

THREE AFFILIATED TRIBES

**TITLE 15
ENVIRONMENTAL CODE**

**CHAPTER 15.1:
SOLID AND HAZARDOUS WASTE MANAGEMENT AND
REMEDATION CODE**

THREE AFFILIATED TRIBES
Title 15 Environmental Code Chapter 15.1:
SOLID AND HAZARDOUS WASTE MANAGEMENT AND
REMEDATION

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Section 1: General Provisions

- 1.01 Short Title.** This law shall be known and may be cited as the TAT Waste Management Act, (TAT-WMA), Title 15 Environmental Code of the MHA Law and Order Codes (the “Act”), Chapter 15.1 Solid and Hazardous Waste Management and Remediation Code.
- 1.02 The Tribes’ Inherent Sovereign Power.** The Tribes’ Inherent Sovereign Power to Manage and Regulate Solid Waste on the Reservation including the power to manage and regulate the storage, collection, transportation, handling, treatment and disposal of solid waste on the Fort Berthold Reservation (“Reservation”), which is anywhere within the exterior boundaries of the Reservation, inherently resides within the retained sovereign power of the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation pursuant to authority vested in the Tribal Council under the Constitution and By-laws of the Mandan, Hidatsa, and Arikara Nation.
- 1.03 Purpose.** To provide for the establishment of a comprehensive solid and hazardous waste collection and disposal system to protect the health, safety, and well-being of residents within the jurisdiction of the Mandan, Hidatsa, and Arikara Nation (MHA, TAT, or Tribes) to regulate the storage, collection, disposal, treatment, and management of solid and hazardous waste, and the remediation of any releases of a hazardous substance pollutant or contaminant to protect the human health, public sanitation, environment, and general aesthetics of the Fort Berthold Indian Reservation.
- 1.04 Findings.** The TAT Tribal Council finds and declares as follows:
- 1.04.1 The governing body of the Tribes, known as the TAT Tribal Council, (Tribal Council) has the authority to pass resolutions and Acts to protect the general welfare of the Reservation residents and the Reservation environment.
- 1.04.2 The increasing volume and variety of solid and hazardous waste being generated on the reservation and often inadequate existing methods of managing solid waste and hazardous waste are creating conditions that threaten the public health, safety and well-being by contributing to land, air and water pollution.
- 1.04.3 It is in the Tribes’ interest to foster, encourage, and promote the development, production, and utilization of natural resources of oil and gas on the reservation in such a manner as will minimize and properly manage all wastes resulting from such operations and to authorize and provide for the operation and development of oil and gas properties in such a manner that the Tribal members, landowners, royalty owners, producers, and the general public realize and enjoy the greatest possible good from these vital natural resources while minimizing and preventing any adverse impacts to public health or the environment.
- 1.04.4 The enactment of this Act by the Tribes is in the best interest of ensuring, promoting, and protecting the character of the Reservation and is consistent with previous policy and Acts enacted for the protection of the Reservation natural environment.

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- 1.05 Effective Date.** This Act shall be in full force and effect on the date of formal approval and adoption by the Tribal Council and shall remain in effect until repealed or amended by the Tribal Council.
- 1.06 Authority.** This Act is adopted pursuant to authority vested in the Tribal Council under the Constitution and By-laws of the Mandan, Hidatsa, and Arikara Nation, Article V, Section 8(a)(9) to protect, preserve and regulate the use of property (including intellectual property), both surface and subsurface, wildlife, land, air, and other natural resources (including surface and ground waters) of the Nation. The Tribes shall have full authority over enforcement of this Act and may delegate authority to Tribal Solid Waste Management Utility (SWMU), the Tribal Environmental Protection Agency (TEPA) and other Tribal programs as deemed appropriate, to implement and enforce provisions of this Act.
- 1.07 Immunity.** No part of this Act constitutes a waiver, in whole or in part, of the sovereign immunity of the Tribes unless otherwise waived by the Tribal Council.
- 1.08 Scope.** This Act shall apply to all individual persons, groups of individuals, households, commercial businesses, schools, governmental facilities, all other facilities and entities, and persons as defined herein regarding the storage, collection, transfer, recycling, disposal, and treatment of solid and hazardous waste within the Reservation. This Act also applies to any commercial or other entity that does business, or has business within, the exterior boundaries of the Fort Berthold Reservation including all oil and gas development and other types of mineral extraction activities.
- 1.09 Jurisdiction.** The Tribal Court of the TAT has civil jurisdiction over all persons and parties that are subject to the provisions of this Act to include the conduct of Tribal members on all lands within the Reservation boundaries to maintain the environment, natural resources, public health, safety, welfare, political integrity and economic well-being of the Tribes. This shall include:
- 1.09.1 Any person or company that has entered into a consensual agreement with the Tribes or its members; or
- 1.09.2 Any non-member where the conduct of the non-member threatens or has some direct effect on the political integrity, economic security, health or welfare of the Tribes.
- 1.10 Repeal.** Any Act, provision of law, rule or regulation of the Tribes in conflict with this Act, is hereby superseded.
- 1.11 Severability.** Any provision of this Act or part thereof or its application to any person in any circumstance declared invalid, shall be severed from the Act and the remaining provisions or applications of this Act shall remain in effect and enforceable.
- 1.12 Applicable Law and Regulations.** Compliance with this Code and regulations promulgated hereunder does not relieve a person of the obligation to comply with other applicable laws and regulations. Where there is a gap in the Tribal law, regulations or

codes, the federal regulations cited in this code shall be incorporated by reference, as determined applicable by the MHA EPA Director. If any part of a federal law, code or regulation cited or adopted by reference in this Code is modified, any modifications are automatically incorporated by reference and become part of this Code, and supersede any of the provisions that were modified. The TAT reserves the right to be more stringent than the federal regulations cited or adopted in this Code.

1.13 Citation or Use of Language from Other Laws. Citation to statutory or administrative language, definitions, procedure, or provisions of Federal law in this Act does not establish jurisdiction, which otherwise does not exist, in such Federal government. Nothing in this Act may be deemed a waiver of tribal sovereign immunity, and if any Court of competent jurisdiction construes this provision as conflicting with any other provision in this Act, then this express retention of sovereign immunity shall control and prevail.

SECTION 2: DEFINITIONS

2.01 **Definitions:** As used in this Act the words and terms below shall have the following meanings (Note: *the singular includes the plural and vice versa and the masculine includes the feminine and vice versa*):

"Agricultural processing operation" means a facility that processes crops, livestock, or other agricultural products in preparation for wholesale or retail sale to the public such as meat packing, the milling of grain, the selling of livestock by licensed livestock auction facilities, or other similar activities.

"Agricultural waste" means solid waste derived from the production and processing of crops and livestock such as manure, spoiled grain, grain screenings, undigested rumen material, livestock carcasses, fertilizer, and fertilizer containers, but does not include pesticide waste or pesticide containers.

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

a) "Individual household containers" must be of the type and volume approved by the SWMU Director;

b) "Business and drop box containers" must be of the type and volume approved by the SWMU Director and compatible with the collection vehicle used by the Solid Waste Program or its agents or contractors.

"Approved site" means a solid waste management, storage, transfer or disposal site or facility which has met all the requirements of this Act and any other applicable federal or Tribal

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regulations and is approved by the Tribal Council as the place for such management or disposal of solid waste.

"Aquifer" means a geological formation, group of formations, or portion of formation capable of yielding significant quantities of ground water to wells or springs.

"Bulky Wastes" means large bulky items of refuse, such as car bodies, appliances, furniture, trees and stumps and other oversized wastes not suitable for disposal in waste collection containers.

"Carcass" means any dead animal or portion of any dead animal.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S. C. § 9601 *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986 and the Small Business Liability Relief and Brownfields Revitalization Act of 2002.

"Certification" means a written statement of professional opinion based upon knowledge and belief.

"CFR" means the U.S. Code of Federal Regulations.

"Closed unit" means a landfill or surface impoundment or a portion thereof that has received solid waste in the past for which closure is complete.

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

"Collection" means the gathering of solid or hazardous waste at the place of generation by an approved collection agent, and transfer to a transfer station or the place of final utilization, reuse or disposal.

"Commercial Facility" Shall mean, any business, stores, offices, restaurants, warehouses, and other non-manufacturing activities no matter what the ownership structure, which operates to package, store, distribute, or market any product or service on the Reservation, exclusive of household waste, industrial waste, and special waste.

"Commercial waste" means all solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, no matter what the ownership structure, excluding residential waste, industrial waste, and special waste.

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“Environmental Division Director” or “ED Director” means the Tribal Enforcement Agent responsible for the compliance and enforcement of this Act and the management and administration of the TEPA Office and its staff and resources.

"Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

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

“Controlled Substance” means any imminently hazardous chemical substance or mixture with respect to which the U. S. EPA Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*).

“Days” means calendar days unless otherwise stated in this Act. Business days are tribal government business days.

"Detachable container" means a reusable container for the collection, storage, or transportation of solid waste that is mechanically loaded or handled (for example, "dumpsters" and "roll offs").

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

“Disposal” means the discharge, abandonment, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any soil, air or water, intentional or otherwise.

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

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

"Facility" means all contiguous land and structures, other appurtenances, and improvements on land which include one or more solid waste management units, such as a transfer station, solid waste storage building, a solid waste processing system, a resource recovery system, an incinerator, a surface impoundment, a surface waste pile, a land treatment area, or a landfill. A facility may or may not be used solely for solid waste management.

"Final cover" means any combination of compacted or un-compacted earthen material, synthetic material, and suitable plant growth material which, after closure, will be

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permanently exposed to the weather and which is spread on the top and side slopes of a landfill or facility.

"Floodplain" means the lowland and relatively flat areas adjoining inland waters that are inundated by a one-hundred-year flood or below an elevation designated by the Tribes.

"Franchised Service" means any solid waste collection service permitted under this Act, operating within Tribal jurisdiction and with Tribal approval.

"Free moisture or liquid" – Shall mean the liquid which separates from the solid portion of a solid waste under ambient pressure and normal, above freezing temperature. The U. S. Environmental Protection Agency paint filter liquids test method or visual evidence must be used to determine if a waste contains free liquid.

"Garbage" means putrescible material including, but not limited to, rejected animal, fruit and vegetable wastes resulting from the use, handling, preparation, cooking and consumption of food or storing of meat, fish, fowl, fruit or vegetables, including wastes from markets, storage facilities, and processing plants.

"Groundwater" means water occurring in the zone of saturation in an aquifer below the land surface in a geologic unit in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure.

"Hazardous Wastes" means solid waste or combination of solid wastes which, because of its quantity, concentration or physical, chemical or infectious characteristics may:

- (a) Pose a substantial present or future hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise mismanaged; or
- (b) Meet the specifications, description or listing as a hazardous waste in 40 CFR Part 261 pursuant to Section 3001 of the Solid Waste Disposal Act (42 U.S.C. § 6901 *et seq.*), as amended.

"Hazardous Substance" means any substance designated pursuant to section 311(b)(2)(A) of the Clean Water Act (CWA); any element, compound, mixture, solution, or substance designated pursuant to Section 102 of CERCLA; any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (SWDA) (42 U.S.C. § 6901 *et seq.*); any toxic pollutant listed under section 307(a) of the CWA; any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. § 7412 *et seq.*); and any imminently hazardous chemical substance or mixture with respect to which the U. S. EPA Administrator has taken action pursuant to Section 7 of the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*).

"Hearing Officer" means the MHA Natural Resource Committee or its appointed official that shall conduct an administrative hearing on complaints brought forth under this Title.

"Household waste" means solid waste, such as trash and garbage, normally derived from households, single and multiple residences, hotels and motels, bunkhouses, ranger stations,

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crew quarters, campgrounds, picnic grounds, and day use recreation areas.

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

“Incinerator” means any enclosed device that:

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

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

"Industrial waste" Such waste may include, but is not limited to, residues or spills of any industrial or manufacturing process and waste resulting from the following: fertilizer/agricultural chemicals; inorganic chemicals; leather and leather products; organic chemicals; plastics and resins manufacturing; plastic, resin, fiberglass, or carbon-fiber based products; textile, or textile product manufacturing; transportation equipment; petroleum refining; oil and gas exploration and extraction; other mineral extraction; and the combustion of municipal waste or regulated infectious waste.

"Inert waste" means non-putrescible solid waste which will not generally contaminate water or generate a contaminated leachate. Inert waste does not serve as food for vectors. Inert waste includes, but is not limited to: construction and demolition material such as metal, wood, bricks, masonry and cement concrete; asphalt concrete; and tree branches.

“Integrated Solid Waste Management Plan (ISWMP)” A document prepared by the Solid Waste Management Program and approved by the Tribal Council which defines the objectives, goals, procedures, responsibilities and future management of the Solid Waste Management Program.

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

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

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

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"Land treatment" means the controlled application of solid waste, excluding application of animal manure, into the surface soil to alter the physical, chemical, and biological properties of the waste.

"Leachate" means liquid that has passed through waste or emanating from land disposal cell or solid waste and contains soluble, dissolved, suspended, miscible materials and/or microbial contaminants from the solid waste.

"Liquid" Any material that when put into an ordinary paint filter, some part of which will pass through the filter.

"Litter" means uncontained solid waste that is scattered intentionally or in a careless manner.

"Littering" means the improper disposal, depositing, release, leaking or placing of any solid waste or junk by any person, acting on his own or on behalf of a firm, corporation governmental subdivision or agency in any location, other than an approved solid waste collection, storage, treatment or disposal container or area within the exterior boundaries of the Ft. Berthold Reservation.

"MHA" means the Three Affiliated Tribes of the Mandan, Hidatsa and Arikara Nation.

"Mine-scarred lands" are defined as lands, associated waters, and surrounding watersheds where extraction, beneficiation, or processing of ores and minerals (including coal, oil and gas, timber, and other minerals) has occurred.

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

"NRC" means the MHA Natural Resources Committee.

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

"Oil Product" means any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casing head gasoline, natural-gas gasoline, kerosene, benzene, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.

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

"Open Dump" means any disposal site that is not in full compliance with this Act and 40 CFR

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"Operator" means the person responsible for the overall operation of a facility or part of a facility.

"Owner" means the person who owns a facility or part of a facility.

"Person" means any individual, firm, association, partnership, political subdivision, government agency, municipality or other governmental subdivision, or governing or managing body of any municipality, governmental subdivision or public agency, industry, public or private corporation, trustee, receiver, agent, assignee or any other legal entity whatsoever.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant.

"Petroleum-Contaminated Soils" means any soils containing an oil product, petroleum product, produced oil, crude oil or other oily wastes.

"Pile" means any non-containerized accumulation of solid, non-flowing hazardous waste that is used for treatment or storage and that is not a containment building.

"Pollutant or contaminant" shall include, but not be limited to:

- a) Any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term pollutant or contaminant shall also include a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. § 802 *et seq.*)) and petroleum or petroleum product.
- b) Pollutant or contaminant also means any pollutant or contaminant that may present an imminent and substantial danger to public health or welfare of the Tribes or any person within the exterior boundaries of the TAT Reservation.

"Pollution" means:

- a) the condition caused by the presence in or on soil, air, or water of any solid waste, hazardous waste, or substance derived there from in such quantity, of such nature and duration, or under such condition that the quality, appearance or usefulness of the soil, air, or water is significantly degraded or adversely altered; or
- b) contamination of the environment to a measurable degree and adverse nature, including but not limited to hazardous substances pollutants or contaminants (as defined in Section 101(14) and (33) of CERCLA, 42 U.S.C. § 9601 *et seq.*); hazardous waste (as defined in the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.* and 40 CFR Part 261), a controlled substance (as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. § 802 *et seq.*); petroleum or petroleum byproducts or other toxic organic waste or

toxic chemicals.

"Post-closure period" means the period of time following closure of a solid waste management unit during which the owner or operator must perform post-closure activities.

"Premises" means a tract or parcel of land with or without habitable buildings.

"Produced Oil" means and includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casing head gas.

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

"Public Facility" shall mean any facility used for tribal or public purposes such as schools, churches, gyms, activity and recreational facilities, offices, etc., generally used from time to time by the tribe or general public.

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

"Recyclable material" means a solid waste material that has been segregated for recycling or converted into a raw material, substitute for a raw material, or a commodity.

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

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

- a) Material, including manure, generated by any concentrated or confined animal feeding that is stored in a feedlot or waste storage structure, provided that the material is stored in a manner that is not likely to pollute the waters of the Tribes, and recycled or applied to soils as nutrients or fertilizers; or
- b) Material, including manure, generated by any agricultural processing operation that is stored in a manner that is not likely to pollute the waters of the Tribes, and recycled or applied to soils as nutrients or fertilizers. Recycled agricultural material does **not** include agricultural waste that is discarded as garbage, refuse, or other solid waste.

"Recycling" means collecting, sorting, or recovering material that would otherwise be solid waste and performing all or part of a method or technique, including processing, to create a recyclable material.

“Refuse” See Solid Waste.

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

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

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

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

“Reservation” Includes all land within the exterior boundaries of the TAT Reservation and any trust land within the Tribe's service area.

“Reserve pit” means an excavated area used to contain drill cuttings accumulated during oil and gas drilling operations and mud-laden oil and gas drilling fluids used to confine oil, gas, or water to its native strata during the drilling of an oil and gas well.

“Responsible Authority” The Tribal Solid Waste Utility Director, MHA Natural Resources Committee or the ED Director, as defined and with authorities and responsibilities delineated in this Act.

“Runoff” means any snowmelt, rainwater, leachate, or other liquid that drains from any part of a facility over another part of the facility or over land adjoining the facility.

“Run-on” means any snowmelt, rainwater, or other liquid that drains from land adjoining a facility onto any part of the facility or that drains from one part of the facility onto another part of the facility.

“Sanitary Landfill” means a tribally approved, permitted, and 40 CFR Part 258 compliant, land disposal facility at which solid waste is disposed.

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

“Sludge” shall mean any solid, semi-solid or liquid waste consisting of a mixture of solids and water, oils, or other liquids generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

“Solid Waste” shall mean any garbage, refuse, rubbish, sludge, ashes, incinerator residue, abandoned automobiles or parts thereof, street sweepings, demolition and construction wastes, discarded commodities, and other material, other than recyclable material that has been segregated for recycling, including solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining, oil and gas development and production and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the CWA.

“Solid Waste Director” shall mean the MHA Director of the Tribal Solid Waste Management Utility, a Tribal utility for the collection, transportation, transfer, recycling, and/or disposal of solid wastes.

“Solid Waste Management Utility (SWMU)” means the designated authority of the Tribes, which is authorized to implement designated provisions of this Act.

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

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

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

“Special Waste” means solid waste that is not a Hazardous Waste as defined herein and is:

- a) solid waste that causes corrosion or decay or otherwise reduces or impairs the integrity of containment structures or storage containers;
- b) solid waste that, if mixed or commingled with other solid waste, produces violent reaction, heat, pressure, fire or explosion, toxic by-products, reaction products, or

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otherwise poses a threat to the health and safety of solid waste workers, handlers and/or transporters, that require a higher level of containment, is a hazardous material, or impairs the integrity of containment features;

- c) solid waste that otherwise requires specific storage, management, transportation or disposal requirements to protect public health or the environment; or
- d) solid waste that is prohibited from disposal at available solid waste disposal facilities.

Such a waste can be designated by the ED Director or the Solid Waste Director as a Special Waste and may require special storage, management, transportation or handling under this Act.

“**Storage**” means the confining, containing, holding or stockpiling of solid waste for a limited period of time prior to collection, treatment, transportation, utilization, processing, recovery or final disposal.

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

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

“**TAT**” means the Three Affiliated Tribes of the Mandan, Hidatsa and Arikara Nation.

“**Transfer Station**” means a temporary holding facility for solid waste for the purpose of interim collection and transfer to a landfill or other facility.

“**Transporter**” means any person, contractor, or facility operator who transports solid waste to solid waste facilities on or off the Reservation.

“**Treatment**” means any method, technique, or process including neutralization designed to change the physical, chemical or biological character or composition of a solid or hazardous waste or leachate so as to neutralize or render such waste or leachate amendable for safe transport, amendable for safe recovery, amendable for safe storage or disposal or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it non-hazardous. The term does not include resource recovery.

“**Tribal Response Program**” means the Tribal EPA program responsible for the investigation and remediation of a release, or threat of release, of a hazardous substance, pollutant or contaminant, including controlled substances, petroleum products and mining materials as provided for in this Act, in coordination with other Tribal programs and as provided for under Section 128(a) of 42 U.S.C. § 9601 *et seq.* (CERCLA).

“**Tribes**” means the TAT to include the Mandan, Hidatsa and Arikara Tribes, including any department or agency thereof, or any business entity owned and operated by the Tribes.

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

“**Waste pile**” means any non-containerized accumulation of non-flowing solid waste.

SECTION 3: DUTIES AND RESPONSIBILITIES

3.01 TAT Natural Resources Committee (NRC). For the purposes of the implementation of this Act the NRC is hereby designated to:

3.01.1 Hear appeals of unresolved TAT ED compliance and enforcement actions;

3.01.2 Hear Appeals of TAT ED permit decisions;

3.01.3 Review, approve and monitor the TAT Integrated Solid Waste Management Plan (ISWMP);

3.01.4 Establish all fees required pursuant to this Act including permit filing and issuance fees.

3.02 TAT Solid Waste Director. The Director of the Tribal Solid Waste Management Utility (TSWMU) is hereby authorized to:

3.02.1 Provide, or cause the provision of, adequate solid waste handling services, including but not limited to collection, transportation, processing, and transfer within the Reservation;

3.02.2 Provide, or cause the provision of, off-Reservation disposal of solid waste under a plan approved by the Tribal Council;

3.02.3 Prepare and implement Tribal policies for solid waste management, reuse and recycling;

3.02.4 Develop, prepare, implement and update, as needed, an Integrated Solid Waste Management Plan (ISWMP) for the Tribes, as described under Section 4 of this Act, to include:

3.02.4.1 seeking grants or other sources of funding to support such efforts, and cause to be undertaken analyses and studies regarding the feasibility of the ISWMP goals and objectives, to include resource recovery and reuse;

3.02.4.2 reporting annually to the NRC on the progress of the implementation of the ISWMP and recommend any revisions needed in the ISWMP.

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- 3.02.5 Conduct studies and investigations regarding new or improved methods of solid waste handling, treatment, and disposal and prepare and implement a solid waste management information storage and retrieval system coordinated with other information systems;
 - 3.02.6 review and recommend for selection and development an appropriate site(s) to the NRC for the management and final disposal of inert construction and demolition wastes;
 - 3.02.7 Conduct community outreach and education on the requirements and goals of this Act; and
 - 3.02.8 Recommend to the NRC such contracts as deemed necessary, for the accomplishment of essential solid waste services and for the planning, design and construction of solid waste projects, provided that the Solid Waste Director monitors all such contracts for the Tribes.
- 3.03 TAT Environmental Division Director.** The Director of the TAT Environmental Division is hereby designated as the responsible agent to ensure compliance with and enforcement of this Act and any permits or orders issued pursuant to this Act. The Director of the TAT Environmental Division will be housed in the Tribal Environmental Division Office. In order to monitor compliance and enforce all provisions of this Act and regulations adopted hereunder that pertain to the minimum standards for solid and hazardous waste handling, treatment, and disposal, for the protection of the public health and safety and of land, air and water; and insure compliance with the conditions of all solid or hazardous waste permits, determinations, orders, plans or other actions taken by the TAT under this Act; the Environmental Division Director (ED Director), or his designated agents, shall have the following duties and authorities:
- 3.03.1 Conducting community outreach and education on the requirements and means of compliance with this Act. Solicit public comment and obtain expert advice when appropriate;
 - 3.03.2 Issue solid and hazardous waste management, collection, transportation and disposal permits as designated under this Act;
 - 3.03.3 Ensure compliance with permits or orders issued under this Act and developing procedures for carrying out a permit compliance and inspection program, including but not limited to requiring operators to file reports with the ED Director in order to monitor solid waste handling, treatment, storage, transfer and disposal within the Reservation;
 - 3.03.4 Conduct investigations and gather information necessary for the enforcement of this Act. Monitoring, inspecting and ensuring entities and persons covered by this Act are in compliance to include the management, handling, treatment, storage, transfer and disposal of solid, special and hazardous waste and the investigation, assessment and remediation of releases or contamination to include the duties under Section 19.

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- 3.03.5 Obtain any information, including records and reports, from any owner or operator necessary to determine whether the owner or operator of a facility or practice regulated pursuant to this Act is in compliance with this Act;
- 3.03.6 Conduct any independent monitoring or testing necessary to ensure that owners or operators of a facility or practice regulated pursuant to this Act are in compliance with this Act;
- 3.03.7 Enter any site or premises subject to the tribal permit programs or at which records relevant to regulated activity or facility are kept. Review and reproduce any records relevant to the regulated activity or facility;
- 3.03.8 Inspect at any time any site or premises at which regulated activities are conducted and make photographic, video, or other records of information obtained during the inspection;
- 3.03.9 Investigate the activities of any solid waste disposal, transfer, storage facility or collection and transportation service in order to determine compliance with this Act or to verify information obtained from the owner or operator;
- 3.03.10 Conduct any and all independent tests or samplings necessary to verify the adequacy of methods (including sampling) used by owners or operators or responsible party to provide information to the Tribes or determine compliance with this Act, including, but not limited to, testing and inspecting any equipment used by the owner or operator or responsible party to test, sample, or obtain information;
- 3.03.11 Interview persons employed in the operation of any regulated facility or service subject to the requirements of this Act;
- 3.03.12 Receive and record information submitted by any persons concerning any regulated activity or facility. If requested, the ED Director shall provide a written response to any person providing such information within 60 days of the request;
- 3.03.13 Ensure the design, construction, operation, monitoring, and monitoring after closure of solid waste facilities are in compliance with this Act;
- 3.03.14 Remove, render inoperative, shut down, close, modify or otherwise control the methods of any operation involved with the collection, transportation, storage, disposal or release of solid or hazardous waste determined to be in non-compliance with this Act;
- 3.03.15 In the event of an accidental release or spill of a hazardous substance, pollutant or contaminant to the air, land or waters or groundwater of the Reservation resulting in a potential threat to the public health, welfare or the environment within the boundaries of the Reservation ensure compliance with the notification and response requirements of this Act and ensure the appropriate entity addresses the immediate and long term

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impacts of the release or spill to include all necessary containment, remediation, assessment of impacts and long term monitoring;

- 3.03.16 Ensure compliance with the remediation requirements of this Act by owners, operators, or other parties responsible for releases of hazardous substances, pollutants or contaminants on or from a property or site resulting in contamination to include Remedial Assessment Agreements, Remediation Agreements, Remediation Orders, No Further Action letters or Certifications of Completion;
 - 3.03.17 Ensuring compliance with Tribal Institutional Controls or land use restrictions imposed pursuant to Section 19 of this Act;
 - 3.03.18 Recommending to the NRC such contracts as deemed necessary, for the accomplishment of essential compliance and enforcement services and/or for the investigation, assessment, or remediation of releases of solid or hazardous waste, hazardous substances, pollutants or contaminants within the Reservation, to include open dumping of solid waste, provided that the ED Director monitors all such contracts for the Tribes;
 - 3.03.19 Seeking grants or other sources of funding to support such efforts, and may cause to be undertaken analyses and studies regarding the best methods for safe solid waste handling, treatment, storage, transfer or disposal within the Reservation; or the investigation, assessment, or remediation of releases of solid or hazardous waste, hazardous substances, pollutants or contaminants within the Reservation, to include open dumping of solid waste. Such a program may include private sector or federal government entities participation in this effort.
- 3.04 Annual Report.** The Solid Waste Director and the ED Director shall prepare and file an annual report with the NRC for submittal to the Tribal Council no later than September 1 of each year, commencing September 1, 2012, describing progress achieved under the requirements of this Act as described herein and containing recommended additional administrative and/or legislative actions necessary to implement the requirements, policies and programs of this Act.
- 3.05 Public Information Program.** The Solid Waste Director and the ED Director may implement a public information program to provide information to other governments, private industry, tribal members and the general public concerning environmental protection, effective reuse of solid waste, and other solid waste management and compliance matters as it deems appropriate and as necessary to implement the requirements of this Act.
- 3.06 Coordination and Cooperation with other Agencies.** The ED Director or the Solid Waste Director may:
- 3.03.1 Coordinate solid waste handling, treatment, transfer or disposal with federal, state, county and tribal agencies and with persons in the solid waste industry;

- 3.03.2 Render or receive technical assistance to or from federal, state, county and tribal agencies and officials thereof and others involved in the planning and operation of solid or hazardous waste programs and facilities;
- 3.03.3 Assist or receive assistance from other tribal, state, and federal agencies in the development, and maintenance of the TAT ED inspection, compliance, enforcement, training, and regulatory programs;
- 3.03.4 Organize, operate, and conduct any solid waste enforcement activity upon the request of the governing body of the federal agency or Tribal Council, upon the appropriation for such purposes by the federal agency or Tribes of a sum adequate to compensate the TAT ED for the full cost of that activity; and
- 3.03.5 Request, as necessary, any Tribal, state or federal agency having jurisdiction to investigate and report on any questions or matters involved in solid or hazardous waste handling, treatment, transfer, disposal or release affecting the Reservation environment or its residents.

SECTION 4: TRIBAL INTEGRATED SOLID WASTE MANAGEMENT

PLAN (ISWMP). The Solid Waste Director shall review, implement, maintain and update as needed any existing ISWMP. The ISWMP shall address solid waste management, reuse, recycling, and/or disposal including, but not limited to, minimum standards as set forth in this Act and the Code of Federal Regulations, Title 40 Part 258 for solid waste handling, treatment and disposal for the protection of land, air and water from pollution. During the process of formulating or revising the Tribal policy for solid waste management, the Solid Waste Director shall consult with and carefully evaluate the recommendations of all concerned tribal members, Reservation residents and businesses.

4.01 Approval of Plan. The Integrated Solid Waste Management Plan (ISWMP), including any updates or revisions, describing the location, design, operation, maintenance and ultimate use of solid waste facilities within the Reservation, shall be submitted by the Solid Waste Director, with the concurrence of the ED Director to the Tribal Council through the NRC for approval.

4.02 Contents of Plan. The ISWMP shall include, at a minimum:

- 4.02.1 a description of the Reservation solid waste transfer, disposal and service area(s);
- 4.02.2 a description of the current Tribal solid waste management program structure and practices and any recommendations for changes and/or additions;
- 4.02.3 a summary of the current funding for collection, management and recycling of solid waste and the sustainability of such Tribal programs;
- 4.02.4 a summary of programs and actions to ensure compliance and enforcement of this Act;

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- 4.02.5 the long term goals of the Tribes' solid waste and recycling programs;
- 4.02.6 a proposed implementation schedule of recommended management actions or system improvements;
- 4.02.7 an estimate of the volume and composition of solid waste generated on and/or imported to the Reservation and explain the basis of the estimate;
- 4.02.8 identification of the responsibilities of other Tribal agencies and entities in the implementation of the ISWMP, the distribution of funds to the authorities responsible for development and implementation of the ISWMP, and the means for coordinating all planning and implementation under the ISWMP;
- 4.02.9 an estimate and description of the existing disposal of any solid waste in open dumps within the Reservation;
- 4.02.10 a report on the plans for closing of all existing open dumps within the Reservation pursuant to this Act and Federal law;
- 4.02.11 a report on extent of open burning within the Reservation;
- 4.02.12 a report on any incineration conducted within the Reservation;
- 4.02.13 recommendations for:
 - (a) options for the removal of solid waste to authorized or permitted solid waste facilities;
 - (b) the construction and operation of new or improved solid waste facilities;
 - (c) securing long-term markets for material and energy recovered from solid waste facilities; and
 - (d) conserving material or energy by reducing the volume of solid waste;
 - (e) for any combination of improved or new practices as may be necessary to handle, treat, recycle, reuse or dispose of solid waste in a manner that is environmentally sound and in compliance with this Act and applicable federal regulations;
 - (f) establishing goals of recycling the solid waste accepted by any recycling facility within the Reservation to the maximum extent possible; and
 - (g) areas for the establishment or expansion of solid waste facilities, to include waste recycling, processing or recovery facilities, and actions necessary to reserve or utilize such areas.

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- 4.03 Periodic Review of Plan.** The Solid Waste Director shall review and evaluate the ISWMP at least every three (3) years to obtain maximum consistency with Tribal and federal policy. After such review and evaluation, the Solid Waste Director shall propose appropriate amendments to the ISWMP for the consideration of the NRC and the Tribal Council.
- 4.04 Future Solid Waste Facility Sites.** In identifying and reserving areas for the establishment or expansion of future solid waste facilities, to include waste recycling, processing or recovery areas, the Solid Waste Director shall ensure that the land uses adjacent to or near such areas are compatible with solid waste facilities and shall consider the following:
- 4.04.1 The varying geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to prevent leachate contamination of ground and surface waters, the protection of surface waters from surface runoff contamination, and the protection of ambient air quality;
 - 4.04.2 Characteristics and conditions of handling, treatment, and disposal methods, techniques, and practices, and locations of solid waste facilities where such methods, techniques, and practices are conducted, taking into account the nature of the material to be handled;
 - 4.04.3 Site Specific Flexibility Requests that are compatible with 40 CFR Part 258 and Tribal requirements;
 - 4.04.4 Population density, distribution, and projected growth;
 - 4.04.5 Geographic, geologic, climatic, and hydrologic characteristics;
 - 4.04.6 The types and locations of transportation facilities;
 - 4.04.7 The profiles of local industries and waste types;
 - 4.04.8 The constituents and general rates of solid waste;
 - 4.04.9 The political, economic, organizational, financial, and management problems affecting comprehensive solid waste management on the Reservation;
 - 4.04.10 Types of resource recovery facilities and resource conservation systems that are appropriate; and
 - 4.04.11 Available new and additional markets for recovered material and energy resources recovered from solid waste as well as methods for conserving such material and energy.

SECTION 5: RESOURCE RECOVERY AND REUSE. Tribal policy is to encourage resource recovery and reuse. The Solid Waste Director will work with the NRC, the ED Director and other tribal programs and entities to create an effective resource recovery

system to conserve our resources and protect the quality of life at TAT Reservation. The Resource Recovery System shall be tailored to the needs of the TAT Community.

5.01 The Resource Recovery and Reuse System will specifically address:

- 5.01.1 Effective methods to reuse, recycle, and reduce solid waste;
- 5.01.2 The extent to which revenue can be generated through recovery or reuse of recycled materials;
- 5.01.3 The removal of disabled vehicles from the Reservation;
- 5.01.4 The impact of improved solid waste practices on water and air quality;
- 5.01.5 The creation of sustainable employment opportunities for Tribal members;
- 5.01.6 The roles of existing and/or new organizations in implementing a Resource Recovery System.

5.02 Grants or Other Funding. The Solid Waste Director or the ED Director may seek grants or other sources of funding to support such efforts, and may cause to be undertaken analyses and studies regarding the feasibility of resource recovery and reuse. Such a program may be implemented to the extent that such recovery and reuse is technologically and economically feasible and may include private sector or federal government entities participation in this effort.

SECTION 6: PROHIBITED PRACTICES AND ACTIVITIES. The following practices and activities are prohibited within the exterior boundaries of the Reservation and are subject to potential compliance and enforcement action, including fines or other penalties, pursuant to Section 18 of this code:

- 6.01 Open Burning.** There shall be no open burning of solid waste, or structures that contain hazardous substances, on the Reservation without a permit from the TAT ED pursuant to Section 13 of this Act. The ED Director will coordinate the approval of burning permits with the Police Department and Fire Department and other federal agencies.
- 6.02 Hazardous Waste Disposal.** No hazardous waste shall be disposed of within the exterior boundaries of the MHA Fort Berthold Reservation.
- 6.03 Disposal of Liquids.** Bulk or non-containerized liquid wastes may not be placed in solid waste collection containers or boxes or in solid waste landfill units on the Reservation. Containers of one (1) gallon or less holding household liquid wastes shall be deposited within approved collection containers, boxes or transfer stations.
- 6.04 Waste Scavenging.** Unauthorized scavenging of solid waste from collection sites, containers, storage sites, transfer sites or disposal sites is prohibited on the Reservation due to the liability of the Tribes for injury or health hazards while engaging in the act.
- 6.05 Construction and Demolition Wastes.** Construction and demolition wastes shall not be disposed of in residential collection containers or boxes, on the construction or demolition site or any other site on the Reservation not specifically authorized by the ED

or Solid Waste Director.

- 6.06 Animal Carcasses.** Dead animals, including livestock and pets, may not be disposed of on public or Tribal lands or placed in solid waste collection containers without the written permission of the ED Director.
- 6.07 Disposal in Open Dumps.** In order to protect the limited land, air, and water resources of the Reservation from permanent damage due to hazardous pollution and to protect the health, safety, and welfare of all residents of the Reservation and surrounding communities, disposal of solid waste in any open or uncontrolled dump is expressly prohibited within the jurisdiction of the TAT or within the exterior boundaries of the Reservation. All solid waste must be managed and disposed of in compliance with this Act.
- 6.08 Illegal Dumping and Littering.** Persons found to be responsible for illegal dumping or littering on the Reservation, on or near any public grounds, or in or around any public waters of the Reservation shall be subject to enforcement under this Act. This shall include the transportation of solid waste, refuse or rubbish in or on any vehicle on tribal, BIA or public roads without proper cover or containment. Such transportation shall comply with Section 14 of this Act.
- 6.09 Maintaining a Public Nuisance.** No person(s) shall act in such a manner as to permit his property or residence or leased property to become dangerous or hazardous, or impair the safety, health or comfort of the public by the improper storage or discarding of solid waste, refuse or rubbish.
- 6.10 Polluting Streams or Waters.** It shall be unlawful for any person(s) to throw or discharge into any creek, river, ditch, other water conveyance system, lake or pond any deleterious substance or solid waste such as refuse which is subject to decay.
- 6.11 Wrecked, Junked or Unserviceable Vehicles.** It shall be unlawful for any person(s) to store within the villages or tribal housing areas any wrecked, junked, unregistered or unserviceable vehicles for more than 48 hours. It shall be unlawful to store outside of the designated villages and communities, wrecked, junked, unregistered or unserviceable vehicles except as provided for under Section 8.02.6 of this Act. This prohibition does not include off road construction or agricultural equipment.
- 6.12 Used or Scrap Tires.** No tires may be disposed of at any location other than at a facility or site approved or permitted under this Act. Tires may not be delivered to a facility or location within the exterior boundaries of the Reservation that is not in compliance with this Act or abandoned upon any street, alley, highway, public place or private premises. Anyone hauling scrap tires to unapproved disposal sites (ravines, coulees, dumps, gravel pits, tree rows, etc.) is in violation of this Act and subject to enforcement action. If scrap tires are taken to a location which comes under enforcement action, the transporter and/or the original generator(s) may be liable for cleanup costs;

- 6.13 Used Motor Oil.** Used motor or lubrication oil is designated as a special waste and may not be dumped, spilled, leaked, or otherwise improperly disposed of within the exterior boundaries of the Reservation.
- 6.14 Major Appliances and Other White Goods.** It shall be unlawful to store or dispose of any other unserviceable appliances or implements such as stoves, dish washers, refrigerators, washing machines, clothes dryers, water heaters or any other such items out-of-doors on residential premises or property unless such area is designated as an approved storage area by the ED Director or Solid Waste Director. The owner or resident of a residential property is responsible for proper storage or disposal of such item(s) as required under this Act.
- 6.15 Lead Acid Batteries.** No person shall place a used lead acid battery in mixed municipal solid waste, discard or otherwise dispose of a lead acid battery except by delivery to an automotive battery retailer or wholesaler, to a collection or recycling facility authorized under this Act or the State.
- 6.16 Misleading Representations.** It shall be a violation of this Act for any person to knowingly omit material information or make any false statement or representation in any label, record, report, or other document filed maintained or used for purposes or application or compliance with this Act or permits issued there under.

SECTION 7: HAZARDOUS WASTES

- 7.01 Hazardous Waste Disposal.** No hazardous waste disposal shall be conducted within the exterior boundaries of the Ft. Berthold Reservation.
- 7.02 Hazardous Waste Management and Treatment Standards.** This Act incorporates, by reference, all of the Criteria contained in 40 CFR Parts 262-279, as applicable. If any part of 40 CFR Parts 262-279 is modified, any modifications are automatically incorporated by reference and become part of this Act, and supersede any of the provisions that were modified. If any of the Parts 262-279 criteria are not actually restated in this Act, they are nevertheless incorporated by reference and are applicable. The TAT reserves the right to be more stringent than the federal regulations cited above.
- 7.03 Hazardous Waste Management and Treatment Requirements.** All hazardous waste, as defined in this Act, and not excluded from regulation as a hazardous waste under 40 CFR §261.4(b) and that exhibits any of the characteristics of hazardous waste identified in 40 CFR Part 261 Subpart C to include: ignitability; corrosivity; reactivity; or toxicity; or is listed in 40 CFR Part 261 Subpart D; and has not been excluded from the lists in Subpart D under 40 CFR §§260.20 and 260.22 shall be generated, managed, stored, treated or transported in compliance with this Act and the following requirements:
- 7.03.1 Generators.** A generator who treats, stores, or disposes of hazardous waste on-site must comply with 40 CFR Part 262 with respect to that waste to include:
- i) §262.11 for determining whether or not he has a hazardous waste;
 - ii) §261.5 for conditionally exempt small quantity generators;

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- iii) §262.12 for obtaining an EPA identification number;
- iv) §262.34 for accumulation and temporary storage of hazardous waste;
- v) §262.40 (c) and (d) for recordkeeping;
- vi) §262.43 for additional reporting; and
- vii) §262.70 for farmers.

7.03.2 **Transportation.** Persons transporting regulated quantities of hazardous waste within the Reservation must comply with the standards and requirements of 40 CFR Part 263 if the transportation requires a manifest under 40 CFR Part 262.

7.03.3 **Treatment and Storage.** The standards of 40 CFR Part 264 apply to owners and operators of all facilities which treat or store hazardous waste, except as specifically provided otherwise in this Act or 40 CFR Part 261.

7.04 Reuse and Recycling of Hazardous Waste. The following specific hazardous wastes that are recycled or reused shall comply with 40 CFR Part 266 and this Act:

- 7.04.1 Recyclable Materials Used in a Manner Constituting Disposal;
- 7.04.2 Recyclable Materials Utilized for Precious Metal Recovery;
- 7.04.3 Spent Lead-Acid Batteries Being Reclaimed; and
- 7.04.4 Hazardous Waste Burned in Boilers and Industrial Furnaces;

7.05 Universal wastes. Batteries, pesticides, mercury containing equipment or lamps as described in 40 CFR Part 273, must be managed in compliance with 40 CFR Part 273 and this Act.

SECTION 8: SPECIAL AND INDUSTRIAL WASTES

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

8.02 Management of Special and Industrial Wastes. The following special wastes, that are not hazardous waste as defined above, shall be managed as specified below and may be not stored, transferred, disposed of or discharged within the boundaries of the Reservation except at a designated and authorized land disposal or transfer, treatment, storage or recycling facility specifically approved or permitted by the TAT ED. Special Waste collection, transportation, management, storage or disposal fees may be assessed by the Tribes for such wastes services provided by the Tribes or franchisee(s) within the Reservation. The management, storage or disposal of such wastes may require a Permit-by-Rule pursuant to Section 13 of this Act. Special and industrial waste and requirements include:

8.02.1 **Septic Tank Pumpings and Sewage Sludge.** Such waste and other sanitary wastes are designated as a special solid waste and are subject to the Permit-by-Rule requirements of

Section 13.

- 8.02.2 **Used or waste oil.** Used motor or lubrication oil is designated as a special waste and must be collected or transported for disposal to any solid waste collection, transfer or storage unit or facility that is in full compliance with 40 CFR Part 279 and this Act and has provision for intermediate storage and recycling of these materials and all such materials are appropriately segregated for recycling.
- 8.02.3 **Major appliances.** Appliances(also known as “white goods”) such as stoves, dish washers, refrigerators, washing machines, clothes dryers, water heaters, are designated as Special Wastes and may not be collected or transported for disposal to any solid waste disposal, transfer or storage unit or facility within the exterior boundaries of the Reservation unless such unit or facility is in full compliance with this Act and has provision for intermediate storage and recycling of these materials and all such materials are appropriately segregated for recycling. Refrigeration or air conditioning units must have the refrigerant (i.e. Freon) removed by a certified technician in conformance with applicable U.S. EPA and state regulations prior to off Reservation disposal or recycling.
- 8.02.4 **Lead-acid batteries.** Such batteries must be recycled in accordance with Section 7 of this act or disposed of by delivery to an automotive battery retailer or wholesaler, or to a collection or recycling facility authorized under this Act or the State. No automotive battery retailer shall dispose of a used lead acid battery except by delivery to the agent of a battery wholesaler, to a battery manufacturer, to a collection or recycling facility authorized under this Act or the laws of the state or to a secondary lead smelter permitted by the U. S. Environmental Protection Agency. Each battery improperly disposed of shall constitute a separate violation.
- 8.02.4.1 A person selling lead acid batteries at wholesale, retail or offering lead acid batteries for retail sale within the exterior boundaries of the Reservation shall:
- 8.02.4.1.1 Accept, at the point of transfer, in a quantity at least equal to the number of new batteries purchased per year, used lead acid batteries from customers, if offered by customers; and
- 8.02.4.1.2 Post written notice which shall be at least eight and one-half (8 1/2) inches by eleven (11) inches in size and shall contain the universal recycling symbol and the following language:
- “It is illegal to discard a motor vehicle battery or other lead acid battery”;
“Recycle your used batteries”;
and
“Tribal Laws require us to accept used motor vehicle batteries or other lead acid batteries for recycling in exchange for new batteries purchased.”
- 8.02.4.2 Failure to post the required notice shall be a violation of this Act.
- 8.02.4.3 Any person accepting batteries in transfer from an automotive battery retailer shall be allowed a period not to exceed one hundred twenty (120) days to remove batteries from the retail point of collection.
- 8.02.5 **Infectious institutional wastes, medical wastes, laboratory wastes and surgical**

operating room pathological specimens and disposal fomites. Such wastes are designated as a special waste. Such wastes must be bagged in Bio/Medical Waste bags or containers obtained from the Indian Health Service or the Tribes that are clearly marked with the appropriate symbols and warnings. Regulated infectious waste may not be subject to mechanical stress or compaction during loading, unloading, and transit. Transportation of such waste within the exterior boundaries of the Reservation must be conducted by a state permitted transporter for such wastes. Similar emergency room and mortuary wastes may not be disposed of within the exterior boundaries of the Reservation unless such wastes are first incinerated in an incinerator approved and permitted by the TAT ED and applicable federal authority, and disposed of at a solid waste disposal site approved by the TAT ED or the State.

8.02.6 Wrecked, Junked or Unserviceable Vehicles. It shall be unlawful for any person(s) to store within the villages or tribal housing areas any wrecked, junked, unregistered or unserviceable vehicles (i.e. cars, trucks, campers and recreational vehicles) for more than 48 hours. Vehicles that are not currently licensed and are abandoned for more than 48 hours on Tribal lands and/or public facilities such as roads, streets, alleys, highways, or public parking areas shall be considered a Special Waste and shall be impounded and towed away at the direction of the ED Director or the Tribal law enforcement department to an impoundment area. Any person claiming such vehicle shall give proof of ownership and pay any towing and storage charges. Vehicles not claimed within 30 days of impoundment shall be declared abandoned, advertised, and sold at auction by the law enforcement department to pay for towing and storage charges. All remaining income from the sale of the vehicle shall be remitted to the Tribes. Vehicles that are accumulated on a property outside of the designated villages or housing areas in a quantity of more than 4 on a single property shall be considered to be a commercial salvage operation and are required to obtain a Permit-by-Rule pursuant to Section 13 of this Act and all applicable fees and licenses. This does not include off road construction or agricultural equipment.

8.02.7 Pesticide and Herbicide Wastes: Surplus agricultural pesticides or herbicides and/or pesticide or herbicide containers intended for disposal are designated as a Special Waste if not regulated as a hazardous waste pursuant to Section 7 of this Act. Every person, commercial or industrial facility who handles surplus agricultural pesticides or herbicides and/or pesticide or herbicide containers shall:

8.02.7.1 Comply with this Act and 40 CFR Part 262. Surplus pesticides or herbicides may not be discarded within the exterior boundaries of the Reservation in any manner which endangers humans, animals, and/or the environment. Pesticide and herbicide containers must be drained or emptied according to label directions and power or triple-rinsed before processing or disposal; or

8.02.7.2 A farmer or rancher within the Reservation boundaries disposing of waste pesticides from his own use which are hazardous wastes shall triple rinse each emptied pesticide container in accordance with 40 CFR 261.7(b) (3) and may dispose of the pesticide residues on his own farm or ranch in a manner consistent with the disposal instructions on the pesticide label in a manner that does not endanger human health or the environment. The ED Director may impose additional requirements or prohibit such disposal in order to protect human health and the natural resources and

environment of the Reservation.

8.02.8 Used and Scrap Tires. Used or scrap tires are designated as a Special Waste. No such tires may be disposed of at any location other than at a facility or site approved or permitted under this Act. Tires may not be delivered to a facility or location within the exterior boundaries of the Reservation that is not in compliance with this Act or abandoned upon any street, alley, highway, public place or private premises. Anyone hauling scrap tires to unapproved disposal sites (ravines, coulees, dumps, gravel pits, tree rows, etc.) is in violation of this Act and subject to enforcement action. If scrap tires are taken to a location which comes under enforcement action, the transporter and/or the original generator(s) may also be liable for cleanup costs.

8.02.8.1 Individual persons may store up to a maximum of 20 tires for personal use on their own property or residence.

8.02.8.2 Used and scrap tires must be disposed of by being transported to an end-user who will process, recycle and/or dispose the materials in a manner that complies with the laws of the Tribes or the State or the governmental jurisdiction having authority over waste management activities. Commercial businesses, public/tribal agencies and tire dealers may store the equivalent of a semi-truck load of whole or shredded scrap tires for transport to a recycling or disposal facility subject to the following conditions:

8.02.8.2.1 Storage must not create a public nuisance;

8.02.8.2.1 Access to the storage area must be controlled;

8.02.8.2.3 The storage area must be accessible to fire control equipment; and

8.02.8.2.4 Funds must be set aside for disposing or recycling the stored scrap tires (proof of availability of such funds must be available upon request by the ED Director).

8.02.8.3 Storage of larger quantities of tires requires a Permit-by-Rule from the TAT ED pursuant to Section 13 of this Act.

8.02.8.4 Individuals or businesses accepting scrap tires are subject to enforcement action if the activity:

8.02.8.4.1 creates a nuisance;

8.02.8.4.2 endangers public health or safety, including harboring disease vectors or insects;
or

8.02.8.4.3 presents a threat to environmental resources.

8.02.9 Dead Animals. Dead animals, to include livestock are designated as a Special Waste. Such waste must be removed in a timely manner and be managed by renderers, disposed of at a permitted solid waste landfill or at an alternative location designated by the ED Director. Small pets shall be buried or taken to a tribally approved transfer or disposal site. During an emergency, potentially large numbers of livestock may need to be managed as rapidly and as efficiently as possible. The TAT ED may issue an emergency permit for one-time disposal events based on various practical factors during emergency conditions. The Tribal ED Director, Solid Waste Director and other local, state and

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federal agencies will work together with livestock owners to accomplish the efficient and environmentally sound disposal of animal carcasses and related materials so as to minimize impacts to human and animal health and to water sources. Disposal under emergency permits must be restricted to dead animals and associated, generally inert waste, unless otherwise authorized.

- 8.02.10 **Asbestos and Asbestos Containing Materials.** Such wastes are designated as a Special Waste. The removal, transportation and disposal of Asbestos and Asbestos Containing Materials must be conducted in compliance with the applicable requirements of this Act, the Clean Air Act (42 U.S. C. §§ 7401-7671) and follow U.S. EPA guidelines. Asbestos and Asbestos Containing Materials must be disposed of outside of the Reservation at a State approved landfill facility. Asbestos disposal must be coordinated with the landfill owner/operator. Friable asbestos-containing material must be disposed into landfills that have agreed to accept the material and have appropriate facilities, procedures, equipment and training for managing such waste. Prior to shipping, friable asbestos-containing material must be wetted. Friable asbestos-containing material must be placed in leak-tight containers and be properly labeled. Containers should be carefully handled. Handling of regulated asbestos-containing material must be performed by certified asbestos personnel.
- 8.02.11 **Abandoned Mobile Home or Trailer.** Mobile homes or trailers that are an unsafe structure, unfit for habitation, junked, partially dis-assembled, wrecked or non-operative and which are abandoned or not inhabited for more than 180 days may be declared a Special Solid Waste by the Solid Waste Director or the ED Director and must be managed accordingly and in full compliance with this Act. The property owner will be provided a Warning Letter by the ED Director to properly repair, remove and/or dispose of the mobile home or trailer in accordance with this Act and any other applicable Tribal, state or federal regulations within 30 days. Failure to comply with this Warning Letter may result in further enforcement action and penalties pursuant to this Act. The right to a hearing may be provided to the property owner to allow for repair of the mobile home or trailer to make it safe and fit for habitation or to provide additional time to dispose of the mobile home or trailer and comply with the Warning Letter or Notice of Violation.
- 8.02.12 **Construction and Demolition Wastes.** All construction or demolition wastes and debris must be properly disposed in accordance with this Act. Prime contractors are required to obtain a TAT ED permit, per Section 13 of this Act, prior to beginning any construction or demolition work on the Reservation. Demolition of a structure over 100 square feet is subject to the Permit-by-Rule requirements of Section 13 of this Act.
- 8.02.13 **Agricultural wastes.** Agricultural waste and products shall be stored as to minimize nuisance, flies, rodents and odor, and shall not result in the contamination of ground or surface water sources. Such wastes that create a public nuisance or threaten the

quality of ground or surface waters may be designated as a Special Solid Waste by the ED Director and may require a Waste Storage or Management permit.

- 8.02.14 **Oil and Gas Exploration and Production Wastes.** Waste from crude oil and natural gas exploration or production, to include petroleum or crude-oil contaminated soils, contaminated drilling cuttings, produced water or other fluids from an oil or gas exploration or production well are designated as Special or Industrial Waste. Oil and gas exploration or production wastes, to include petroleum or crude-oil contaminated soils or produced water or fluids, accumulated, stored or treated at or near the point of generation in pits or tanks must obtain and comply with a Permit-by-Rule pursuant to Section 13 of this Act.
- 8.02.15 **Petroleum-Contaminated Soils.** Such wastes are designated as Special Wastes. Any solid waste management facility which accepts petroleum-contaminated soils, to include soils from oil and gas exploration or production facilities for storage prior to treatment or disposal are subject to the Permit-by-Rule requirements of Section 13 of this Act. Upon request the ED Director may waive application of the provisions of this section where the ED Director finds that the petroleum contaminated soils are of a limited volume, the management event is likely to be a nonrecurring event, and the operator demonstrates that the management can occur in a manner that is protective of the public health and safety.
- 8.02.16 **Hydrogen Sulfide releases from oil and gas drilling or production:** Upon request of the Tribes, the surface owner or adjacent landowner or lessee, the TAT ED shall inspect and monitor the well site on the surface owner's land for the presence of hydrogen sulfide. If the presence of hydrogen sulfide is indicated, such waste shall be designed as Industrial Waste and the ED Director shall take appropriate action under this Act to protect the health, safety, welfare and property of the surface owner, lessee or other impacted nearby residents and the environment.

SECTION 9: RESPONSIBILITIES OF PROPERTY OWNERS AND RESIDENTS.

9.01 Responsibilities. The owner, agent, lessee or occupant of every dwelling, residence, premises or business establishment on the TAT Reservation shall be responsible for proper storage and stockpiling of all refuse accumulated for proper collection and disposal and the sanitary condition of said dwelling, residence, premises, or business establishment and for compliance with the following:

- 9.01.1 No person shall place, deposit, or allow to be placed, or deposited on his/her premises or on any public street, road or alley, streams, springs, or bodies of surface or ground water, any refuse or other objectionable waste, except in a manner described in this Act.
- 9.01.2 All hazardous waste or dangerous materials and substances shall be rendered harmless prior to collection and disposal as solid waste or refuse; or properly store hazardous

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wastes and locate an approved certified hazardous waste collection service which accepts such waste and arrange for its disposal.

9.01.3 Pets and domestic animals shall be controlled by their owners to provide for the safety of the waste collector and prevent interference with collection services or littering of solid wastes.

9.01.4 Animal carcasses or parts of animal carcasses shall be disposed of pursuant to Section 8.03.

9.01.5 Access to storage and collection containers should be kept clear to prevent interference with other residents or collection services.

SECTION 10: SOLID WASTE STORAGE

10.01 Containers. The owner, agent or occupant of every dwelling, business establishment or other premises where refuse accumulates, shall provide a sufficient number of suitable and approved containers for receiving and storing of refuse and shall keep all refuse therein. The owner, agent or occupant of every dwelling, business establishment or other premises where refuse accumulates, shall be responsible for the safe and sanitary storage of all solid waste accumulated at that premise until it is removed and:

10.01.1 Approved containers shall be maintained in a manner consistent with this Act and acceptable to the Solid Waste Director. Containers that are broken or otherwise fail to meet the requirements of this Act, shall be replaced;

10.01.2 Drop-box containers shall be periodically disinfected, and shall be steam cleaned and painted as deemed necessary by the Solid Waste Director.

10.01.3 Approved individual containers shall be stored off the ground on racks or stands and easily accessible for collection by the tribal solid waste utility or authorized representatives.

10.02 Storage of Solid Waste. Solid Waste shall be stored in an approved container or in a manner that will confine the waste in one area, and not create a public nuisance or attract vectors. Bulky rubbish such as tree trimming, newspaper, weeds and large cardboard boxes shall be handled as directed by the Solid Waste Director. Where garbage separation is not required, containers for the storage of mixed rubbish and garbage shall meet the requirements specified by the Solid Waste Director.

Section 11: WASTE COLLECTION, TRANSFER and TRANSPORTATION

11.01 Solid Waste Collection Fees, Services and Practices

- 11.01.1 **Collection Schedule.** The Solid Waste Director shall establish a schedule and arrange for the collection of solid waste on a timely basis but no less than once every seven (7) days utilizing a Tribal refuse collection service or its franchisee(s) barring adverse weather conditions or other conditions beyond the control of the collection service
- 11.01.2 **Collection Service.** All Reservation residents shall be required to subscribe to the Tribal refuse collection service or its franchisee(s). Reservation residents may take their own trash to an on-Reservation disposal or transfer site for a fee, if required.
- 11.01.3 **Collection Service Fees.** All residents of the Reservation served by the collection system will be assessed a monthly solid waste collection fee. All solid waste fees will be set by the NRC with the concurrence of the Tribal Council, based upon the cost of services provided by the TAT Solid Waste Management Utility or on a competitive bid process for franchise(s). Special fees for transfer, recycling, collection of special or bulky wastes or other special services shall be set and collected as prescribed by the NRC.
- 11.01.4 **Non-payment of Fees.** Non-payment of collection or transfer fees, after ninety days, shall, be a violation of this Act and may result in action being taken by the Solid Waste Director. Action may include the discontinuation of other utilities provided by the Tribe or other civil penalties.
- 11.01.5 **Collection Standards.** Solid Waste shall be deposited, stored and collected in a manner that prevents spillage and littering. Should spillage and/or littering occur, the waste shall be cleaned up by the responsible person within 24 hours and returned to the vehicle or appropriate facility or container. Property owners, lessees, residents and home owners are the responsible party for releases, littering or spillage of solid waste from their residence or property until such wastes are collected by the authorized collection service.
- 11.01.6 **Waste Rejection.** The Solid Waste Director or the Collection Service Franchisee(s) reserves the right to refuse any and all materials at the collection sites, transfer stations, or any other solid waste facility based upon the characteristics of the waste or the generator's failure to properly screen the waste for hazardous or special waste as defined under this Act.
- 11.01.7 **Material Separation.** The Solid Waste Director, the ED Director or the Collection Service Franchisee(s) reserves the right to require screening and separation of any waste materials deemed necessary to identify and separate hazardous or special waste prior to collection or acceptance at a solid waste management or transfer facility.

11.02 Waste Transportation.

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

11.02.2 **Commercial Waste Haulers.** Tribally permitted commercial vehicles used for the collection and transportation of solid waste, including refuse or garbage, shall have covered, watertight, metal bodies of easily cleanable construction, and shall be cleaned frequently to prevent a nuisance, and shall be maintained in good repair.

11.02.3 **Additional Permit Conditions for Solid Waste Collection and/or Transportation Permits.** As a condition for the issuance of a solid waste collection and/or transportation permit, the ED Director shall:

11.02.3.1 Require every vehicle operated by the transporter to be conspicuously marked or placarded to identify the solid waste transported and its principal hazard. Such markings or placards may be in addition to the federal DOT requirements. Any such vehicle shall be marked in a like manner with the full name or legally registered trade names or names of the transporter and the number of the Tribal solid waste collection and/or transportation permit(s) issued pursuant to this Act;

11.02.3.2 Require the collector or transporter to make an annual (or as otherwise conditioned in the permit) report to the ED Director, indicating the number and type of containers collected, the volume (and weight if available) and nature of solid waste collected and/or transported of, the place and manner in which such solid waste was finally disposed, the number and nature of any releases or spillage and responses taken, and such other information as the permit may require; and

11.02.3.3 Require every vehicle operated by the transporter for waste hauling be parked or stored in designated locations when not in use and that no vehicles containing wastes shall be stored within 1000 feet of a residential area or community.

SECTION 12: SOLID WASTE DISPOSAL. All solid waste disposal sites shall be sited and disposal conducted in compliance with 40 CFR Part 258, Criteria for Municipal Solid Waste Landfills, the requirements of this Act and any permit issued pursuant to this Act. If any of the Part 258 criteria are not actually restated in this Act, they are nevertheless incorporated by reference and are applicable. The TAT reserves the right to be more stringent than the federal regulations cited in this Act.

12.01 Landfill Criteria. The criteria for all municipal solid waste landfills (MSWLF) constructed or operated on the MHA Reservation includes 40 CFR Part 258 and the following Subparts:

- 12.01.1 **Subpart A—General Purpose, scope, and applicability.**
- 12.01.2 **Subpart B—Location Restrictions.**
- 12.01.3 **Subpart C—Operating Criteria**
- 12.01.4 **Subpart D—Design Criteria**
- 12.01.5 **Subpart E—Ground-Water Monitoring and Corrective Action**
- 12.01.6 **Subpart F—Closure and Post-closure Care**

Subpart G—Financial Assurance Criteria

12.02 Financial Assurance for Solid Management Waste Facilities. As a condition for the issuance, modification, revision, or review of a TAT solid waste management facility permit, the owner/operator shall provide assurance of adequate financial ability to:

- 12.02.1 Respond to personal injury claims, public or private property damage claims, environmental and natural resource damage claims and response to a release from the facility or equipment that may result from the construction, operation and/or closure of the facility;
- 12.02.2 Provide for the cost of closure and post-closure maintenance in an amount equal to the estimated cost of closure and thirty years of post-closure maintenance;
- 12.02.3 The evidence of financial assurance shall be in the form of a trust fund into which funds shall be deposited on an annual basis in amounts sufficient to meet closure and post-closure maintenance costs when needed, or an equivalent financial instrument or insurance or combination of such instruments acceptable to the ED Director and the NRC.
- 12.02.4 The amounts that the owner/operator will deposit annually in the trust fund or other acceptable financial instrument shall ensure adequate resources for closure and post-closure maintenance.
- 12.02.5 The trust fund, or other accepted financial instrument or insurance, shall state that:
- 12.02.6 The Tribes may draw upon the trust fund, in its discretion, to monitor and maintain the facility before or after closure or to take any necessary remedial or cleanup actions; and
- 12.02.7 The trust fund, insurance, or other approved financial instrument may not be closed or terminated without the written approval of the Tribes.

12.03 Closure and Post-Closure for Solid Waste Facilities. The closure or post-closure of a solid waste facility shall meet the requirements and procedures of 40 CFR Part 258, this Act and the following:

- 12.03.1 The owner/operator shall develop and submit closure, and if required, post closure plans for a waste management facility. The ED Director shall review closure plans and post-closure maintenance plans to determine their compliance with this Act, the permit and the requirements of 40 CFR Part 258;
- 12.03.2 The owner/operator shall certify to the ED Director that he has prepared an initial estimate of closure and, if appropriate, post closure maintenance costs for a period of not less than thirty (30) years after closure. The facility owner/operators shall annually calculate and revise as needed the cost estimates for closure and post-closure maintenance;
- 12.03.3 The owner/operator may distinguish between preliminary and final plans and provide that preliminary plans may require less specific and engineering detail than final plans. Preliminary plans shall provide sufficient detail to enable the owner/operator and the ED Director to estimate accurately the costs for closure and post-closure maintenance; and
- 12.03.4 All documentation relating to the preparation of the closure and post-closure maintenance plan shall be retained by the owner/operator and shall be available for inspection and copying by the ED Director at all reasonable times upon request.

12.04 Post Closure Financial Assurance. After closure and during post-closure maintenance, the operator shall maintain evidence of financial ability for post-closure maintenance at all times equal to the estimated costs of thirty (30) years of post-closure maintenance, except at fifteen (15) years before the end of the post-closure maintenance period specified in the post-closure maintenance plan, the owner/operator may request approval of ED Director to provide evidence of financial ability in a lesser amount. Throughout the closure and post-closure period, the progress shall be monitored and certified by registered Civil Engineer (P.E.) to ensure the closure and post-closure plans are followed.

SECTION 13: WASTE PERMITS REQUIRED

13.01 General Permits. Permits from the TAT ED are required for the following activities or facilities, other than those conducted by the TAT Solid Waste Utility, and application for such permits shall be made pursuant to Section 14 of this Act:

- (a) Hazardous Waste Treatment or Storage;
 - (b) Solid Waste Treatment, Disposal, Collection or Transfer Facility, to include Special or Industrial wastes as designated under Section 8; or
 - (c) Commercial collection and/or transportation of solid or hazardous waste originating or terminating at a location within the jurisdiction of the TAT, to include Special or Industrial wastes as designated under Section 8.
- 13.01.1 No permit for the transportation of solid waste is required by private persons who:

- 13.01.1.1 transport solely their own non-commercial or non-industrial waste to a solid waste management unit or facility;
- 13.01.1.2 transport waste entirely within a facility; or
- 13.01.1.3 transport a recyclable material to a recycle facility.

13.02 Prime Contractor Construction/Demolition Waste Management Permits. Prime contractors are required to obtain a Tribal EPA Waste Management Permit prior to beginning any construction or demolition work on the Reservation. The permit fee shall be payable to the TAT ED and shall be for the sum of one percent (1%) of the total contract cost. Failure to obtain such a permit will result in delay of the start up of the construction or demolition project until such permit is obtained. If a construction project begins without a TAT ED waste management permit, the construction site may be closed down and penalties/fines along with interest may be assessed according to the number of days the construction project was in operation without a permit. Any false information given on such permit application can result in the TAT ED and other TAT Tribal departments denying permits on any projects within the exterior boundaries of the Reservation for that Prime contractor for a period of two years. Application for such permits shall be made pursuant to Section 14 of this Act and shall be provided in the format designated by the TAT ED.

13.03 Permits by Rule. The owner or operator of the following facilities or activity is deemed to have obtained a permit for a solid waste management facility or activity without making formal permit application as long as the owner or operator timely submits the required notification on the required TAT ED form(s), pays all applicable fees and remains in compliance with this Act and the rules and requirements provided in the permit and the respective subsections below:

- 13.03.1 **Demolition Permit.** Demolition of a structure greater than 100 square feet on the Reservation by property owners or lessees. Notice of such activity must be submitted at least ten (10) days prior to beginning such demolition. This includes the intentional burning of a structure for purposes of demolition or removal. Such demolition must be conducted so that no public nuisance or hazard is created and the following requirements are addressed:
 - 13.03.1.1 There is no release of any hazardous waste or hazardous substances, pollutants or contaminants;
 - 13.03.1.2 The demolition is monitored by the permittee at all times; and
 - 13.03.1.3 Access to the demolition site is controlled at all time until completion and all hazards are removed.
- 13.03.2 **Open Burning Permit.** Any open burning of solid waste or a structure on the Reservation. Notice of such activity must be submitted at least two (2) days prior to beginning such activity. The ED Director will coordinate the approval of open burning permits with the Police Department and Fire Department. Such open burning of solid wastes or a structure must:
 - 13.03.2.1 Not include any hazardous waste or hazardous substances, pollutants or contaminants;

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- 13.03.2.2 Not be conducted during periods of high fire hazard or burning restrictions;
- 13.03.2.3 Be monitored at all times; and
- 13.03.2.4 Be conducted by a party that has ready access to fire control equipment and contact information for the appropriate fire department.

- 13.03.3 **Commercial Salvage Yard Permit.** Any commercial operation that has cause to maintain an accumulation of used farm equipment, industrial equipment or used motor vehicles for salvage purposes provided that no public nuisance is created and the following requirements are addressed:
 - 13.03.4 The salvage yard shall be fenced with locking gates;
 - 13.03.5 Access to the facility is monitored or controlled;
 - 13.03.6 The location is accessible by fire control and emergency equipment;
 - 13.03.7 The yard shall be maintained in a manner to prevent environmental, community health or nuisance hazards;
 - 13.03.8 All solid, special and hazardous wastes shall be properly contained and managed in conformance with this Act; and
 - 13.03.9 Access to facility by the TAT ED is provided as needed to assure compliance with this Act.

- 13.03.4 **Septic Wastes Pumping and Hauling Permit.** Commercial services for the pumping and hauling of septic or other sanitary wastes originating from a source within the exterior boundaries of the Reservation. Such pumping and hauling of septic or other sanitary wastes must be conducted so that no public nuisance or hazard is created and the following requirements are addressed:
 - 13.03.4.1 Such wastes disposed of within the exterior boundaries of the Reservation shall be disposed of only at a tribally designated land disposal facility or tribally approved sewage treatment facility in compliance with this Act and 40 CFR Parts 257 and 503, as applicable;
 - 13.03.4.2 vehicles used for the collection and transportation of such wastes shall have watertight metal bodies of easily cleanable construction, shall be cleaned frequently to prevent a nuisance, and shall be maintained in good repair; and
 - 13.03.4.3 all applicable discharge fees must be paid in full.

- 13.03.5 **Used or Scrap Tire Storage Permit.** A pile of used or scrap tires accumulated by a commercial business, tire dealer, municipality or incorporated community located within the exterior boundaries of the Reservation which contains either one thousand three hundred (1300) or fewer car tires, twenty-five (25) tons [22.7 metric tons] or less of shredded tires or a pile of tires, which is equivalent in volume to one (1) twin-axle semitrailer load or less, provided that no public nuisance is created and the following requirements are addressed:
 - 13.03.5.1 Access to the facility is monitored or controlled;
 - 13.03.5.2 The location is accessible by fire control and emergency equipment; and
 - 13.03.5.3 The owner or operator has appropriate provisions and financial arrangements for the recycling or disposal of tires.
 - 13.03.5.4 Any facility or location that exceeds these numbers or quantities of tires must apply for a General Solid Waste Management or Storage Permit pursuant to

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Section 13.1 of this Act.

- 13.03.6 **Petroleum-Contaminated Soils Storage Permit.** Any facility that accepts petroleum-contaminated soils, to include contaminated soils from oil and gas exploration or production facilities for storage prior to treatment and/or disposal. Notice of such activity must be submitted to the TAT ED at least ten (10) days prior to beginning such activity. All such facilities shall be located, operated, and maintained in accordance with the following standards and must be conducted so that no public nuisance or hazard is created:
- 13.03.6.1 **Location standards:**
- 13.03.6.1.1 Facilities shall not be located within one thousand (1000) feet of any occupied dwelling, house, school or hospital except with the written consent of the owner, school district, or board of trustees, as applicable;
- 13.03.6.1.2 Facilities shall not be located within one thousand (1000) feet of a public park or recreation area, except with the written consent of the owner;
- 13.03.6.1.3 Each point of access and the perimeter of all waste management units shall be identified by a sign that shall be easily readable, maintained in good condition, and contain, at a minimum, the following wording:
“RESERVED FOR PETROLEUM-CONTAMINATED SOILS, NO SMOKING”; and
- 13.03.6.1.4 The ED Director may authorize any existing solid waste management facility which does not conform with the location requirements of this subsection to manage petroleum-contaminated soils, provided the operator demonstrates that the facility design and construction, operating procedures, monitoring procedures and closure procedures are protective of human health and the environment.
- 13.03.6.2 **Design & Construction standards:** All facilities that transfer, treat and store petroleum contaminated soils shall be designed and constructed in accordance with the following standards, in addition to any other applicable facility design and construction standards:
- 13.03.6.2.1 Waste management units shall be constructed in an area of the facility that is physically isolated from other areas of the facility which are frequented by the general public;
- 13.03.6.2.2 Waste management units shall be designed and constructed to prevent the migration of contaminants to other soils, ground water and surface water; and
- 13.03.6.2.3 Each point of access and the perimeter of all Solid Waste management units shall be identified by a sign that shall be easily readable, maintained in good condition, and contain, at a minimum, the following wording:
“RESERVED FOR PETROLEUM CONTAMINATED SOILS. NO SMOKING.”.
- 13.03.6.3 **Operating standards:** All facilities which transfer, treat and store petroleum-contaminated soils shall be operated in accordance with the following standards, in addition to any other applicable facility operating standards:

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- 13.03.6.3.1 Petroleum-contaminated soils shall be managed using procedures that meet objectives approved by the TAT ED , including microbial degradation;
- 13.03.6.3.2 Waste management activities shall be evaluated on a regular basis using TAT ED approved procedures to evaluate progress toward and attainment of petroleum-contaminated soil management objectives;
- 13.03.6.3.3 The following records shall be marked with the appropriate date and time and maintained at the facility or an approved alternative location and made available for inspection, and a copy of all records will be forwarded to the TAT ED;
 - (i) Records of the specific locations at which specific sources of petroleum contaminated soils are managed;
 - (ii) Records of any waste management activities which may, depending on the technology, include adjustment of microbial population density, soil pH, moisture content, soil temperature, nutrient concentrations and soil texture; and
 - (iii) Copies of any analytical testing done to evaluate progress toward or attainment of petroleum contaminated soil management objectives.

13.03.7 Oil and Gas Exploration and Production Wastes Storage and Treatment Permit.

- Oil and gas exploration or production wastes, to include petroleum contaminated soils, accumulated, stored or treated at the point of generation. Notice of such activity must be submitted to the TAT ED at least ten (10) days prior to beginning such activity. Such accumulation, treatment or storage must be conducted so that no public nuisance or hazard is created and the following requirements are addressed:
- 13.03.7.1 The time of the waste management activity does not exceed one hundred eighty (180) days from the start of activity;
 - 13.03.7.2 Public access to the waste management unit(s) is controlled;
 - 13.03.7.3 Access by the ED Director, or his designees, is granted at all times;
 - 13.03.7.4 The waste management unit is bermed, lined and covered with an impermeable material which has a nominal thickness of 6 millimeters, at a minimum. A cover is not required if run-off from the waste management unit is controlled and odor problems are not reported; and
 - 13.03.7.5 The waste management unit is posted with a sign which identifies the date of the start of accumulation and the words:
“CAUTION PETROLEUM CONTAMINATED SOILS/MATERIALS. NO SMOKING.”.

13.04 Emergency Permits. The TAT ED may issue an emergency permit for one-time disposal events based on various practical factors during emergency conditions. Application for such permits shall be made pursuant to Section 14 of this Act. The ED Director, Solid Waste Director and other local, state and federal agencies will work together to accomplish the efficient and environmentally sound disposal of solid and/or hazardous waste and related materials so as to minimize impacts to human health, the environment

and to water resources. Disposal under emergency permits must be restricted to generally inert or other solid wastes from a specific site or area and for a specific period of time.

13.05 Temporary Permits. The TAT ED may issue a temporary permit for one-time or short term events based on various practical factors and conditions. Application for such permits shall be made pursuant to Section 14 of this Act. The ED Director and Solid Waste Director will coordinate such permits to accomplish the efficient and environmentally sound disposal of solid waste and related materials so as to minimize impacts to human health, the environment and to water resources. Disposal under temporary permits must be restricted to generally inert or other solid wastes from a specific site or area and for a specific period of time.

SECTION 14: PERMIT APPLICATION

14.01 Permit Application Requirements.

14.01.1 **General Permits.** Any person, other than the TAT Solid Waste Utility, who proposes to continue or become an operator of a waste management or disposal facility or a commercial collector or transporter of solid waste within the exterior boundaries of the Reservation shall file an application for a solid waste management facility, collection or transportation permit with the ED Director, with a copy to the Solid Waste Director in accordance with the requirements and timelines of this Section.

14.01.2 **Prime Contractor Construction/Demolition Waste Management Permits.** All contractors required to obtain a waste management permit pursuant to this Act shall submit the required notification and information to the ED Director at least ten (10) business days prior to beginning such activity. Such information shall include, at a minimum:

14.01.2.1 A description of the contractor responsible for conducting the construction and/or demolition and any subcontractors responsible for managing wastes or removing wastes from the site;

14.01.2.2 A brief description of the construction or demolition to be conducted and the location, to include a map of the site and any waste storage or management areas;

14.01.2.3 The time period of the proposed construction or demolition;

14.01.2.4 A description of the types of solid or hazardous wastes to be generated by the construction or demolition;

14.01.2.5 An estimate of the quantities of solid and/or hazardous wastes to be generated;

14.01.2.6 A description of the waste storage and management to be conducted on the site;

14.01.2.7 A description of how wastes will be transported off-site and by whom;

14.01.2.8 A list of the proposed disposal facilities where wastes will be transported to;

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- 14.01.2.9 A list of emergency contacts for the contractor and at the site; and
- 14.01.2.10 Any other information deemed necessary by the ED Director.
- 14.01.3 **Permit-by-Rule.** Any owner, operator or person subject to the Permit-by-Rule requirements of this Act shall submit the required notification and form(s) to the ED Director at least ten (10) business days prior to beginning such activity.
- 14.01.4 **Emergency and Temporary Permits.** Any owner, operator or person seeking such a permit for an activity subject to the requirements of this Act shall submit the required notification, form(s) or information to the ED Director in a timely manner prior to beginning such activity or in the in the required time period required by the ED Director.
- 14.01.5 **Permits for Existing Waste Management Facilities and Operations.**
- 14.01.5.1 **General Permits.** Existing solid waste management facilities or services subject to the general permitting requirements of this Act must obtain a permit within one hundred eighty (180) days of the effective date of this Act to continue in operation. All standards and criteria applicable for a new facility shall apply to an existing one. Compliance with this Act and applicable guidelines of 40 CFR Part 258 will be required or the facility must cease operation and be closed within 180 days of the effective date of this Act.
- 14.01.5.2 **Permits-by-Rule.** Existing waste storage, treatment or management facilities or operations subject to the Permit by Rule requirements must:
- 14.01.5.2.1 submit the required notice and form and pay all required fees within 30 days of the effective date of this Act; and
- 14.01.5.2.2 be in full compliance with the applicable standards and operating requirements within 60 days of the effective date of this Act.
- 14.02 Contents of Permit Application: General.** Applications filed pursuant to this Act shall be submitted to the ED Director in the form and format required by the ED Director and shall contain the information required under this Act and in the TAT ED permit application guidelines provided to the applicant.
- 14.03 Contents of Application: Permit-by-Rule.** All persons or parties required to obtain a Permit-by-Rule pursuant to this Act shall submit the required notification and information to the ED Director. Such information shall include, at a minimum:
- 14.03.1 It is accompanied by a Tribal building, special use, or other applicable permit(s) or lease authorizing the establishment of the facility or operation, and such permit or lease has been approved by the Bureau of Indian Affairs, if necessary;
- 14.03.2 All form(s) or other information required by the TAT ED;
- 14.03.3 It is accompanied by payment of any required fee for the permit in a manner acceptable to the TAT ED; and

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14.03.4 Documentation that all applicable tribal licenses have been obtained and all fees paid.

14.04 Contents of Application: Solid Waste Transportation. Permit applications filed pursuant to this Section for the transportation of solid waste shall include:

14.04.1 A description of the number and type of the vehicles and related mechanical and other equipment to be used by the applicant;

14.04.2 A site evaluation report describing the location and physical characteristics of the place or places, including uses of adjoining properties, where the applicant will store or maintain solid waste vehicles and related equipment, if located on the Reservation;

14.04.3 A description of the practices, technologies and procedures that will be employed to ensure adequate protection of the environment, public health and welfare to include prevention of leakage, excessive noise, odors, and other releases or spillage and the capability to respond to any such releases;

14.04.4 Assurances of the manner in which the applicant will meet the financial assurance requirements established pursuant to this Act and the permit;

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

14.04.6 Such other information as the ED Director or the NRC deems necessary.

14.05 Contents of Application: Solid Waste Management Facilities. Permit applications filed pursuant to this Section for the storage, accumulation, transfer, treatment or other management of solid waste shall include:

14.05.1 A description of the facilities, mechanical and other equipment, holding tanks, vehicles, and locations and means of temporary solid waste storage or accumulation used or to be used by the applicant;

14.05.2 A site evaluation report describing the geographic, geologic, climatic, and hydrologic characteristics of the place or places where and the manner in which the applicant will handle, treat, or dispose of the solid waste;

14.05.3 A description of the land uses and facilities on adjoining properties;

14.05.4 A description of the practices, technologies and procedures that will be employed to ensure adequate protection of the environment, public health and welfare to include prevention of leakage, excessive noise, odors, and other releases or spillage and the capability to respond to any such releases;

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- 14.05.5 Assurances of the manner in which the applicant will meet the financial assurance requirements established pursuant to this Act and the permit;
- 14.05.6 A description of the training program for employees in environmental concerns in managing solid waste, addressing any releases, recognizing hazardous or improper wastes and to provide such employees with needed skills for the safe operation of the facility and related equipment;
- 14.05.7 A closure and post-closure maintenance plan for the solid waste management facility; and
- 14.05.8 Such other information as the ED Director or the NRC deems necessary.

14.06 Contents of Application: Solid Waste Disposal Facilities. Permit applications filed pursuant to this Section for the disposal of solid waste shall include:

- 14.06.1 All information necessary to determine compliance with the location, construction, operation, closure and post closure requirements of 40 CFR Part 258 and Section 12 of this Act;
- 14.06.2 All information necessary to determine compliance with the financial assurance requirements of this Act; and
- 14.06.3 Such other information as the ED Director or the NRC deems necessary.

14.07 Additional Permit Application Requirements for Any Solid Waste Management or Disposal Facility Permit. The ED Director shall not issue, modify, or revise a solid waste facility permit unless:

- 14.07.1 It is accompanied by a Tribal building, special use, or other applicable permit(s) or lease authorizing the establishment of the facility, and such permit or lease has been approved by the Bureau of Indian Affairs, if necessary;
- 14.07.2 The decision to issue, modify, or revise a facility permit includes a finding by the ED Director that the proposed permit is consistent with the TAT Solid Waste Management Plan, as adopted, and with the standards of this Act; and
- 14.07.3 All applicable tribal licenses have been obtained and all fees paid.

14.08 Application for Revision of Permit. If a permittee wishes to modify his operation, he shall file an application for revision of his existing permit at least one hundred twenty (120) days in advance of the date when the proposed modification is to take place. Under circumstances that present an immediate danger to public health, as determined by the ED Director, the 120-day filing period may be waived by the NRC. No operator of a permitted solid waste facility or transportation service shall make any significant change in the design or operation of any solid waste facility or transportation service except in conformity with the terms and conditions of the permit issued to such operator.

SECTION 15: PERMIT ISSUANCE

15.01 Issuance of Permits by the TAT Environmental Director: The ED Director shall issue, modify, or revise a permit pursuant to this Act only if he/she is convinced that primary consideration is given to preventing environmental damage or health threats and that the long-term protection of the environment and public health is the guiding criterion. To achieve these purposes, the ED Director may:

- 15.01.1 Prohibit or condition the handling, treatment, transfer or disposal of solid waste to protect, rehabilitate, or enhance the environmental quality;
- 15.01.2 Require the proposed facility or transportation operation to be in full compliance with the applicable rules and regulations in effect on the date of permit issuance;
- 15.01.3 Require feasible mitigation measures identified in any Environmental Assessment or Environmental Impact Statement prepared pursuant to the TEPA or the NEPA Section 1505.2c, be incorporated as permit conditions;
- 15.01.4 Require contingency plans for effective action to minimize unanticipated damage from any treatment, storage, processing, or disposal of solid waste;
- 15.01.5 Design or condition the permit in any other way to accomplish the goals of this Act; and
- 15.01.6 Issue or not issue the permit in a reasonable time, unless, in the Director's best judgment, additional time is necessary to gather additional information on the application, to conduct environmental studies related to the application, or to require further analysis related to the application.

15.02 Issuance of Permit: Conditions. The ED Director may issue, modify, or revise a permit that shall contain all terms and conditions that the ED Director determines to be appropriate for the construction and/or operation of a solid waste management, storage or transfer facility or for the transportation of solid waste.

15.03 Permit Issuance Period. The ED Director shall issue permits for the following periods:

- 15.03.1 Solid Waste Management Facility permits may be issued for a period of up to five (5) years. Such permits may include an annual fee;
- 15.03.2 Solid waste collection or transportation permits may be issued for a period of up to twelve (12) months and must be renewed annually and approved by the NRC;
- 15.03.3 Permit-by-Rule may be issued for a range of time periods to be determined by the TAT ED; and

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15.03.4 Temporary or Emergency Waste Management Permits may be issued for up to ninety (90) days.

15.04 Permit Renewals. A permittee may apply for renewal of a permit. All applicable fees must be paid upon the effective date of a permit for the permit to become effective. The application for permit renewal must be submitted to the TAT ED as follows:

15.04.1 Solid Waste Collection or Transportation Permits: at least sixty (60) days prior to the expiration of a permit;

15.04.2 Solid Waste Management Facility Permits at least 120 days prior to the expiration of a permit;

15.04.3 Prime Contractor Construction/Demolition Waste Management Permits: at least (10) business days prior to the expiration of a permit;

15.04.4 Permit by Rule: at least ten (10) business days prior to the expiration of a permit;

15.04.5 Emergency and Temporary Permits: at least five (5) business days prior to the expiration of a permit;

15.05 Investigations. The NRC or the ED Director, in issuing or reviewing any facility permit or solid waste transportation permit or in connection with any action relating to or authorized by this Act, may investigate the construction, maintenance, and operation of any facility or transportation service owned or operated by the permittee or applicant.

15.06 Reports by Permittees. Each report filed by the permittee shall be submitted in a form and format specified by the permit and the ED Director. The ED Director may require that the permittee furnish such technical or monitoring program reports or other reports that may be specified to determine full compliance with the permit and this Act.

15.07 Inspections. The ED Director shall make periodic inspections of any permitted premises, facility, equipment, or vehicle used for, and any records relating to, the management, handling, treatment, storage or disposal of solid or hazardous waste, to include special or industrial wastes, to ensure compliance herewith and to determine that owners and/or operators are complying with applicable permit requirements and this Act. Such inspection may be unannounced. Through application for and acceptance of a permit required pursuant to this Act the permittee grants the ED Director, or his designee, permission to access the property, premises and buildings that are subject to such permit during regular hours of operation or at any time upon a minimum of two (2) hours verbal or written notice.

15.08 Protection of Proprietary Information. Upon the approval by the ED Director of the written request of any person furnishing any report, notice, application, or other document required hereby, the TAT ED shall not make available for inspection by the

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public those portions of such report, notice, application, or other document that contains information declared proprietary or confidential information. All such information shall be clearly marked as “CONFIDENTIAL” or “PROPIETARY”. However, such report, notice, application, or other document or portions thereof, shall be made available to the NRC, the Tribal Council or its agencies and to any other government agency or agencies, provided that, the information is at all times kept confidential, and/or used for enforcement or investigative purposes. Such declaration of proprietary or confidentially is subject to review by the Tribal Court.

15.09 Periodic Permit Review. Solid Waste Management Facility permits are subject to an annual report and review by the ED Director to the NRC on the annual anniversary of the last issuance, modification or renewal of the permit.

15.10 Permit Revocation or Modification. The NRC may revoke a permit or may modify a permit and impose additional or revised permit conditions upon recommendation by the ED Director if the ED Director determines that:

15.10.1 The method or location of collection, transportation, or the place or manner in which the solid waste is stored, processed, transferred, treated or disposed of is potentially detrimental to, may damage or pollute the environment, or adversely impact public health, welfare or natural resources of the Reservation; or

15.10.2 The permittee has a significant incidence or history of failing to comply with this Act, other Tribal Acts or laws or is deemed in significant non-compliance with a Tribal Administrative Order or Tribal permit issued pursuant to this Act.

15.11 Permit Denial. The ED Director may deny the permit issuance or may impose permit conditions that will adequately protect against unreasonable degradation of the environment, public health, welfare and natural resources of the Reservation, if the ED Director determines that:

15.11.1 The proposed method or location of collection, transportation, or the place or manner in which the solid waste is to be stored, processed, transferred, treated or disposed of will potentially be detrimental to, damage or pollute the environment, public health, welfare or natural resources of the Reservation; or

15.11.2 The applicant has an incidence or history of failing to comply with this Act, similar federal or state regulations or is reasonably deemed not likely to comply with Tribal permit conditions.

15.12 Renewal Denial. The ED Director may deny renewal of a permit for failure of the permittee to properly report or otherwise comply with this Act, the permit or any applicable tribal or federal law, rules or regulations.

15.13 Compliance with Applicable Law. Receipt of a permit shall not relieve any person of the responsibility to construct and operate all solid waste facilities and collection systems

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in a manner that complies with any and all applicable Tribal and Federal laws, rules, or regulations.

15.14 Public Review and Comment. The TAT ED shall review and consider all written public comments received during the public comment period. There shall be a minimum twenty (20) day comment period for Solid Waste Collection or Transportation Permits and Solid Waste Management Facility Permits. Any written comments received on any other permits shall be considered upon the renewal of such permits or the issuance of additional such permits by the TAT ED.

15.15 Public Notice. There shall be a public notice of a proposed or actual permit issuance or renewal as follows:

15.15.1 Solid Waste Collection or Transportation Permits: at least twenty (30) days prior to the issuance of a permit;

15.15.2 Solid Waste Management Facility Permits at least sixty (60) days prior to the issuance of a permit;

15.15.3 Prime Contractor Construction/Demolition Waste Management Permits: at least five (5) business days prior to the expiration of a permit;

15.15.4 Permit by Rule: within five (5) business days of the issuance of a permit; and

15.15.5 Emergency and Temporary Permits: within five (5) business days of the issuance of a permit.

15.16 Statement of Issues. A written “Statement of Issues” shall be delivered by the ED Director to the permit applicant. The “Statement of Issues” shall include all written comments that were received during the public comment period that oppose the permit issuance or renewal or recommend special conditions be placed upon the permit. If applicable, this “Statement of Issues” shall specify any particular facts or matters that the NRC determines would justify a denial of the permit.

15.17 Public Hearing on Permit Application. No Solid Waste Collection or Transportation Permits or Solid Waste Management Facility Permits shall be issued or renewed except after a public hearing at which the applicant and all interested parties have an opportunity to present evidence on whether the permit application should be granted and the conditions to be included in the permit. The hearing may be waived by the NRC if the ED Director receives no written comments during the public comment period concerning the proposed permit.

15.18 The Notice of Public Hearing. The ED Director shall publish a public notice of a hearing on a general permit application or renewal. The NRC shall hold the hearing no earlier than twenty (20) days and no later than forty-five (45) days from applicant's receipt of the Statement of Issues. All written notices, requests, and statements shall be

delivered personally or by certified or registered mail, return receipt requested. A public hearing may be held on all other permits at the request of the NRC and such hearing may be held after the permit issuance.

15.19 Informal Review of Permit Decision. If the ED Director denies a permit, denies renewal of a permit or if the applicant deems the terms and conditions of the permit inappropriate, the permit applicant may request reconsideration of the decision or the permit terms by the ED Director in writing within fifteen (15) days after the applicant receives formal written notice of the denial or of the terms and conditions of the permit.

15.20 Formal Appeal of Permit Decision. In the event that the permit is denied or not renewed after reconsideration by the ED Director, or the applicant cannot agree to the terms and conditions of the permit, the applicant may file a written request for a hearing on the contested permit before the NRC. The request must be filed within 30 days after the receipt of the written decision on the permit has been issued by the ED Director. A copy of the request shall be served upon the ED Director, the NRC and all parties of record by certified mail, return receipt requested.

15.21 Permits by Rule: A Permit-by-Rule is required for all operations or facilities listed in Section 13.3 of this Act. A Permit by Rule may be modified, suspended or terminated by the ED Director in accordance with the terms and conditions of the permit. All Permits by Rule are subject to review and comment by the public at any time.

SECTION 16: WASTE MANAGEMENT AND PERMIT FEES

16.01 Fees: General Provisions: The Three Affiliated Tribes may impose fees and charges for permits and other services to implement the requirements of this Act as follows:

- 16.01.1 The Solid Waste Director shall impose reasonable fees established by the NRC for services provided by the TAT Solid Waste Management Utility.
- 16.01.2 The ED Director shall impose all permit fees and other fees authorized pursuant to this Act, other than those fees under 16.1.1 above, required or authorized pursuant to this Act.
- 16.01.3 All fees are subject to review and approval by the NRC and the Tribal Council.
- 16.01.4 All permit and waste management fees are to be developed in cooperation with the Tribal Rights Employment Office (TERO) to meet the requirements of the Tribal TERO fee structure.
- 16.01.5 All fees for permit applications, issuance or renewal required under this Act shall be posted and available as the Three Affiliated Tribes' Title 15 Environmental Code Schedule of Fees. The Schedule shall be public information and available from the Tribal ED Director.

16.02 Permit Application Filing Fee. Each permit application, required pursuant to this Act, including renewals, shall be accompanied by a reasonable filing fee established by the NRC according to a fee schedule to reflect the cost of processing such applications, including but not limited to the cost of technical and legal consultants, office staff, and overhead. This fee is in addition to the fees authorized for permit issuance, operation, monitoring and enforcement. The Fee may be waived by the NRC when the permittee is operating a permitted activity under contract to the Tribes.

16.03 Permit Issuance Fees. Each permit issued or renewed pursuant to this Act, including a Permit-by-Rule, shall be issued upon payment of a fee established by the NRC according to a fee schedule to reflect the cost of permit issuance, monitoring and enforcement. The Fee may be waived by the NRC when the permittee is operating a permitted activity under contract to the Tribes.

16.04 Prime Contractor Waste Management Permit Fee. Prime contractors are required to obtain a Tribal TAT ED waste management permit, per Section 8 of this Act, prior to beginning any construction or demolition work on the Reservation. The permit fee shall be payable to the Tribal TAT ED and shall be for the sum of 1% of the total contract. For the purposes of this requirement a Prime Contractor is the prime contractor for construction or demolition projects funded by a federal agency, Tribal Government, or other commercial construction. This does not apply to private residential or agricultural property construction or demolition.

16.05 Non-payment of Fees. Non-payment of required fees may be grounds for denial or revocation of a permit. Non-payment of required fees shall be a violation of this Act and permittee may be subject to civil penalties. The NRC shall have jurisdiction to hear matters regarding the non-payment of fees established pursuant to this Act. Decisions of the NRC may be appealed to the Tribal Council.

SECTION 17: COMPLIANCE AND ENFORCEMENT

17.01 TAT Enforcement Agent. The ED Director, or his/her designee, is hereby designated as the civil enforcement agent entrusted with the duty and responsibility of ensuring the proper handling, treatment and disposal of solid, special and hazardous waste on the Reservation, investigating the release, or threat of release, of a hazardous substance, pollutant or contaminant, petroleum product, controlled substance or mining materials and of ensuring compliance by all persons and government agencies with this Act. Decisions of the ED Director may be appealed to the NRC. Final decisions of the NRC may be appealed to the Tribal Court of the Three Affiliated Tribes, which has final jurisdiction over all offenses and violations of this Act.

17.02 Duties. The ED Director's duties shall include:

17.02.1 Enforcement of Permits and Orders. Enforce compliance with permits or orders issued pursuant to this Act.

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- 17.02.2 **Enforcement of Mitigation Measures.** Enforce compliance with feasible mitigation measures identified within Environmental Assessment/Environmental Impact Statement prepared pursuant to the TEPA and the NEPA.
- 17.02.3 **Enforcement of Response Measures.** Enforce compliance with response or remediation measures required under Section 19 of this Act.
- 17.02.4 **Enforcement by Federal Agencies.** Ability to request enforcement by state or federal agencies of their respective laws and regulations governing solid or hazardous waste handling, treatment, disposal or releases where those laws and regulations may be applicable.
- 17.02.5 **Provide Information.** Provide information to the affected public, the Tribal Council, the NRC and other Tribal departments as requested and where such requests do not conflict with other provisions of this Act.
- 17.02.6 **Development of Program.** Develop, implement, and maintain inspection, enforcement and training programs.
- 17.02.7 **Record Keeping.** Keep and maintain accurate records of its inspection, enforcement and training programs.
- 17.02.8 **Consultation with Health Agencies.** Consult with appropriate health agencies concerning all actions involving solid waste handling, treatment and disposal.
- 17.02.9 **Periodic Review.** The NRC shall periodically review the ED Director and its implementation of the enforcement program. This review may include the inspection by the NRC, or any person authorized by the NRC, of all books, records, accounts and other documents of the ED Director. If the NRC finds that the ED Director is not adequately fulfilling its enforcement responsibilities, the NRC shall notify the ED Director and the Tribal Council of its intention to take remedial action if the ED Director does not correct the problems specified by the NRC.
- 17.03 Actions on Complaints.** If the ED Director or the Solid Waste Director receives a complaint concerning the violation of applicable tribal or federal environmental or solid waste laws, regulations or permit conditions, the ED Director shall investigate to ensure proper consideration of the complaint. The ED Director's investigation may include the inspection of the facility or transportation vehicle/container to determine whether any applicable tribal or federal law, regulation, or permit has been or is being violated.
- 17.03.1 If the ED Director receives a complaint concerning a solid waste facility, collection system, release, or other activity, and the ED Director is not able or authorized to take action concerning the complaint, the ED Director shall refer the complaint within ten (10) days of receipt to the appropriate state or federal agency.

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17.03.2 If the ED Director receives a complaint concerning a solid waste facility, collection system, release, or other activity, and the ED Director does not refer it to another agency, or if the ED Director receives a complaint referred to it by another agency, the ED Director shall either take appropriate compliance or enforcement action concerning that person, facility or transporter or provide the person who filed the complaint with a written statement within thirty (30) days explaining why an enforcement action would not be appropriate or possible.

17.04 Enforcement Actions. The ED Director may initiate informal actions to inform a party of violations of this Act where such violations do not pose an imminent risk to public health or the environment or are not habitual in nature to include a written Warning Letter. A Citation with a fine or penalty may be issued for Minor non-repetitive violations of this Act where such violations do not pose an imminent risk to public health or the environment. Failing timely and complete compliance with this Act, or where such violations pose an imminent risk to public health or the environment or are habitual in nature, the ED Director may issue the following types of formal Civil Enforcement Actions:

17.04.1 **Notice of Violation (NOV).** The ED Director shall, upon discovery of a violation of this Act, or violation of any permit issued under this Act, provide a Notice of Violation (NOV) that sets forth the acts or omissions with which the person, government agency or permittee is charged and specifies the terms, laws, conditions, rules, or regulations that is alleged to have been violated. The NOV and all accompanying documents shall be delivered personally or by certified or registered mail, return receipt requested to the person, government agency or permittee and a copy provided to the NRC and Solid Waste Director. The NOV may include:

17.04.1.1 A list of the violations, acts or omissions with which the person, government agency or permittee is charged and specifies the permit terms, laws, conditions, rules, regulations or requirements of this Act that are alleged to have been violated;

17.04.1.2 A compliance schedule for any violation of a permit issued pursuant to this Act or any other violation of this Act that cannot be corrected immediately;

17.04.1.3 Notification of potential fines or penalties that may result from failure to comply with the NOV;

17.04.1.4 Notification of additional or subsequent enforcement action(s) that may result from failure to comply with the NOV;

17.04.1.5 Procedures to notify the ED Director of compliance with the NOV; and

17.04.1.6 Procedures to request an informal meeting with the ED Director to discuss the violations cited in the NOV and/or the compliance schedule.

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- 17.04.2 **Administrative Orders.** The ED Director may issue a Tribal Civil Administrative Order to any person for violations of this Act or any permit issued pursuant to this Act, to include assessment of appropriate penalties or fines. A Tribal Administrative Order shall include the information listed for a NOV in 17.4.1 as appropriate for such Administrative Order.
- 17.04.3 **Cease and Desist Orders.** The ED Director may issue an Order to an owner/operator to cease and desist where the construction or operation of a solid waste facility or the transportation of solid waste is causing or threatening to cause a condition of hazard, pollution, or nuisance due to the release or migration of solid, special, industrial or hazardous waste or to any person to cease and desist any improper action or activity that is in violation of this Act and:
- 17.04.3.1 causing, or threatening to cause, a release or spill of a solid, special, industrial or hazardous waste or other hazardous material; or
- 17.04.3.2 causing any adverse impact on public health, welfare or the environment.
- 17.04.4 **Remedial Action Orders.** The ED Director may require a person, government agency or the owner/operator of a solid waste facility or the solid waste transporter to take corrective action necessary to abate any release, hazard, pollution, or nuisance or to protect public health and safety and the environment and be in conformance with this Act.
- 17.05 Notice to NRC.** Ten (10) days before issuing an enforcement order that is not for an emergency, within five (5) days after issuing an enforcement order for an emergency the ED Director shall provide a written statement providing an explanation and justification for the enforcement order and a description of the violation to the NRC, Tribal law enforcement department and the Solid Waste Director.
- 17.06 Remedial Actions.** Compliance and enforcement actions to require remedial actions for releases, dumping or spills of solid, special, industrial or hazardous waste or substances shall include:
- 17.06.1 **Imminent Threats.** If any of the circumstances set forth herein above pose an imminent threat to public health, life or the environment, the NRC may approve the ED Director to initiate appropriate action pursuant to Section 19 of this Act.
- 17.06.2 **Other Remedial Actions.** If any of the circumstances set forth herein above do not pose an imminent threat to public health or the environment, but the ED Director deems it necessary for the public health and safety to perform timely clean up, abatement work or remedial work, the NRC may approve the ED Director to perform such actions pursuant to Section 19 of this Act.
- 17.07 Compliance Schedule.** The ED Director shall develop a compliance schedule for any violation of a permit issued pursuant to this Act or any other violation of this Act that cannot be corrected immediately and include such compliance schedule as part of a NOV

or Order. The compliance schedule shall assure that diligent progress shall be made by the responsible person, government agency or permittee to bring the solid, special, industrial or hazardous waste management facility, transporter or other activity or situation into compliance with the minimum standards of this Act and any applicable permit within a specific period of time determined by the ED Director. If the person, permittee, government agency, facility or transporter is not in compliance within the period specified, the ED Director may assess additional fines or penalties and/or revoke, suspend, or modify the permit until such time as violations of the minimum standards are remedied.

17.08 Revocation, Suspension, or Modification of Permit. If a permittee of a facility or transporter permitted under this Act fails to comply with an Administrative Order issued pursuant to this Act the ED Director may revoke, suspend, or modify the permit until such time as violation(s) are remedied.

17.09 Statement of Charges. A hearing to determine whether an Administrative Order should be issued may be initiated by the ED Director by filing a written Statement of Charges that sets forth the acts or omissions with which the person, government agency or permittee is charged and specifies the terms, laws, conditions, rules, or regulations that is alleged to have been violated. The Statement of Charges and all accompanying documents shall be delivered personally or by certified or registered mail, return receipt requested to the permittee. A copy of any Statement of Charges shall be sent by the ED Director to the NRC.

17.10 Notice of Hearing. The Statement of Charges shall be accompanied by a notice advising the person, government agency or permittee of a date for a hearing, which hearing shall be held no earlier than twenty (20) days and no later than forty-five (45) days from the ED Director's mailing or personal delivery of the Statement of Charges. The notice shall inform the person, government agency or permittee that they have the right to inspect and copy documents relative to the Statement of Charges.

17.11 Notice of Defense. Within fifteen (15) days after service upon the person, government agency or permittee, they may deliver to the ED Director a Notice of Defense in which they may object to the Statement of Charges upon the grounds that it does not state acts or omissions upon which the ED Director may proceed or to the form of the Statement of Charges on the ground that it is so indefinite or uncertain that the person, government agency or permittee cannot identify the acts or omissions or prepare the permittee's defense.

17.11.1 The Notice of Defense shall be deemed a specific denial of all parts of the Statement of Charges not expressly admitted. Failure to file a Notice of Defense shall constitute a waiver of the right to a hearing. The Statement of Charges will stand and legal action for remedy will begin.

17.11.2 The Notice of Defense shall be in writing signed by or on behalf of the person, government agency or permittee.

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17.11.3 A copy of any Statement of Charges and Notice of Defense shall be sent by the ED Director to the NRC.

17.12 Hearings. All hearings shall be conducted pursuant to provisions provided in this Section.

17.12.1 General Hearing Requirements.

17.12.1.1 Any hearing held pursuant to this Title shall be conducted by the Hearing Officer or Designated Officer. The hearing shall be governed by the rules of practice and procedure which shall be adopted by the Agency or the Tribe. The Hearing Officer may consider any evidence which it deems relevant to the hearing. The Hearing Officer shall not be bound by technical rules of evidence in the conduct of hearings under this Title, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulations made, approved, or confirmed by the Hearing Officer. A tape recording shall be made of each hearing. No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of the party charged.

17.12.1.2 The TAT ED Director shall prosecute the alleged violation on behalf of the Tribe. For the hearing and during all stages of the procedures provided for in this Title, the TAT ED Director shall be represented by the Nation's Legal Department.

17.12.1.3 During the hearing phase of the enforcement process, to avoid a conflict of interest between the Hearing Officer, which shall sit as an impartial judicial body, and the TAT ED Director who shall act as the prosecutor, the Agency shall establish such procedures and safeguards to ensure the due process rights of all parties are protected and that there is no improper contact or communication between the Hearing Officer and the TAT ED Director.

17.12.1.4 If the Hearing Officer requires legal assistance during the hearing process or at any other phase of the enforcement process and it would be a conflict of interest for the Nation's Legal Department to provide such representation, the Hearing Officer shall retain its own legal counsel from a source other than the Nation's Legal Department.

17.12.2 Prehearing Procedures

17.12.2.1 Review of TAT ED Files. The Respondent (the entity against whom a complaint has been filed) shall have the right to review the case file of the TAT ED Director by making scheduling a visit to the TAT ED Office during regular business hours at any point after receiving notice of a hearing. However, the TAT ED Director shall have the right to redact any portion of the file to protect confidential information. The file

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shall be redacted in a manner that causes the loss of the least amount of relevant information from the files.

- 17.12.2.2 **List of Witnesses.** Ten (10) days prior to the hearing (or as soon as possible if the hearing is to be held within the minimum ten (10) days after receipt of notice), the Respondent and the TAT ED Director shall submit to the Hearing Officer a list of witnesses each intends to call at the hearing, the approximate length of their testimony, and the subject matter and relevancy of their testimony. It shall indicate any witnesses that must be subpoenaed. The TAT ED Director shall issue said subpoenas upon written notification by the Hearing Officer.
- 17.12.2.3 **Pre-Hearing Interviews of the Witnesses.** The Respondent and the TAT ED Director shall have the right to interview the witnesses of the other party prior to hearing. The TAT ED Director's witnesses shall be interviewed in the presence of the TAT ED Director or his/her delegate. The Respondent's witnesses shall be interviewed under such reasonable conditions as are established by the Respondent. Either party may appeal to the Hearing Officer if cooperation is not forthcoming on this matter and the Hearing Officer is empowered to require such steps as are necessary to resolve the problem.
- 17.12.2.4 **Subpoenas of Documents and Things.** The Respondent shall, no later than 10 days prior to the Hearing (or as soon as possible if the hearing is to be held within the minimum ten (10) days after receipt of notice), provide the TAT ED Director with a list of items it wishes to have subpoena and the relevance of each. The TAT ED Director shall issue subpoenas for all relevant items listed as well as items needed by the TAT ED Director. Any disputes shall be brought to the Hearing Officer who shall resolve such disputes.
- 17.12.3 **Postponements.** Any request for postponement or continuance of the hearing must be submitted in writing to the Hearing Officer no fewer than three (3) days prior to the hearing. However, if the TAT ED Director and the Respondent mutually submit a request for a postponement or continuance because there is a possibility of settling the matter, the request for postponement or continuance may be submitted at any time.
- 17.12.4 **Conduct of the Hearing**
- 17.12.4.1 **Hearing Officer.** The Hearing Officer shall preside and control all elements of the proceedings. He or she will take whatever action is necessary to insure an equitable, orderly and expeditious hearing. The parties will abide by the Hearing Officer's rulings and the Hearing Officer shall have the authority, among other to:
- i) Administer oaths and affirmations;

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- ii) Regulate the course of the Hearing;
 - iii) Rule on offers of proof;
 - iv) Limit the number of witnesses when the testimony would be unduly repetitious;
 - and
 - v) Exclude any person from the Hearing for contemptuous conduct or misbehavior that obstructs or delays the Hearing.
- 17.12.4.2 **TAT Environmental Division (ED) Director.** The TAT ED Director shall represent the Agency and the Tribe on all complaints filed by the Agency, even if the complaint was filed by a private individual or third party.
- 17.12.4.3 **Respondent.** The Respondent shall be present for the entire hearing and he or his representative shall represent him during the proceedings.
- 17.12.4.4 **Attorneys.** Either party may have an attorney present as its representative during the Hearing.
- 17.12.4.5 **Recording of the Hearing.** The Hearing Officer shall have the hearing recorded in full and shall retain the recording for no less than one (1) year after the hearing. The Respondent shall, upon request and payment for any costs incurred for fulfilling said request, be permitted a copy of the recording.
- 17.12.4.6 **Prohibition Against Reprisals.** All parties shall have the right to testify on their own behalf, without fear of reprisal or sanction.
- 17.12.4.7 **Starting Time.** The Hearing shall open promptly at the time specified by the Hearing Officer.
- 17.12.5 **Order of Proceedings.**
- 17.12.5.1 The Hearing Officer shall open the Hearing with statement of complaint and the parties involved.
 - 17.12.5.2 The TAT ED Director shall present an opening statement.
 - 17.12.5.3 The Respondent shall present an opening statement
 - 17.12.5.4 The TAT ED Director shall present witnesses and evidence in support of the complaint filed against the Respondent.
 - 17.12.5.5 The Respondent shall present witnesses and evidence in defense against the complaint filed against him or her.
 - 17.12.5.6 The TAT ED Director shall make a closing statement if so desire.
 - 17.12.5.7 The Respondent shall make a closing statement if so desire.
- 17.12.6 **Examination and Cross Examination of Witnesses.** Both parties may subpoena and examine friendly and hostile witnesses. Both parties may examine and cross

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examine witnesses. However, no harassment or efforts to intimidate witnesses shall be permitted. The Hearing Officer may examine witnesses at any point in their testimony. The testimony of all witnesses shall be under oath or affirmation.

- 17.12.7 **Irrelevant Testimony.** Parties may object to clearly irrelevant material, but technical objections to testimony as used in a Court of Law shall not be entertained. The Hearing Officer shall prohibit any testimony that it deems clearly irrelevant in order to keep control of the hearing.
- 17.12.8 **Written Testimony.** Written testimony will be admitted into evidence during the hearing only when a witness cannot appear in person. When a party wishes to use the written testimony of a witness who cannot appear, the submitting party must provide in advance of the hearing a written explanation for the non-appearance of the witness to the Hearing Officer. If the Hearing Officer is satisfied with the explanation, the party will obtain the testimony by means of an interrogatory. When, for reasons satisfactory to the Hearing Officer, an interrogatory cannot be used, an affidavit or a deposition from the witness may be used. A signed, but unsworn statement will be admitted into evidence only under unusual circumstances and when the Hearing Officer is satisfied that the testimony cannot be obtained otherwise.
- 17.12.9 **Closing Statement.** Closing Statements by both parties are permitted.
- 17.12.10 **Open Hearings.** The Hearings shall be opened to the public. However, the Hearing Officer shall have the authority to either close the hearing for any reason or remove any person who disrupts the hearing in an inappropriate manner.
- 17.13 Discovery.** Prior to the hearing, any party, upon written request made to any other party prior to the hearing is entitled to:
 - 17.13.1.1 Obtain the names and addresses of witnesses to the extent known to the other party, including but not limited to, those intended to be called to testify at the hearing
 - 17.13.1.2 Inspect and make a copy of any relevant documents in the possession or custody or under the control of the other party, including but not limited to statements made by any person pertaining to the subject matter of the proceeding, all writings pertaining to the subject matter of the proceeding, and investigative reports pertaining to the subject matter of the proceeding. Nothing in this Section shall authorize the inspection or copying of any writing or thing that is privileged from disclosure by law or otherwise made confidential or protected as attorney work product or otherwise;

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17.13.1.3 Before the hearing has commenced, the hearing panel shall request the participation, at the request of any party, for attendance of witness or production of documents at the hearing.

17.14 Issuance of Decision. The Decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the assessment of costs and penalties, if any. The Hearing Officer shall have thirty (30) days after the hearing to issue its decision. However, the Hearing Officer may provide the parties with notice if additional time is required for issuance of its decision but shall not exceed ninety (90) days following the hearing. Copies of the decision shall be sent to all parties and to the Chairman and the Tribal Council.

17.15 Appeals. All appeals for decisions issued by the Hearing Officer shall be under the exclusive authority of the Fort Berthold District Court.

17.15.1 **Procedure.** The Fort Berthold District Court shall set forth the rules and procedures for the appeal of any decision of the Hearing Officer on a complaint brought forth under this Title.

17.15.2 **Final Decision.** The decision on any appeal brought forth under this Title to the Fort Berthold District Court shall be final and without appeal.

17.16 Law Enforcement Assistance. The Director of the TAT ED may negotiate a Memorandum of Understanding (MOU) with the TAT Law Enforcement Police, Game and Fish Department, Energy Department and/or other Tribal departments or the Bureau of Indian Affairs (BIA) to establish areas of cooperation and coordination and may provide authority for specific field staff of those agencies or departments to issue citations to persons found to be in violation of this Act.

SECTION 18: CIVIL FINES AND PENALTIES

18.01 Civil Fines and Penalties. Any person who violates any provision of this Act may be subject to civil fines and penalties imposed by the ED Director or civil fines and penalties imposed by the Tribal Court in addition to remedies specifically provided for any violation.

18.01.1 **Civil Penalties for Violations.** Any person who engages in the unauthorized handling, treatment, or disposal of solid waste, special waste or hazardous waste within the exterior boundaries of the Reservation; who constructs or operates a solid, special or hazardous waste facility in violation of his facility permit; who constructs or operates a solid, special or hazardous waste facility without a facility permit; who transports solid, special or hazardous waste in violation of a solid waste transportation permit; who violates any requirements found in this Act; or who violates any standard adopted by the Tribes and TAT ED for the handling, treatment or disposal of solid, special and hazardous waste shall be liable for:

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- 18.01.1.1 A civil penalty of up to twenty five thousand dollars (\$25,000.00) each day for each violation, up to a maximum per incident of \$500,000 for negligent violations of this code and \$1,000,000 for willful violations of this code to be assessed by the ED Director with the concurrence of the Tribal CEO, the Tribal Chairman or the Tribal Courts.
- 18.01.1.2 Alternatively, any person found guilty of violating any of the provisions under this Act may be required to provide not less than eight (8) hours, but not more than two hundred (200) hours of community service assisting the Solid Waste Program, ED Director, or performing other kinds of community service designated by the NRC.
- 18.01.1.3 A penalty policy and matrix shall be developed by the ED Director for the range of penalties to be assessed in consideration of the severity of the violation and potential threat to public health or the environment. Standard fines may be established for common minor violations. The policy shall be reviewed and approved by the Natural Resources Committee, the Tribal CEO and the Tribal Court.
- 18.01.1.4 Any person who commits any of the above prohibited acts may be liable for any civil damages caused by the commission of such acts in excess of the fines assessed under Section 18.01.1.1 and may be excluded from the Reservation.
- 18.01.1.5 Any person who commits any of the above prohibited acts, or whose employees or agents in the course of their employment or agency commit any of the above prohibited acts, may have its rights to engage in activities on the Reservation suspended or terminated.
- 18.02 Disposition of Civil Penalty Funds.** Civil fines assessed under this code shall be paid to the TAT ED. Revenues from civil fines assessed and paid to the TAT ED shall be set aside in a separate account and shall be used to help defray the cost of implementing and enforcing the Tribes' environmental laws and regulations to include this code and the costs of responses to environmental emergencies or releases of hazardous substances, pollutants or contaminants on the Reservation.
- 18.03 Penalties In Addition to Others.** Penalties under this section are in addition to and do not supersede or limit any other remedies, civil or criminal.
- 18.04 Injunctive Relief.** The Tribal Court shall have jurisdiction to enjoin violations of this Act, and grant such additional relief as it deems necessary or appropriate to secure compliance with the provisions of this Act or any order, license, permit approval or regulation issued or adopted thereunder upon the petition of the ED Director or the Tribes.
- 18.05 Indemnification.** Any person, vendor or permittee who contracts with the Tribe to collect, transport, distribute, or dispose of solid waste, shall indemnify the Tribe, or any of its members, officers, agents or employees, from any claims and liabilities of any nature whatsoever, including third party suits for personal injury, death, environmental

cleanup, or property damage, which are based upon any violations of any of the provisions of the Act; rules or regulations promulgated thereunder; guidance documents; environmental solid waste standards; any orders or permit conditions; or are based upon violations of any other Federal or Tribal environmental laws, and which claims or liabilities are not caused by the Tribe, or any of its members, officers, agents, or employees.

SECTION 19: TRIBAL RESPONSE AND REMEDIAL ACTION PROGRAM

19.01 TAT Tribal Response Program (TAT-TRP). The TAT-TRP, as a part of the TAT ED, may investigate, assess, respond and remediate or require a responsible party to investigate, assess or remediate; a release, or threat of release, of a hazardous waste, substance, pollutant, contaminant, petroleum product, controlled substance or mining or oil and gas exploration or production activity materials that may pose a threat to public health, welfare or the environment. This may include the verification of the performance and results of a response or remedial action and the certification of the results or completion of such action.

19.02 Remedial Actions by TAT-TRP in Circumstances Posing an Imminent Threat. If a release of a hazardous substance, pollutant or contaminant results from the management, handling, treatment, storage, transportation or disposal of a solid or hazardous waste, hazardous material, petroleum product, controlled substance or from mining or oil and gas exploration or production activity poses an imminent threat to life or public health, TAT-TRP may:

19.02.1 Perform such activities as are necessary to address the threat in cooperation with any other Tribal, state, or federal department agency;

19.02.2 Conduct inspections and investigations as provided for in this Act; and

19.02.3 Expend any available funds to perform any assessment, cleanup, abatement, and/or remedial activities required to mitigate the threat, subject to the approval of the NRC.

19.03 Other Remedial Actions by TAT-TRP. If a release of a hazardous substance, pollutant or contaminant resulting from the management, handling, treatment, storage or disposal of a solid waste or hazardous waste, petroleum product, controlled substance or from mining or oil and gas exploration or production activity does not pose an imminent threat to life, health or the environment, but TAT-TRP and/or the ED Director deems it necessary for the public health, safety or the environment to perform assessment, cleanup, abatement or other remedial actions, TAT-TRP may perform such activities in cooperation with any other Tribal, state, or federal agency or department and expend available monies thereon, subject to the approval of the NRC.

19.04 Remediation by TAT-TRP at Orphan Sites. The TAT ED may expend funds, subject to approval of the NRC, for the purpose of remediation of orphan sites and the performance of any other activity as defined in this Section to include the completion of a remedial or response action when the primary or responsible party fails to properly or fully complete the action. Such activities may include conducting site evaluations and testing, evaluating remedial measures, selecting remediation requirements, and

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constructing, installing, maintaining and operating systems to remedy contamination in accordance with a remediation work plan prescribed by the ED Director for the orphan site. The liability of the TAT-TRP and the Tribes to fulfill the requirements of this Section is limited to the amount of funds available for such actions. As used in this Section, orphan sites means:

- 19.04.1 Sites where the ED Director determines that there is no viable party that is responsible for causing or contributing to the contamination present at the site; or
- 19.04.2 Sites where the TAT-TRP determines that the person responsible for the littering, dumping, release or spill cannot be identified.

19.05 Remedial Actions by TAT-TRP for Failure to Perform. Remedial action may be taken by the TAT-TRP in the absence of, or in addition to, assessment, cleanup, abatement, or remedial activities by the site owner, operator or other persons in cooperation with any other Tribal, state, or federal department or agency in the event that the activities subject to a Tribal Order or Voluntary Remediation Agreement are not satisfactorily performed or completed or where the TAT ED must take prompt action to prevent hazards to human health or the environment at a site where a responsible party, or other appropriate state or federal authority, fails to act promptly.

19.06 Remedial Action Contracting. TAT-TRP may perform remedial activities itself or in cooperation with any other Tribal, state, or federal department or agency or private contractor. To this end and notwithstanding any other provisions of law, TAT-TRP may:

- 19.06.1 Enter into oral or written contracts for such activities, and the contracts, whether written or oral, may include provisions for equipment rental and the furnishing of labor and materials necessary to accomplish or complete the activities; and
- 19.06.2 Expend any available funds to contract any assessment, investigation, cleanup, abatement, or remedial activities, subject to the approval of the NRC.

19.07 Liability of Owners, Operators and Other Persons. Whenever the TAT-TRP determines that the operation of a solid waste management facility or the collection or transportation of solid waste is causing or threatening to cause a release of a hazardous substance, contaminant or pollutant or a condition of hazard, pollution, or nuisance due to the migration of hazardous or solid waste, or for any other reason, TAT-TRP may require the operator of the solid waste facility or the solid waste transporter to take corrective action necessary to abate any hazard, pollution, or nuisance or to protect public health and safety and the environment. The owner or operator of the property or business may be held liable for all damages and costs associated with the assessment, investigation, cleanup, abatement, or remedial actions caused by such release or threat or release. However, an "innocent land owner", as defined below, is not liable for investigation, monitoring, remediation or other response action, or relates costs, regarding contamination attributable to a release, discharge or migration of contaminants on his property.

19.08 Innocent Land Owner. For the purposes of this Section "Innocent land owner" means a person who did not cause or contribute to the source of contamination and who is one (1)

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of the following:

- 19.08.1 An owner of real property that has become contaminated as a result of a release or migration of contaminants from a source not located on or at the real property;
- 19.08.2 An owner of real property who can show with respect to the property that the owner has no liability for contamination under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607(a), because the owner can show a defense as provided in Section 107(b) of that Act (42 U.S.C. § 9607(b));
- 19.08.3 An owner of real property who at the time of becoming the owner of the property, and after exercising due diligence, did not know or should not have reasonably known about the presence of contamination on the property;
- 19.08.4 A lender or fiduciary who owns or holds a security interest in land, unless the lender or fiduciary participated in the management of a site at the time that the owner or operator thereof caused a release or migration of contaminants;
- 19.08.5 A unit of Tribal government which acquired ownership or control through bankruptcy, abandonment or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the Tribal government agency contributed to the contamination; or
- 19.08.6 A landowner whose property is being leased by another such as in the instance of a grazing lease permit, mineral rights development by another party or other rental agreement wherein violations of this Act occurred, due to the actions of the lessor or other parties.

19.09 Innocent Land Owner Eligibility. To be eligible for immunity under this Section, such “innocent land owner” shall:

- 19.09.1 Grant to the TAT-TRP or to a person designated by the ED Director, reasonable access to the land for purposes of investigation, monitoring or remediation;
- 19.09.2 Comply with any requirements established by the TAT-TRP that are necessary to comply with federal grants or programs;
- 19.09.3 Not use the real property in a manner that causes exposure of the public to harmful environmental conditions; and
- 19.09.4 Comply with any Tribal engineering or institutional controls applicable to the real property.

19.10 Innocent Land Owner Exceptions. The following exceptions shall apply to an Innocent Land Owner:

- 19.10.1 Any person who knowingly transfers, conveys or obtains an interest in land to avoid liability for contamination, remediation or compliance with any provision of this Act shall not be an innocent owner.

19.10.2 Notwithstanding the provisions of this Section, an innocent land owner who undertakes a cleanup of his property must comply with all applicable provisions of this Act.

19.11 Recovery of Expenditure of Tribal Funds. In any case under this Section where the TAT-TRP expends funds to investigate, assess, remediate or contain contamination resulting from a spill or a release, and where the TAT-TRP has identified a responsible party, and the responsible party is not an “innocent Land owner”, the responsible party shall reimburse the TAT-TRP. If a release of a hazardous substance, pollutant or contaminant is assessed, remediated, the effects thereof abated, or other necessary remedial action is taken by the TAT-TRP as described above, the person or persons who committed or allowed the improper disposal, action or release shall be liable to TAT-TRP for the reasonable costs actually incurred in cleaning up any solid or special waste, hazardous waste or hazardous material, abating the effects thereof, monitoring , implementing engineering controls or taking other remedial action. The amount of such costs shall be recoverable in a civil action in the Tribal Court, together with the costs of suit incurred by TAT-TRP in recovering such monies. A judgment ordering the payment of these costs to TAT-TRP will bear interest at the rate of fifteen percent (15%) a year or at the rate of interest allowable on judgments under tribal or state law as applicable, whichever is greater. TAT-TRP shall reimburse the Tribes to the extent of the latter’s contribution.

19.12 Remedial Action and Enforcement Orders. Whenever TAT-TRP determines that a person or responsible party is causing, has caused or is threatening to cause a condition of hazard, pollution, or nuisance due to the release or migration of a hazardous substance, pollutant or contaminant the TAT-ED may issue an Order, pursuant to this Act, to take emergency action, cease or desist and/or require the person or responsible party to take corrective or remedial action necessary to abate any hazard, pollution, or nuisance or to protect public health and safety and the environment. Any person shall, upon order of the TAT-ED, cease and desist any improper action, remediate a release of a hazardous substance, pollutant or contaminant, abate the effects thereof, and take any other remedial action directed by TAT-TRP pursuant to this Section.

19.13 Accidental Release or Spill. In the event of an accidental release or spill of a hazardous substance, pollutant or contaminant to the air, land or waters or groundwater of the Reservation resulting in a potential threat to the public health, welfare or the environment within the exterior boundaries of the Reservation the persons causing the release or the originating facility's or vehicle’s owner or operator must implement the requirements of this Section to include:

19.13.1 **Timely and Appropriate Action.** The persons causing the release or the originating facility or vehicle owner or operator must take timely and appropriate action to include notification of appropriate officials and government agencies as specified below. Failure to take timely and appropriate action, as directed by this Section and the ED Director may result in enforcement action pursuant to this Act and other Tribal Acts and/or referral to appropriate state or federal agencies.

19.13.2 **Notification Requirements.** Notification is required where an accidental spill or

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- release of a hazardous substance, pollutant or contaminant has occurred within the exterior boundaries of the Reservation; and
- 19.13.2.1 The release poses a potential threat to the public health, welfare or the environment; or
 - 19.13.2.2 The release exceeds 25 gallons or causes a sheen on surface water; or
 - 19.13.2.3 It exceeds any Tribal or federal U.S EPA groundwater, surface water or drinking water quality standards; or
 - 19.13.2.4 The release is required to be reported according to Superfund Amendments and Reauthorization Act (SARA), Title III, § 304 (1986); or
 - 19.13.2.5 The ED Director requires a notification of a release to be made.
- 19.13.3 **Who to Notify of a Release.** The owner or operator of a facility or a vehicle believed to be the source of such a release of a hazardous substance, pollutant or contaminant must notify the TAT-TRP within Twenty-four hours (24) at (701) 627-4569, or any other telephone number designated by the ED Director, as well as the appropriate State and federal authorities.
- 19.13.4 **Notification Information Required.** All notifications and reports of an accidental release or spill of any hazardous substance or pollutant shall contain the following information, at a minimum, to the best of the reporting person's ability:
- 19.13.4.1 Name and telephone number of the reporting person;
 - 19.13.4.2 Name and address of the facility (or location of the spill or accident);
 - 19.13.4.3 Name of facility/vehicle owner contact if different than reporting person;
 - 19.13.4.4 Time and type of incident, for example spill, release, fire, etc;
 - 19.13.4.5 Name, description and quantity of materials involved, to the extent known;
 - 19.13.4.6 The extent of any injuries, if known;
 - 19.13.4.7 The possible hazard to human health or the environment outside the facility or to the nearby area;
 - 19.13.4.8 Description of actions taken to mitigate the release or spill; and
 - 19.13.4.9 Other authorities notified.
- 19.13.5 **Additional Reports.** Subsequent to the initial report, the responsible person shall immediately notify the ED Director of information that changes the accuracy of the initial report. As directed by the ED Director, the responsible person shall make additional reports verbally or in writing.
- 19.13.6 **Response Action Required.** The owner or operator of a facility or a vehicle believed to be the source of such a release or spill of a hazardous substance, pollutant or contaminant must comply with the requirements of this Act and the ED Director to address the immediate and long term impacts of the release or spill to include all necessary containment, remediation, assessment of impacts and long term monitoring.
- 19.14 Remediation Standards.** Any voluntary or involuntary remedial action conducted by an owner, operator or responsible party or by the TAT-TRP, shall:

19.14.1 **Be protective of human health, safety and the environment.** A remedy shall be considered to be protective of human health if it reduces risk to humans of acute and chronic toxic exposures to contaminants to levels that do not pose a significant risk to human health. A remedy shall be considered to be protective of the environment if it adequately reduces risk of significant adverse impacts to the ecology for which habitats have been identified on or near the site. Remedies may meet this requirement through a combination of removal, treatment, monitored natural attenuation, engineering or Tribal or federal institutional controls. Any site where a remedy is proposed that includes leaving contamination above background or risk based levels in place utilizing engineering or Tribal or federal institutional controls must also be approved by the Tribal Council pursuant to this Act;

19.14.2 **Attain Standards Established by the Tribes.** A remedy shall attain standards established under this Section for air, soil, water and ground water affected by the release, unless the ED Director sets an alternate standard. No standard set under this Section for a contaminant shall be set at a level or concentration lower than the background level for that contaminant. A remedy must attain standards or alternate standards by the end of the remediation period set forth in an Order or a Remediation Agreement. A remedy shall be considered to attain Tribal standards for air, soil water and ground water if it:

19.14.2.1 Meets any applicable media standards established under Tribal or federal Act, law or rule or regulation; or

19.14.2.2 Meets site-specific, risk-based standards developed by the Tribal EPA Director for the eligible site based on exposure factors. Exposure factors for hazardous substances, pollutants or contaminants in groundwater shall assume that groundwater may be used as a drinking water source, provided that no standard set under this Section for a contaminant shall be set at a level or concentration lower than the background level or concentration for that contaminant. For substances that may adversely impact water quality, the exposure factors to be used by the Tribal ED Director shall assume uses consistent with the class of use prior to contamination of the groundwater.

19.15 Maintain Source Control. The remedy shall control any sources of releases so as to reduce or eliminate, to the extent technically practicable, further releases as required to protect human health and the environment. A remedy shall be considered to control sources of releases if it controls the release of contaminants from sources to any media in concentrations that:

19.15.1 exceed applicable standards set by the ED Director under this Section, or the soil standards under this Section; and

19.15.2 complies with any applicable federal, state or Tribal standard for management of wastes generated as a consequence of the remedy.

19.16 Remedy Waste Management. A remedy shall be considered to comply with applicable standards for management of wastes if all wastes generated as a consequence of implementation of the remedy are treated, stored or disposed of in compliance with the requirements of this Act and any applicable state or federal requirements.

19.17 Remedy Selection. The ED Director shall choose a remedy, or combination of remedies, from among those remedies that meet the requirements of this Section, as applicable. In choosing a remedy, the ED Director shall consider:

- 19.17.1 The extent to which the remedy will be reliable and effective for the long term. For remedies that include engineering or Tribal institutional controls, the ED Director shall consider the expected life cycle performance of any engineering controls, monitoring systems and institutional controls;
- 19.17.2 The extent to which the remedy results in a reduction of toxicity, mobility or volume of contaminants;
- 19.17.3 The degree to which remedies incorporate treatment or removal of contaminants to lower long term risk to human health and the environment;
- 19.17.4 The time required for each remedy to attain standards for air, soil, water and ground water specified in this Section, as applicable. A remedy involving monitored natural attenuation may be considered whether or not the ED Director has made a determination of technical impracticability. Monitored natural attenuation shall be deemed effective if there is clear and convincing evidence that natural attenuation is occurring and will be completed within a reasonable time period;
- 19.17.5 Any adverse impacts which may be caused by a remedy, and shall take into consideration:
 - 19.17.5.1 The gravity of any projected impact and the cost and availability of measures to mitigate the impact;
 - 19.17.5.2 The extent and nature of contamination and practicable capabilities of remedial technologies, and whether achieving standards is technically impracticable;
 - 19.17.5.3 Reasonably anticipated future land uses or use restrictions in a Tribal institutional control area;
 - 19.17.5.4 Consistency of remedies with the nature and complexities of releases of contaminants;
 - 19.17.5.5 Consistency of the remedies with cultural and traditional values of the Tribes; and
 - 19.17.5.6 Cost of the remedy to include capital, operation and maintenance, engineering and institutional control costs and monitoring costs for the anticipated life of the remedy.

19.18 Voluntary Remediation Eligibility. Sites or properties that are eligible for voluntary remediation shall include sites or properties which meet the following conditions:

- 19.18.1 Sites, or portions of sites or properties, where releases occurred before the effective date of this Act; and the site, or portion of site or property, where the release occurred was not subject to the requirements of a Tribal permit under this Act at the time of the release; or the site is not covered by an Order of the TAT-TRP, TAT ED or by any court and entered with the consent of the person or entity.
- 19.18.2 Sites, or portions of sites, where releases occurred on or after the effective date of this Act and where the responsible party, owner or operator is implementing a pollution prevention plan approved by the TAT-TRP to prevent further releases consistent with this Act.
- 19.18.3 Site or properties that are **not** eligible to be voluntary remediation sites shall include:
 - 19.18.3.1 A site for which remediation is not eligible for voluntary remediation under this Section;

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- 19.18.3.2 A site that is listed on the National Priorities List of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675;
- 19.18.3.3 A commercial solid waste management facility, commercial waste incineration or disposal facility permitted under this Act;
- 19.18.3.4 Underground and aboveground storage tanks subject to federal remediation requirements under RCRA;
- 19.18.3.5 Radioactive waste storage or processing facilities subject to Federal requirements; or
- 19.18.3.6 Any site where a release resulted from continuous or repeated violations of any law, rule, regulation, permit or Order under this Act or other Tribal, state or federal Act, law or regulation.

19.19 Voluntary Remediation Requirements. Consistent with the policy and purpose of this Act, this Section shall provide incentive to a responsible party, owner or operator to voluntarily remediate eligible sites. All voluntary remediation for eligible sites shall be performed in accordance with this Act and all remediation requirements shall be contained in a Remediation Agreement issued by the TAT-TRP. The following requirements and procedures are necessary for voluntary remediation of eligible sites or properties under this Act:

- 19.19.1 The remediation shall not conduct un-permitted releases of hazardous substances, pollutants or contaminants to the environment of the Reservation;
- 19.19.2 Except as provided in this Section, no additional remediation requirements may be imposed by the TAT-TRP under this Act for remediation of any site or property subject to a Remediation Agreement issued by the TAT-TRP, unless the Remediation Agreement has been reopened or terminated pursuant to this Act;
- 19.19.3 Nothing in this Section shall prohibit the imposition of remediation requirements to address the release of a contaminant which may occur after a Remediation Agreement has been entered into or a no further action letter has been issued;
- 19.19.4 Remediation authorized by the TAT-TRP under this Section shall not be deemed a prohibited act under this Act, or of any rules or regulations promulgated thereunder;
- 19.19.5 Nothing herein shall relieve owners or operators of eligible sites from applicable permit requirements under this Act or limit the ED Director's ability to undertake enforcement action relating to a complaint under this Act and impose a penalty for violation of the Act;
- 19.19.6 Nothing in this Section shall limit the ED Director's authority to order any person to abate any condition that poses an imminent or substantial endangerment to human health or the environment, or the ED Director's authority to issue emergency orders or take emergency action.

19.20 Application for Participation in the Voluntary Remediation Program. To participate in the TAT-TRP voluntary remediation program an applicant identified as the owner, operator or other responsible party must submit an application to the ED Director that provides a location and description of the site. The application shall also describe the site-specific conditions which the applicant believes satisfy one (1) or more of the above eligibility criteria of this Section. No later than forty-five (45) days after receipt of the application, the TAT-TRP shall give written notice to the applicant containing the ED

Director's determination of the site eligibility for participation in the voluntary remediation program.

19.21 Non-Voluntary Remediation. The ED Director may require remediation by owners, operators, or other parties responsible for releases of hazardous substances, pollutants or contaminants on or from a property or site resulting in contamination. Such remediation, for parties that do not participate in the voluntary remediation program in this Act, may be required under a Tribal Order or permit issued pursuant to this Act. Sites or properties that are not eligible for voluntary remediation are subject to all other applicable requirements of this Act. Remediation is not voluntary under this article if it is required by:

- 19.21.1 Order of the TAT-TRP, ED Director, Tribal Council or by any federal or state court and entered into without the consent of a person; or
- 19.21.2 Order of the TAT-TRP, ED Director, Tribal Court or by any federal or state court and entered without the consent of a person who has failed or refused to enter into, or breached the terms of a Remediation Assessment Agreement, Remediation Agreement or reopened Remediation Agreement; or
- 19.21.3 Administrative or judicial order to which the United States Environmental Protection Agency is a party, which is issued after the effective date of this Act, on a site or property that has been determined not to be eligible under this Section.

19.22 Remediation Assessment Agreement. The Remediation Assessment Agreement shall contain the terms and conditions agreed to by the parties, which shall include the information, supporting documents, existing data or reports and procedures required by the TAT-TRP for completion of an environmental assessment or site characterization that is adequate and appropriate to:

- 19.22.1 Support selection of a permanent or long term protective remedy for the site and adjacent property;
- 19.22.2 Meet the standards of this Act and any applicable federal requirements; and
- 19.22.3 Develop a remediation work plan and schedule.

19.23 Site Characterization Plan. For any site that is determined by the ED Director to have the potential for significant contamination, be located in an area where human exposures to contaminants are likely, or require evaluation of remedial alternatives, the ED Director may require a Site Characterization Plan within the Remediation Assessment Agreement to include the collection of any data and site information needed to evaluate alternative remedial actions. Not all potential remedies must be evaluated for a site.

19.24 Remediation Assessment and Action Agreement. The ED Director and the applicant may enter into a single agreement containing both characterization and remedial action plans.

19.25 Remediation Agreement. The ED Director may enter into a Remediation agreement that meets the following requirements:

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- 19.25.1 Any Remediation Agreement shall contain, at a minimum a Remedial Action Plan to include:
- 19.25.1.1 the remediation standards and objectives for the site or property;
 - 19.25.1.2 the remediation standards and objectives for adjacent property;
 - 19.25.1.3 a description of any engineering or proposed Tribal or federal institutional controls;
 - 19.25.1.4 a schedule for the required remediation activities; and
 - 19.25.1.5 conditions for the effective and efficient implementation of the Remediation Agreement.
- 19.25.2 The ED Director may enter into a Remediation Agreement for any site or property subject to a prior administrative or judicial order or permit which contains remedial requirements. However, no Remediation Agreement for any such site or property shall be effective until the previous order or permit has been modified to incorporate the terms of the Remediation Agreement. Modifications to Orders or permits under this Section shall be made using the procedures specified in the prior Order or permit.
- 19.25.3 Entry into a Remediation Agreement under this Section shall not affect the duty of the site owner or operator to comply with any prior order or permit.

19.26 Financial Assurance. The ED Director may require a suitable bond or other evidence of financial assurance that is approved and accepted by the ED Director, to assure the satisfactory performance of the planned remediation and maintenance of engineering controls and any long term monitoring activities.

19.27 Property Sale or Transfer. It shall be the duty of any successor in interest in the property subject to a Assessment or Remedial Agreement to:

- 19.27.1 maintain any bond or financial assurance required under Section 19.26;
- 19.27.2 comply with any existing assessment or remediation agreement; or
- 19.27.3 comply with any re-openers or termination clauses determined appropriate by the ED Director.

19.28 Public Notification. The residents of the TAT Reservation shall be notified thru public notice in appropriate locations and local publications of remedial actions planned and conducted under this Section.

- 19.28.1 The TAT-TRP shall notify the affected public of all confirmed releases requiring a response plan for soil, water and/or groundwater remediation, and upon request, provide or make available to the interested public information concerning the nature of the release and any corrective actions planned or taken.
- 19.28.2 The public shall be provided a minimum of fourteen (14) days notice for any public meetings on a planned Response Action and for an opportunity to comment on a Response Action Plan and related activities.

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- 19.28.3 The applicant for voluntary remediation shall implement a public participation plan which shall be provided by the ED Director. In implementing the plan, the applicant or owner shall consult with and consider the public participation needs of interested parties, including but not limited to all known adjacent property owners of record of land, tribal or federal government agencies, local government groups, and public interest groups.
- 19.28.4 Following any voluntary remediation application and determination by the ED Director that a site is an eligible site, or following the submission of any application to modify an existing voluntary Remediation Agreement, the applicant shall:
 - 19.28.4.1 Give written notice to all known property owners of record and/or responsible tribal or government agency(s) of land, which is contiguous to the site, of the proposed action;
 - 19.28.4.2 The notice shall be of a form and content prescribed by the TAT-TRP, provide a description of the site and summarize the proposed Remediation Agreement; and
 - 19.28.4.3 Shall publish such notice in a newspaper of general circulation in the community in which the site is located. Such notice shall provide a summary of the criterion which makes the site eligible for participation in the TAT-TRP voluntary remediation program under this Section and provide contact information for the public to comment on the proposed action.

19.29 Public Participation. For any Remedial Action the ED Director shall implement a public participation plan. In implementing the plan, the ED Director shall consult with and consider the public participation needs of interested parties, including but not limited to all known adjacent property owners of record of land, responsible tribal or federal government agencies and local public interest groups.

- 19.29.1 The ED Director shall provide an opportunity for a public meeting on a planned Remedial Action and the meeting shall be held if the ED Director finds sufficient public interest.
- 19.29.2 The public shall be provided:
 - 19.29.2.1 a minimum of fourteen (14) days notice and an opportunity to comment on a draft Response Action Plan and related activities.
 - 19.29.2.2 a minimum of fourteen (14) days notice for any public meetings on a planned Response Action.
- 19.29.3 In determining whether there is significant public interest, the ED Director shall consider whether there have been responses to the notices required under this Section by: at least five (5) individuals; or an organization representing at least twenty (20) individuals; or the governing body of a local government or Tribal Segment; or the NRC or Tribal Council.

19.30 Public Record. The TAT-TRP shall establish and maintain a Public Record of response actions conducted by the TAT-TRP, or conducted by another party, or tribal or

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government agency, with oversight by the TAT-TRP, that is updated at least annually.

The Public Record shall include, at a minimum:

- 19.30.1 A record of sites at which response actions have been completed during the previous calendar year, including the name and location of such sites;
- 19.30.2 A record of sites at which response actions are planned to be conducted in the coming calendar year;
- 19.30.3 Upon completion of a response action, information of whether the site will be suitable for unrestricted use or if institutional controls on the use of the site or property will be implemented by the TAT-TRP or the Tribes as part of the remedy; and
- 19.30.4 Other such information as deemed appropriate by the TAT-TRP.
- 19.30.5 The public shall have access to all documents and related materials that the owner/operator of a site or property and/or the TAT-TRP are relying upon to make response action decisions or conduct the site activities to include the:
 - 19.30.5.1 Notification of a Release
 - 19.30.5.2 Spill Reports
 - 19.30.5.3 Assessment Report(s)
 - 19.30.5.4 Remedial Agreement or Action Plan and related documents
 - 19.30.5.5 Notification of Completion of a Response Action
 - 19.30.5.6 Certification of Completion of a Response Action; and
 - 19.30.5.7 Post Response Action/Monitoring Plan (if required).

19.31 Verification and Documentation of Completion. The TAT-TRP may review any reports or documentation or conduct any necessary site investigations, to include site sampling and analysis, to verify that the response or remedial action has met the requirements and standards of this code and the Tribes.

- 19.31.1 The TAT-TRP may issue either of two (2) letters to a responsible party, person or government agency to document that a response action is complete: A Certificate of Completion; or A No Further Action (NFA) letter. Both assurances may give site owners, operators, prospective purchasers, or other responsible party or government agency certainty about the extent of their remediation liability. If a Certificate of Completion or No Further Action letter is issued the TAT-TRP shall record a notice of such action in the appropriate office of the Tribes, the BIA and/or the County with the deed or other official document(s) of record for the site or property and shall file such notice no later than ten (10) business days after the date of issuance.
- 19.31.2 If a term or condition of any No Further Action letter, covenant not to sue, or Certificate of Completion requires the maintenance of a bond or other evidence of financial assurance, it shall be the duty of any successor in property interest to maintain such bond or financial assurance.
- 19.31.3 No person or entity shall change any engineering or institutional controls contained in a Remediation Agreement, NFA letter or Certificate of Completion without the prior written consent of the TAT-TRP. Before a change may be made, the TAT-TRP shall review the contamination at the site and any new requirements shall be incorporated into a subsequent Remediation Agreement, NFA letter or Certificate of Completion.

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Upon entry into a subsequent Remediation Agreement or Certificate of Completion or issuance of a NFA letter, the ED Director shall modify or terminate any prior Remediation Agreement, NFA letter or Certificate of Completion.

- 19.31.4 **Certification of Completion.** Certificates of Completion must be requested from TAT-TRP in writing. A Certification of Completion may be issued by the ED Director for sites that have been remediated according to the terms and conditions in an approved Voluntary Remediation Agreement, Order or Permit. The Certification of Completion may state that, at the time the certificate is issued, all remediation requirements necessary to protect human health and the environment have been successfully completed and that TAT-TRP currently has no plans to further evaluate the site or to impose additional remediation requirements. In addition a Certificate of Completion does not limit the TAT-TRP ability to undertake enforcement actions or to impose penalties for violations of this Act.
- 19.31.4.1 a Certificate of Completion does not relieve the responsible party from applicable tribal, state or federal environmental permitting requirements;
- 19.31.4.2 a Certificate of Completion may be issued for an entire site or for only a particular area on a site, or a particular set of contaminants, or a particular environmental medium. Partial Certificates of Completion will contain disclaimers explaining that the coverage of the liability assurance is limited to the specific area, contaminants, or media addressed and that the TAT-TRP ability to require additional remediation is not limited for other areas, contaminants, or media;
- 19.31.4.3 if a Certificate of Completion is requested because the responsible party believes no cleanup is necessary, information must be provided to the TAT-TRP documenting that the site (or portion of a site) for which the certificate is requested has been characterized in accordance with the site characterization performance criteria in the Remediation Assessment Agreement and that contaminants of concern either have not been released or are below required cleanup levels;
- 19.31.5 **Covenant not to Sue.** Consistent with the re-openers and termination clauses in the Remediation Agreement, the TAT-TRP may, upon request, provide the property owner or prospective purchaser a covenant not to sue. Any covenant not to sue shall extend to subsequent owners.
- 19.31.6 The ED Director may reopen a Certificate of Completion based on the provisions in the certificate and/or:
- 19.31.6.1.1 The site owner fails substantially to comply with the terms and conditions of the certificate; or
- 19.31.6.1.2 Contamination is discovered that was present on the site but was not known to the owner/responsible party or the TAT-TRP on the date the certificate was issued; or
- 19.31.6.1.3 An imminent and substantial endangerment to human health or the environment is discovered; or

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- 19.31.6.1.4 TAT-TRP determines that the site remedy has failed to meet remediation objectives; or
- 19.31.6.1.5 TAT-TRP determines that the certificate was based on fraud, material misrepresentation, or failure to disclose material information.

- 19.31.7 The ED Director may issue a Conditional Certificate of Completion where:
 - 19.31.7.1 A monitored natural attenuation remedy is approved and TAT-TRP determines that no exposure to contaminated media is reasonably expected to occur during the period of monitored natural attenuation. The Certificate of Completion will be conditioned on the volunteer's continued compliance with the monitoring requirements associated with the Remediation Agreement, site uses not changing during the period of natural attenuation, and confirmation sampling to show that cleanup levels are achieved when the period of natural attenuation is complete;
 - 19.31.7.2 An alternative (i.e., restricted use) soil cleanup levels are approved in conjunction with a use control area determination. In these circumstances, the certificate of completion will be conditioned on continued compliance with the requirements of the use control area; or
 - 19.31.7.3 A technical impracticability determination is made for cleanup of soil or water in accordance with this Act, provided the volunteer achieves alternative cleanup levels established by the TAT-TRP. The Certificate of Completion will be conditioned on the volunteer's continued compliance with any controls on land use to prevent human or environmental exposure to contaminated media.

- 19.31.8 **No Further Action Letter (NFA).** If the ED Director determines that no further remediation is required on a property or site; the TAT-TRP may, upon request, issue a No Further Action (NFA) Letter to a responsible party, person or government agency and/or a prospective purchaser or lessee to document that a response action is complete pursuant to this Act and any Tribal Order or permit requiring such action, and that no further action may be required. The NFA letter may provide site owners, operators, prospective purchasers, or other responsible party or government agency certainty about the extent of their remediation liability. The letter may state that, at the time the letter is issued, all remediation requirements necessary to protect human health and the environment have been successfully completed and that TAT-TRP currently has no plans to further evaluate the site or to impose additional remediation requirements. Special conditions and/or re-openers may be included in the NFA letter when:
 - 19.31.8.1 The property or site requires engineering or institutional controls or other use restrictions to meet the standards in this Section; or
 - 19.31.8.2 Monitored natural attenuation over a reasonable period of time is appropriate and that no exposure to contaminated media is reasonably expected during the period of natural attenuation. The No Further Action letter may require that the current use of the property continue during the period of natural attenuation and also may require that testing be conducted to confirm that standards are met.
 - 19.31.8.3 The TAT-TRP may reopen a No Further Action determination at any time if an imminent and substantial endangerment to human health or the environment is

discovered; or the TAT-TRP determines that the monitored natural attenuation remedy is not effective in meeting the standards for a No Further Action letter under this Section.

- 19.32 Institutional Controls.** An institutional control area or site may be created or modified by a resolution of the Tribal Council and/or a responsible government agency.
- 19.32.1 The ED Director, an owner or lessee of a site or property or a government agency responsible for a site or property or the NRC may propose long-term restrictions or controls on the use of a site or property and shall petition to the Tribal Council and to the appropriate governmental entity or entities, as appropriate, for the creation of such an institutional control area to establish long-term restrictions or controls on the use of the site or property. Such petitioner for creation or modification of an institutional control area shall:
- 19.32.1.1 Provide data, information, reports and any other information required in a Remediation Assessment Agreement and/or Remediation Agreement under this Section;
- 19.32.1.2 Document written notice of the petition to all property owners of record of land contiguous to the site; and
- 19.32.1.3 Publish notice of the petition and a public meeting in a newspaper of general circulation in the community in which the site is located. The notice shall identify the property, generally describe the petition and proposed use restrictions, direct that comments may be submitted to the Tribal Council and any responsible governmental entity or entities to whom the petition has been submitted, and provide the date, time and place of a public meeting. The public meeting shall be held no sooner than thirty (30) days after the first publication of the notice.
- 19.32.2 The Tribal Council shall approve or deny such petition for an institutional control area in accordance with applicable Tribal policies, rules, regulations and procedures.
- 19.32.3 The Tribal Council may condition its approval of the petition upon the determination by the ED Director that a remedy can be selected that meets the requirements of this Section and is consistent with the petition.
- 19.32.4 The NRC or the ED Director may request an institutional control be placed on a property or site but shall not have the authority to require a Tribal or governmental entity to adopt any restriction applicable to a site as part of a remediation or response action or a Remediation Agreement.
- 19.32.5 Before a voluntary remediation applicant and the TAT-TRP may enter into a Remediation Agreement that includes long-term restrictions on the use of a site or property, the owner or lessee of the site or property must obtain an institutional control designation for the site as provided for in this Section.
- 19.32.6 The restrictions in an institutional control area are enforceable by the Tribal Council or the ED Director by injunction, mandamus or abatement, in addition to any other remedies provided by Tribal law or Act.

- 19.32.7 Institutional controls or use restrictions shall run with the land and be binding upon successors in land ownership and/or leases.
- 19.32.8 A violation of any use restriction or institutional control shall be deemed a violation of this Act, and the ED Director or Tribal Council may bring any action for such violation against the owner or lessee of the property or site for the violation at the time the violation occurs or against the person who violates the use restriction or institutional control.
- 19.32.9 Nothing in this Section shall contravene or limit the authority of any Tribal, county, city or government agency to regulate and control the property under their jurisdiction.

19.33 Re-openings or Terminations of Agreements.

- 19.33.1 **Re-openings.** The TAT-TRP may reopen a Remediation Agreement, covenant not to sue, No Further Action Letter or Certificate of Completion at any time if:
 - 19.33.1.1 The current owner fails substantially to comply with the terms and conditions of the Remediation Agreement, covenant not to sue, No Further Action Letter or Certificate of Completion;
 - 19.33.1.2 An imminent and substantial endangerment to human health or the environment is discovered;
 - 19.33.1.3 Contamination is discovered that was present on the site but was not known to the owner, responsible party or the TAT-TRP on the date of the Remediation Agreement or when the TAT-TRP issued a covenant not to sue, NFA letter or certificate of completion; or
 - 19.33.1.4 The remedy fails to meet the remediation objectives that are contained in the Remediation Agreement, NFA letter or Certificate of Completion; or
 - 19.33.1.5 The monitored natural attenuation remedy is not effective in meeting the standards under this section.
- 19.33.2 **Terminations.** The ED Director may terminate a Remediation Agreement, covenant not to sue, Certificate of Completion or No Further Action letter if:
 - 19.33.2.1 It is discovered that any of these instruments were based on fraud, material misrepresentation or failure to disclose material information; or
 - 19.33.2.2 If a responsible party's or property owner's willful violation of any use restriction results in harmful exposures of any toxic contaminant to any user or occupant of the site.

19.34 Notice of Action. If a Remediation Agreement, covenant not to sue, Certificate of Completion or No Further Action letter is reopened or terminated, the TAT-TRP shall record a notice of such action in the appropriate tribal, BIA or county office with the deed for the site or other appropriate official land document and shall file the notice no later than ten (10) business days after the date of the Remediation Agreement, covenant not to sue, certificate of completion or no further action letter is reopened or terminated.

19.35 Disputes and Appeals. If a person and the ED Director are unable after good faith efforts to resolve a dispute arising under this Section pursuant to the provisions of an agreement, the person may request a hearing to appeal the ED Director's decision to the NRC. The NRC decision may be appealed to the Tribal Court.

19.36 Hearings.

19.36.1 **Notice of Hearing.** A notice advising the person of a date for a hearing, which hearing shall be held no earlier than twenty (20) days and no later than forty-five (45) days from the ED Director's mailing or personal delivery of the request for a hearing. The notice shall inform the person that they have the right to inspect and copy documents relative to the dispute.

19.36.2 **Conduct of Hearing.** All hearings conducted under this Section shall be conducted pursuant Section 17.12 of this Act.

19.37 Remediation Fees Assessment

19.37.1 The TAT-TRP shall implement a fee system and schedule of fees, subject to the approval of the NRC, which are applicable to the applicant for a Remediation Assessment Agreement, Remediation Agreement, Certificates of Completion or No Further Action letter authorized under this Section. Fees shall cover all reasonable direct and indirect costs of the ED Director and the TAT-TRP.

19.37.2 The TAT-TRP shall give written notice of the amount of the fee assessment to the applicant.

19.37.3 The applicant for the Remediation Assessment Agreements, Remediation Agreements, Certificates of Completion and No Further Action letters authorized under this Section may appeal the fee assessment to the NRC within thirty (30) days of receipt of the notice.

SECTION 20: LIMITATIONS

20.1 Appropriations. Nothing in this Act shall cause the TAT Tribes, the Solid Waste Director, or the ED Director to expend funds in excess of appropriations or other available funds.