for completing all activities necessary to satisfy the closure criteria in
4 40 CFR Sec. 258.60.
- 5 (c) An owner or operator subject to the requirements of paragraph (b) of this Section must
6 notify the Compliance Officer that a closure plan has been prepared and placed in the
7 operating record by the date of the first receipt of solid waste.
- 8 (d) Prior to beginning closure of an MSWLF on the Reservation, the owner or operator of the
9 facility must notify the Compliance Officer that a notice of intent to close the unit has
10 been placed in the operating record.
- 11 (e) The owner or operator of an MSWLF on the Reservation must begin closure activities of
12 each MSWLF no later than 30 days after the date on which the MSWLF receives the
13 known final receipt of wastes or, if the MSWLF has remaining capacity and there is a
14 reasonable likelihood that the MSWLF will receive additional wastes, no later than one
15 year after the most recent receipt of wastes.
- 16 (f) The owner or operator of an MSWLF on the Reservation must complete closure activities
17 of each MSWLF in accordance with the closure plan within 180 days following the
18 beginning of closure as specified in 40 CFR Sec. 258.60(f).
- 19 (g) Following closure of each MSWLF on the Reservation, the owner or operator must
20 supply the Compliance Officer with a certification signed by an independent registered
21 professional engineer that verifies that closure has been completed in accordance with the
22 closure plan and place such certification in the operating record.
- 23 (h) The Compliance Officer shall take whatever action is reasonably necessary in perpetuity
24 to notify any potential users or purchasers of the on-Reservation MSWLF property that
25 the land has been used as a landfill facility and that its use is restricted under 40 CFR Sec.
26 258.61(c)(3). Post-closure use of the property shall not disturb the integrity of the site,

1 final cover, liner(s) or monitoring systems, unless necessary to comply with requirements
2 under 40 CFR Part 258.

3 **Section 9-2: Post-Closure Care Requirements.**

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

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

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

16 (3) Monitoring the ground water in accordance with the requirements of subpart E of
17 40 CFR Part 258 and maintaining the groundwater monitoring system; and

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

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

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

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

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

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

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

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

15 **Section 9-3: Financial Assurance Requirements.**

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

20 **CHAPTER TEN—SOLID WASTE STORAGE AND COLLECTION**

21 **Section 10-1: Tribal Solid Waste Storage Containers**

22 (a) The Director of the Solid Waste Department shall arrange for the placement of a
23 sufficient number of suitable and approved Tribal solid waste storage containers for
24 receiving and storing solid waste at transfer stations and other locations on the
25 Reservation where solid waste is likely to be disposed. Tribal solid waste storage
26 containers shall be placed at locations that minimize negative traffic and aesthetic
27 impacts to the Reservation and its residents. All Tribal solid waste storage containers

1 shall be of sound construction, resistant to animal entry, constructed with rust and impact
2 resistant materials, and equipped with tight-fitting covers. The Director of the Solid
3 Waste Department is responsible for maintaining Tribal solid waste storage containers in
4 a neat, clean, safe, and sanitary condition.

5 (b) Tribal solid waste storage containers shall be of sufficient size and adequate number to
6 fully contain solid waste that is generated on the Reservation during a seven-day period.

7 (c) Except as otherwise allowed by this Code, the Director of the Solid Waste Department
8 shall be responsible for maintaining Tribal solid waste storage container sites free of
9 improperly stored solid waste accumulations.

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

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

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

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

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

24 **Section 10-2: Storage of Solid Waste on Private Property**

25 The owner, agent, and occupant of every on-Reservation dwelling, business establishment, and
26 other premises where solid waste accumulates shall be responsible for the safe and sanitary
27 storage of bulk solid waste accumulated at that premises until it is removed. No person shall

1 store solid waste on the Reservation in such a manner as to cause a nuisance, a human health or
2 safety hazard, or harm to the environment or natural resources of the Reservation.

3 **Section 10-3: Solid Waste Collection**

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

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

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

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

17 **Section 10-4: Recycling.**

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

21 **Section 10-5: Solid Waste Collection Vehicles**

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

- 25 (1) be kept cleaned and maintained;
- 26 (2) have covered, watertight, metal bodies of easily cleanable construction, be
27 cleaned frequently to prevent a nuisance, and be maintained in good repair; and

1 (3) be loaded and moved in such a manner that the contents will not fall, leak, or spill
2 from the vehicles.

3 **Section 10-6: Load Rejection**

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

8 **Section 10-7: Material Separation**

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

12 **Section 10-8: Service Fees for Solid Waste Services**

13 (a) The Director of the Solid Waste Department, with the prior approval of the Tribal
14 Council, shall establish reasonable fees for transfer, disposal, recycling, and other solid
15 waste services performed under this Chapter. Any person who benefits from the solid
16 waste services provided pursuant to this Chapter shall be subject to such fees. Fees
17 established pursuant to this paragraph shall be limited so as to not encourage unlawful
18 solid waste disposal practices.

19 (b) Non-payment of solid waste fees established under this Section is a violation of this Code
20 and may result in action being taken by the Compliance Officer pursuant to Chapter 11 of
21 the Code.

22 **Section 10-9: Contracts for Solid Waste Services**

23 The Director of the Solid Waste Department is authorized, with the approval of the Council, to
24 enter contracts with private solid waste collectors to discharge any duties assigned to the Director
25 of the Solid Waste Department in this Chapter. Such contracts shall obligate each such private
26 solid waste collector to adhere to all relevant requirements of this Code and federal law.

27 Contracts entered into pursuant to this Section shall be terminable by the Director of the Solid

1 Waste Department or the Director of the Environmental Protection Department, with approval of
2 the Council, upon 30-days written notice.

3 **CHAPTER ELEVEN—INVESTIGATIONS AND ENFORCEMENT**

4 **Section 11-1: Investigations and Warrants.**

- 5 (a) Subject to paragraph (b) of this Section, the Compliance Officer, Tribal law enforcement
6 officers, and BIA law enforcement officers are authorized to enter at reasonable times
7 upon any private or public property on the Reservation for the purpose of inspecting and
8 investigating conditions relating to solid or hazardous waste. It shall be a misdemeanor
9 for any person to interfere with such inspections or investigations.
- 10 (b) Unless an emergency exists as defined in paragraph (e) of this Section, or the Compliance
11 Officer or Tribal law enforcement officers have reason to believe that any unlawful
12 activity is being conducted or is imminent, the Compliance Officer or Tribal law
13 enforcement officers shall provide the owner, operator, or occupant of the property to be
14 inspected or investigated under paragraph (a) of this Section prior notification and request
15 from the owner, operator, or occupant authorization to enter the property for the
16 inspection or investigation during normal business hours. If such authorization is denied,
17 the Compliance Officer or Tribal law enforcement officers shall obtain an administrative
18 warrant from the Tribal Court to enter the property and conduct an inspection or
19 investigation.
- 20 (c) The Tribal Court shall issue an administrative warrant requested pursuant to Section (b)
21 of this Chapter upon a showing by the Compliance Officer, Tribal law enforcement
22 officers, or BIA law enforcement officers that there is a reasonable basis to believe that
23 an inspection or investigation on the subject property will uncover evidence of a violation
24 of: any provision of: this Code; any rule, regulation, or guidance document adopted
25 under this Code; any condition of any permit issued under this Code; or any provision of
26 other applicable Tribal or federal law.

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

12 **Section 11-2: Enforcement Orders.**

- 13 (a) Any person who violates any condition of a permit issued under the Code, any part of this
14 Code, or any rule, regulation, or guidance document adopted under this Code, shall, upon
15 order of the Compliance Officer: cease and desist from any improper action or
16 violation(s); clean up any solid waste; abate any hazard, pollution, or nuisance; and
17 otherwise comply with any corrective or remedial order issued by the Compliance
18 Officer. The Compliance Officer's order may require compliance immediately or within
19 a specified period of time, and may assess civil damages and penalties pursuant to
20 Section 11-3 of this Chapter.
- 21 (b) An order issued pursuant to paragraph (a) of this section shall state with reasonable
22 specificity the nature of the violation, the time for compliance if applicable, the basis for
23 any assessed civil damages and penalties, the right to a hearing before the Compliance
24 Officer, and instructions for how the alleged violator may obtain such a hearing. Such
25 order shall be served on the alleged violator in the same manner that a complaint is
26 served under Rule 3 of the Tribe's Rules of Civil Procedure.

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

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

10 **Section 11-3: Civil Damages and Penalties.**

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

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

26 (c) Any civil penalties or damages imposed under this Section are in addition to, and do not
27 supersede or limit any other remedies which may be available to the Tribe or any other

1 Reservation property owner or user, including the filing of an action for injunctive relief
2 in Tribal Court or the filing of a civil action for civil damages or any other relief.

3 **Section 11-4: Criminal Penalties.**

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

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

18 **Section 11-5: Compliance Schedules.**

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

24 **Section 11-6: Enforcement Against Non-Members**

25 If the Compliance Officer has probable cause to believe that a non-member has violated: any
26 material condition in a permit issued under the Code; any material provision of the Code; or any
27 material rule, regulation, or guidance document adopted under this Code, the Compliance

1 Officer, in addition to any other remedy lawfully available, may initiate proceedings in
2 accordance with Tribal law for the exclusion of the non-member from the Reservation and
3 suspension or termination of the non-member's rights to engage in activities on the Reservation.

4 **CHAPTER TWELVE—ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW**

5 **Section 12-1: Administrative Hearings**

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

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

19 (c) Prior to any hearing held before the Director of the Environmental Protection Department
20 under this Section, any party to the hearing, upon written request made to any other party
21 to the hearing prior to the hearing, is entitled to: (1) obtain the names and addresses of
22 witnesses, to the extent known by such other party to the hearing, including but not
23 limited to those intended to be called to testify at the hearing; and (2) inspect and copy
24 any relevant documents in the possession or under the control of such other party
25 including but not limited to statements made by s person pertaining to the subject matter
26 of the hearing and investigative or expert reports pertaining to the subject matter of the
27 hearing. Nothing in this Section shall authorize the inspection or copying of any writing

1 that is privileged from disclosure by law or otherwise made confidential or protected as
2 attorney work product.

3 (d) Before a hearing has commenced pursuant to this Section, the Director of the
4 Environmental Protection Department may issue and have served subpoenas and
5 subpoenas *duces tecum*³ at the request of any party to the hearing for the attendance of
6 witness or production of documents at the hearing. Any subpoenas issued by the Director
7 of the Environmental Protection Department shall be enforceable in Tribal Court or other
8 court of competent jurisdiction.

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

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

³NOTE TO COUNCIL: A “subpoena duces tecum” is a summons requiring a named party to appear and produce documents or other evidence for use at a hearing or trial.

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

6 **Section 12-2: Final Decision**

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

16 **Section 12-3: Judicial Review**

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

26 (b) In any appeal brought under paragraph (a) of this Section, the Tribal Court shall conduct
27 a review of the record of the proceedings of the Director of the Environmental Protection

1 Department but shall not take new evidence. The Tribal Court may then modify or
2 reverse a Final Decision of the Director of the Environmental Protection Department only
3 if the Final Decision is contrary to law, not supported by the evidence, or arbitrary and
4 capricious. The Director of the Environmental Protection Department, upon request of
5 the Tribal Court, shall provide to the Tribal Court a certified copy of all pleadings,
6 documents, records, transcripts, and other evidence that formed the basis for the Final
7 Decision. The filing of a petition for review shall not operate as a stay of the Director's
8 Final Decision, but the Tribal Court shall have the authority to issue a stay upon such
9 terms as it deems appropriate.

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

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

1 **Section 12-4: Intervention**

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

10 **CHAPTER THIRTEEN--PUBLIC PARTICIPATION**

11 **Section 13-1: Public Complaints.**

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

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

21 **Section 13-2: Public Hearings.**

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

24 (1) The adoption of and any updates to the Tribe's Integrated Solid Waste
25 Management Plan;

- 1 (2) The issuance of any rules or regulations under the Tribe's Solid Waste
2 Management Code, including any guidance documents, as proposed by the
3 Director of the Environmental Protection Department;
- 4 (3) The approval of any site location for a new MSWLF on the Reservation;
- 5 (4) The issuance of any permits for the construction and/or operation of an MSWLF
6 on the Reservation, or for the collection or transportation of solid waste on the
7 Reservation;
- 8 (5) The suspension of any groundwater monitoring requirements under 40 CFR Sec.
9 258.50;
- 10 (6) The assessment of any corrective measures and selection of remedies which may
11 be necessary under 40 CFR Secs. 258.56 and 258.57;
- 12 (7) The approval of any covenant not to sue or any settlement of any claim against
13 any permittee under the Code; and
- 14 (8) Any other matters which the Director of the Environmental Protection
15 Department deems appropriate for public participation and review, or which may
16 be required under 40 CFR Part 239 or this Code.
- 17 (b) In a public hearing held pursuant to paragraph (a) of this Section, the Director of the
18 Environmental Protection Department shall allow the public to submit both written and
19 oral comments, which shall be placed in an administrative record for the relevant action
20 maintained by the Environmental Protection Department.
- 21 (c) The Director of the Environmental Protection Department shall schedule hearings held
22 pursuant to paragraph (a) of this Section at a convenient location on the Reservation and
23 give reasonable advance notice of the date, time, and subject matter of such hearings by
24 publication in the newspaper most widely circulated on the Reservation. Sixty (60) days
25 advance notice is required for the issuance of any MSWLF permits.

26

1 **CHAPTER FOURTEEN--INDEMNIFICATION**

2 **Section 14-1: Indemnification.**

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

10 **CHAPTER FIFTEEN—INTERPRETATION, SEVERANCE, AND APPLICABILITY OF**
11 **PART 258 CRITERIA**

12 **Section 15-1: Interpretation.**

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

15 **Section 15-2: Severability.**

16 If any provision of the Code, or application of any provision of the Code to any person or
17 circumstance, is determined to be invalid or unlawful, the application of such provision to other
18 persons and circumstances, and the remaining provisions of the Code, shall not be affected.

19 **Section 15-3: Applicability of Part 258 Criteria.**

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