

TO ENACT THE CHOCTAW NATION ENVIRONMENTAL LAWS

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL

A COUNCIL BILL

TO ENACT the Choctaw Nation Environmental Laws under Title 105, which include the Choctaw Nation Environmental Protection Code, the Choctaw Nation Solid Waste Code, and the Choctaw Nation Regulated Aboveground and Underground Storage Tank Code.

WHEREAS, Article IX, Section 4 of the Constitution of the Choctaw Nation (the “Nation”) provides that the Tribal Council (the “Council”) shall enact legislation, rules and regulations not inconsistent with the Constitution for the general good of the Choctaw Nation and for the administration and regulation of the affairs of the Choctaw Nation;

WHEREAS the Nation wishes to enact the Choctaw Nation Environmental Protection Code (the “Environmental Protection Code”) to protect the environment, its natural resources, and the health and safety of the Nation, its members, and all those living on the Reservation. See Exhibit A;

WHEREAS the Nation seeks to create the Environmental Protection Service of the Choctaw Nation (the “EPS”) to establish rules, regulations, investigate, and enforce violations of tribal environmental laws on the Reservation;

WHEREAS the EPS shall use all means, consistent with other essential considerations of Nation law and customs to improve and coordinate plans, functions, programs, and resources for the protection of the environment;

WHEREAS the Nation seeks to enact the Choctaw Nation Solid Waste Code (the “Solid Waste Code”) to establish comprehensive solid waste collection and disposal laws to protect the health, safety, and well-being of persons within the boundaries of the Reservation. See Exhibit A;

WHEREAS the Solid Waste Code will enable the Nation to prevent the deterioration of the natural environment and minimizing impacts from the improper management or disposal of solid waste to the air, surface water, groundwater, wildlife, and land resources;

WHEREAS the Nation seeks to enact the Choctaw Nation Regulated Aboveground and Underground Storage Tank Code (the “Storage Tank Code”). See Exhibit A

WHEREAS the purpose of this Code is to create an accountability and regulatory system for regulated aboveground and underground storage tanks; and

WHEREAS the Council finds it is in the best interest of the Nation to adopt the Choctaw Nation Environmental Laws to protect the environment, its natural resources, and the health and safety of the Nation, its members, and all residents living on the Reservation.

TO ENACT THE CHOCTAW NATION ENVIRONMENTAL LAWS TITLE 105


THEREFORE BE IT ENACTED by the Tribal Council that this Council Bill be cited as approval to adopt and enact the Choctaw Nation Environmental Laws, which include the Choctaw Nation Environmental Protection Code, the Choctaw Nation Solid Waste Code, and the Choctaw Nation Regulated Aboveground and Underground Storage Tank Code listed in the attached Exhibits A.

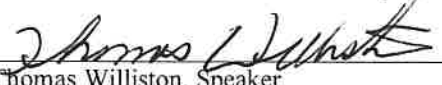
BE IT FURTHER ENACTED by the Tribal Council of the Choctaw Nation of Oklahoma, that this Council Bill be cited as approval for the Choctaw Nation Legal Department to reformat and renumber the attached codes, if necessary, to follow proper numbering and formatting under the Choctaw Nation Codification Act. This Bill also authorizes the Choctaw Nation Legal Department to review and correct any formatting, grammatical, or other errors or make insubstantial changes in the codes prior to publication.

BE IT FURTHER ENACTED by the Tribal Council that the Tribal Codes attached as Exhibits A shall become effective January 1, 2023.

CERTIFICATION

I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that twelve (12) members answered roll call and that a quorum was present at the Special Session of the Tribal Council in Durant, Oklahoma and by phone and video conference on November 12, 2022. I further certify that the foregoing Council Bill CB- 20 -23 was adopted at such meeting by the affirmative vote of twelve (12) members, zero (0) negative votes, and zero (0) abstaining.


 Ronald Perry, Secretary
 Choctaw Nation Tribal Council


 Thomas Williston, Speaker
 Choctaw Nation Tribal Council


 Gary Batton, Chief
 Choctaw Nation of Oklahoma

Date 11-15-22

TO ENACT THE CHOCTAW NATION ENVIRONMENTAL LAWS TITLE 105

Purpose/Need of Council Bill: This bill adopts and enacts the first tribal environmental laws governing the Choctaw Nation reservation. This bill enacts the Choctaw Nation Environmental Laws which include the Choctaw Nation Environmental Protection Code, the Choctaw Nation Solid Waste Code, and the Choctaw Nation Regulated Aboveground and Underground Storage Tank Code. These codes do, among other things, establish the Choctaw Nation Environmental Protection Service (the "EPS"), grants the EPS the ability to investigate and enforce violations of Choctaw environmental laws, and sets laws governing disposal of solid waste and regulates storage tanks within the reservation.

Title of Council Bill: TO ENACT THE CHOCTAW NATION ENVIRONMENTAL LAWS

Agency: Legal & Compliance

Budget: N/A

Match Required: N/A

Request by Project Director: Brian Danker, SEO Legal & Compliance

Title 105. Environmental Laws

Chapter 1. Environmental Protection and Enforcement Code

Article 1. General Provisions

Section 1.1.01 Short Title

This Code shall be referred to as the Choctaw Nation Environmental Protection Code.

Section 1.1.02 Definitions

These definitions shall apply to the terms used in this Title unless otherwise specified:

- (1) "BIA" means the United States Bureau of Indian Affairs.
- (2) "Chief" means the Chief of the Choctaw Nation.
- (3) "CNEPC" means the Choctaw Nation Environmental Protection Code.
- (4) "EPA" means the United States Environmental Protection Agency.
- (5) "EPS" means the Environmental Protection Service of the Choctaw Nation of Oklahoma.
- (6) "Nation" as appropriate to context means
 - (a) the sovereign and self-governing tribe, with a government duly organized and conducted in accord with the Constitution, ratified July 9, 1983, and as thereafter from time to time amended.
- (7) "Persons" means any individual, trust, firm, association, partnership, corporation, or other business entity, and any political subdivision, government agency, municipality, public corporation, or other governmental entity, and includes the Nation and its instrumentalities.
- (8) "Reservation" means all lands within the exterior boundaries set forth in Article I, Section 2 of the Constitution of the Choctaw Nation, ratified July 9, 1983, and as thereafter from time to time amended.
- (9) "Rules and Regulations" means any rules and regulations, not inconsistent with this Title, promulgated by the EPS regarding the collection, storage, treatment, transportation, or disposal of solid waste on the Reservation that implement or supplement any provision of this Title.
- (10) "Tribal Council" means the legislative branch of the Choctaw Nation.
- (11) "Tribal Court" means the courts of the Choctaw Nation.

Section 1.1.03 Legislative Purpose

- (A) The Tribal Council desires to create the EPS to protect the environment, its natural resources, and the health and safety of the Nation, its members, and all residents living on the Reservation.
- (B) To carry out the provisions of this Title, it shall be the responsibility of the EPS to use all means, consistent with other essential considerations of Choctaw Nation law and customs, to improve and coordinate plans, functions, programs, and resources to the end.

Section 1.1.04 Jurisdiction.

This Title and all Codes herein are designed to maintain the environment, natural resources, public health, safety, political integrity, economic security, and welfare of the reservation. Because violations of this Title and all Codes herein or any rules or regulations adopted thereunder will demonstrably and seriously impact the environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Nation, this Title and all Codes herein, and any rules and regulations adopted thereunder, shall apply to:

- (1) Any person, including but not limited to Choctaw Nation Tribal members, enterprises, corporations, associations, partnerships, Tribal government entities or other entities, any Indian or Non-Indian person, corporations, associations, partnerships, other entities, successors and assigns, states, counties, local governments and other agencies, and the United States where not prohibited by applicable laws, doing business within or otherwise affecting the environment of the Choctaw Nation.
- (2) All places and lands located anywhere within the Reservation, including all trust lands, and notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, and any real property interest of any kind, held by any person as defined under the Title.

Section 1.1.05 Consensual relations among non-Indians, the Nation, and Tribal members.

Any person who uses land anywhere within the Reservation and any person who enters into agreements or understandings with the Nation or its members and residents by commercial dealings, contracts, leases, licenses, permits, intergovernmental agreements, or other arrangements, commercial or otherwise, shall be deemed to have entered a consensual relationship with the Nation or its members.

Section 1.1.06 Applicability.

Any person who is anywhere within the Reservation and other lands within the jurisdiction of the Nation, whether on trust or non-trust lands, agrees to comply with, and is subject to this Title and all Codes herein, and any rules or regulations promulgated thereunder, all applicable Federal and Tribal laws, Executive Orders, applicable EPS rules and regulations, and applicable Tribal Court orders. All such persons shall have consented to the jurisdiction of the Choctaw Nation Tribal Court, and shall be subject to prosecution, penalties, damages, or any other remedies imposed or awarded by the regulations promulgated thereunder.

Section 1.1.07 Rulemaking Authority.

- (A) The EPS shall have the authority to promulgate such rules and regulations as may be necessary to carry out the provisions of this Title.
- (B) The EPS is designated as the Lead Tribal Agency for all purposes under this Title. The EPS shall have the powers, duties, and responsibilities provided for in this Title, including the power to issue administrative orders and fines.
- (C) The EPS is hereby designated as the responsible agent to ensure compliance with, and enforcement of this Title and any permits or orders issued pursuant to this Title and may

designate persons authorized to issue penalties, make arrests, and confiscate property for violations.

- (D) The EPS may issue guidance documents and may also provide guidance on implementation and interpretation of this Title. Any criteria set forth in any guidance document shall not conflict with federal law or contain any criteria which are less stringent than federal law. Guidance documents shall be enforceable if they are specifically referenced or attached as part of, or as a condition of, any permit issued under the Title.

Section 1.1.08 Choctaw Nation Environmental Protection Service Enforcement and Administration

- (A) Pursuant to the powers vested in the Executive Department by the Constitution of the Choctaw Nation, the EPS will carry out all administrative functions, rules and regulations necessary and proper for the implementation of this Title and all Codes herein, and such actions may include the filing of appropriate civil and criminal actions. Appropriate civil actions may be filed in the District Court of the Choctaw Nation or the United States District Court. In coordination with the Choctaw Nation Public Safety Department, criminal actions may be filed in the courts of the Choctaw Nation. If the Nation lacks criminal jurisdiction, the EPS shall exercise civil regulatory authority to the greatest extent necessary to enforce compliance with the Title and all Codes herein and may coordinate with other government agencies as necessary to pursue appropriate criminal prosecutions.
- (B) For purposes of protecting the environment, its natural resources, and the health, and welfare of the Nation, its members, and residents living on the Reservation, the EPS may exercise its authority to:
- (1) Develop environmental rules and regulations and procedures to promote and protect the environment and the quality of the land, air, and water resources of the Reservation.
 - (2) Issue, modify, and revoke permits and establish terms and conditions for any discharge into or upon the land, air or waters of the Reservation;
 - (3) Establish rules and procedures for the conduct of its business consistent with applicable Tribal and federal laws, and to protect the confidentiality of information which is proprietary in nature;
 - (4) Establish and assess fees and conditions for the issuance, modification, or revocation of any permit;
 - (5) Implement, regulate, and enforce environmental standards and criteria, orders and permit conditions, and rules and regulations under this Title;
 - (6) Establish a schedule of civil fines and penalties for violation of its regulations; provided, that no fine or penalty shall be imposed without notice and the opportunity for a hearing; and
 - (7) Take any and all other administrative actions necessary to fully implement this Title and all Codes herein and all policies promulgated pursuant hereto, provided such actions are otherwise consistent with applicable law.

Section 1.1.09 Severability.

If any provision of the Title and all Codes herein, or application of any provision of the Title and all Codes herein to any person or circumstance, is determined to be invalid or unlawful, the application of such provision to other persons and circumstances, and the remaining provisions of the Codes herein, shall not be affected.

Section 1.1.10 Authority to administer and implement federal laws and programs.

The EPS is hereby designated and authorized to take all actions necessary or appropriate to administer, implement and enforce applicable federal laws as allowed by Congress.

Section 1.1.11 Revocation, Suspension, or Modification of Permit

If a permittee fails to comply with an Administrative Order issued pursuant to this Title the EPS may revoke, suspend, or modify the permit until such time as violation(s) are remedied.

Section 1.1.12 Penalties for Violations of Title

(A) Except as otherwise specifically provided by tribal law, any person who violates any of the provisions of, or who fails to perform any duty imposed by, the Choctaw Nation law or who violates any order, permit or license issued by the EPS or rule promulgated by the EPS pursuant to this Title:

(1) Shall be guilty of a misdemeanor and upon conviction thereof may be punished by a fine of not less than Two Hundred Dollars (\$200.00) for each violation and not more than Ten Thousand Dollars (\$10,000.00) for each violation or by imprisonment for not more than six (6) months or by both such fine and imprisonment;

(2) May be punished in civil proceedings in the district court of the Choctaw Nation by assessment of a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) for each violation;

(3) May be assessed an administrative penalty pursuant Choctaw Nation law, rules, and/or regulations, of not to exceed Ten Thousand Dollars (\$10,000.00) per day of noncompliance; or

(4) May be subject to injunctive relief granted by the district court of the Choctaw Nation. The district court may grant injunctive relief to prevent a violation of, or to compel a compliance with, any of the provisions of this Title or any rule promulgated thereunder or order, license or permit issued pursuant to this Title.

(B) Nothing in this part shall prevent the EPS from seeking penalties in the district court of the Choctaw Nation for the maximum amount allowed by law. The assessment of penalties in an administrative enforcement proceeding shall not prevent the subsequent assessment by a court of the maximum civil or criminal penalties for violations of this Title.

(C) Any person assessed an administrative or civil penalty shall be required to pay, in addition to such penalty amount and interest thereon, attorneys fees and costs associated with the collection of such penalties.

(D) For purposes of this section, each day or part of a day upon which such violation occurs shall constitute a separate violation.

(E) The Office of the General Counsel or the Choctaw Nation District Attorney's Office may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of this Title or any rule promulgated thereunder, or order, license or permit issued pursuant thereto. Any violation of the Choctaw Nation Environmental laws shall be commenced within three (3) years after the commission of such violation or the discovery of the violation.

(F)

(1) Any action for injunctive relief to redress or restrain a violation by any person of this Title or of any rule promulgated thereunder, or order, license, or permit issued pursuant thereto or for recovery of any administrative or civil penalty assessed pursuant to this Title may be brought by:

(a) the Choctaw Nation District Attorney,

(b) the Office of the General Counsel on behalf of the Choctaw Nation, or

(c) the EPS on behalf of the Choctaw Nation.

(2) The courts of the Choctaw Nation shall have jurisdiction to determine said action, and to grant the necessary or appropriate relief, including but not limited to mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

(3) In any judicial action in which the EPS seeks injunctive relief and alleges by verified petition that:

(a) the defendant's actions or omissions are a violation of the Title or a rule, order, license, or permit, and

(b) the actions or omissions present an imminent and substantial endangerment to health or the environment if allowed to continue during the pendency of the action, the EPS shall be entitled to obtain a temporary order or injunction to prohibit such acts or omissions to the extent they present an imminent and substantial endangerment to health or the environment. Such temporary order or injunction shall remain in effect during the pendency of the judicial action until superseded or until such time as the court finds that the criteria of subparagraphs a and b of this paragraph no longer exist. If a temporary order or injunction has been issued without prior hearing, the court shall schedule a hearing within twenty (20) days after issuance of the temporary order to determine whether the temporary order should be lifted, and a preliminary injunction should issue. The EPS shall bear the burden of proof at such hearing.

(G) Except as otherwise provided by law, administrative and civil penalties shall be paid into the Environmental Protection Revolving Fund.

- (H) In determining the amount of a civil penalty, the court shall consider such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the defendant from the violation, the history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the defendant, the defendant's degree of culpability, and such other matters as justice may require.
- (I) In addition to or in lieu of any administrative enforcement proceedings available to the EPS, the EPS may take or request civil action or request criminal prosecution, or both, as provided by law for any violation of this Title, rules promulgated thereunder, or orders issued, or conditions of permits, licenses, certificates or other authorizations prescribed pursuant thereto.

Section 1.1.13 Penalty for Misrepresentation

In addition to other penalties as may be imposed by law, any person who knowingly makes any false statement, representation or certification in, or omits material data from, any application for a permit, license, certificate or other authorization, or any notice, analyses or report required by this Title, rules promulgated thereunder or any permit, license, certificate or other authorization issued pursuant thereto, or knowingly misrepresents or omits material data in such report to any person relying on such report or who alters any sample or knowingly renders inaccurate any monitoring device or method required to be maintained by such code, rules, permits, licenses, certificates or authorization, or with regard to owners and employees of laboratories certified by the EPS, misrepresents or omits material data from any report or analyses submitted to any person relying on such data because of the laboratory's certification shall, upon conviction, be guilty of a misdemeanor and may be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) for each such violation.

Section 1.1.14 Violations, Remedies, and Penalties Cumulative

- (A) It is the purpose of this Title to provide additional and cumulative remedies to prevent, abate, and control pollution. Nothing contained in this Title shall be construed to abridge or alter rights of action or remedies under the common law or statutory law, criminal or civil; nor shall any provision of this Title, or any act done by virtue thereof, be construed as estopping the Nation, or any person in the exercise of their rights under the common law to suppress nuisances or to abate pollution. Nothing in this Title shall in any way impair or affect a person's right to recover damages for pollution.
- (B) Nothing in this Title shall be construed to prevent the disposition of any matter by stipulation, agreed settlement, consent order, or default.
- (C) Unless otherwise specified, the violations, remedies, and penalties contained in this Title are in addition to other Choctaw Nation laws.

Section 1.1.15 Compliance Schedules with EPS

Political subdivisions may enter into compliance schedules with the EPS when compliance with environmental standards would create excessive debt. Political subdivisions may enter into compliance schedules with the EPS to prioritize compliance based on their greatest environmental or other public health and safety needs. Excessive debt is indicated when the work needed for compliance would require a capital cost or user charge significantly beyond the per-

household cost for similar sized communities within the state. Penalties shall not be assessed if a political subdivision complies with the schedule authorized by the EPS.

Section 1.1.16 Environmental Protection Service Revolving Fund.

- (A) There is hereby created a revolving fund for the Environmental Protection Service to be designated the "Environmental Protection Service Restricted Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations and shall consist of funds collected pursuant to this Title and all codes herein and such other funds as are provided by law. All monies accruing to the credit of said funds are hereby appropriated and shall be budgeted and expended by the EPS to be used for expenses related to protecting human health and the environment within the Reservation, enforcing the provision of the various environmental regulations adopted by the Nation, promoting environmental projects, and furthering environmental education for all persons within the Reservation.
- (B) Expenditures and accounting of said fund shall be made pursuant to the policies and procedures of the Choctaw Nation of Oklahoma Finance Department and/or applicable laws of the Choctaw Nation of Oklahoma.
- (C) The Court Clerk shall deposit all fines and penalties assessed pursuant to this Title in the Court Fund. The amounts imposed by this section shall be forwarded monthly in one check or draft to be deposited in the Environmental Protection Services Revolving Fund.
- (D) The Court Clerk and EPS shall provide a distinct numbering system for the identification and tracking of the expenditures.
- (E) Deposits and expenditures required by this section shall be included in the report required by Section 1.115 of Choctaw Nation CB-65-2009.

Chapter 2. Solid and Hazardous Waste Code

Article 1. General Provisions

Section 2.1.01 Short Title.

This chapter shall be known as the Choctaw Nation Solid Waste Code.

Section 2.1.02 Definitions.

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

- (A) "Biosolids" means byproduct left over from the treatment of water and wastewater by municipal and industrial treatment plants.
- (B) "Carcass" means any dead animal or portion of any dead animal.
- (C) "Closure" means the termination of the receiving, handling, recycling, treatment, composting, or disposal of solid waste at a solid waste facility and includes all operations necessary to prepare the facility for other future use or 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.
- (D) "CNSWC" means the Choctaw Nation Solid Waste Code, including any amendments hereof or supplements hereto adopted by the Tribal Council and approved by the Chief.
- (E) "Code" means this Solid Waste Code, including any amendments hereof or supplements hereto adopted by the Tribal Council and approved by the Chief.
- (F) "Collection" means the act of collecting solid waste or hazardous waste at the place of generation by an approved collection agent and does not mean "removal".
- (G) "Construction" means the erection or building of new structures and the replacement, expansion, remodeling, alteration, modernization, or extension of existing structures.
- (H) "Construction and demolition debris" means uncontaminated solid waste resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads; and uncontaminated solid waste resulting from land clearing. Such waste includes but is not limited to bricks, concrete, other masonry materials, soil, rock, wood (including painted, treated, and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, non-asbestos insulation, roofing shingles and other roof coverings, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, empty buckets ten gallons or less in size and having no more than one inch of residue remaining on the bottom, electrical wiring and components containing no hazardous liquids, and pipe and metals that are incidental to any of the above. Solid waste that is not construction and demolition debris (even if resulting from the construction, remodeling, repair and demolition of utilities, structures and roads and land clearing) includes, but is not limited to asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, fluorescent lights, carpeting, furniture, appliances, tires, drums, containers greater than ten gallon in size, any containers having more than one inch of residue remaining on the bottom, and fuel tanks. Specifically excluded from the definition of construction and demolition debris is solid waste (including what otherwise would be construction and demolition debris) resulting from any processing technique, other than that employed at a construction and demolition debris processing facility approved pursuant to this Code, that renders individual waste components unrecognizable, such as pulverizing or shredding.

- (I) "Cover material" means soil or other material suitable for use in covering compacted solid waste in a sanitary landfill. A material is suitable for use as a cover material if, when properly used, it will prevent (1) the propagation, harborage, or attraction of vectors; (2) the progress of fires; (3) the escape of odor; (4) excess infiltration of surface water runoff; and (5) erosion.
- (J) "Discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.
- (K) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any surface waters or groundwaters.
- (L) "Disposal site" means a site, location, tract of land, landfill site, or premises used or intended to be used for partial or total solid waste disposal.
- (M) "Fomite" means any substance that may harbor or transmit pathogenic organisms.
- (N) "Groundwater" means water below the land surface in a zone of saturation.
- (O) "Guidance document" means a document issued by the EPS that supplements criteria under the Code. A guidance document may provide specific technical direction regarding the manner in which an owner or operator shall comply with the Code and other applicable laws and regulations relating to the transport, storage, or disposal of solid waste. A guidance document may also provide direction as how the EPS interprets the CNSWC or solid waste program consistent with Tribal law and federal law.
- (P) "Hazardous waste" means any waste substance, material, smoke, gas, particulate matter, or combination thereof that:
- (1) Because of its quantity, concentration, or physical, chemical, or infectious characteristics, may either cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating illness or pose a substantial present or potential hazard to human health, living organisms, or the environment when improperly handled, treated, sorted, transported, or disposed of;
 - (2) Is specifically defined to be hazardous or toxic by the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Resource Conservation and Recovery Act of 1976 as either act may be amended from time to time, and by any regulations promulgated there under, including but not limited to 40 C.F.R. part 261 and any substance, material, smoke, gas, particulate matter, or combination thereof containing asbestos, petroleum or its byproducts, or polychlorinated biphenyls ("PCS's");
 - (3) Is hazardous, toxic, ignitable, reactive, or corrosive and is defined and regulated as such by the Nation or the United States of America pursuant to 40 C.F.R. Part 261; or
 - (4) Is specifically designated by the EPS as a hazardous waste.
- (Q) "Household hazardous waste" means hazardous waste discarded by households.
- (R) "Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(S) "Infectious waste" means:

- (1) Laboratory wastes, including but not limited to cultures of etiologic agents, which pose a substantial threat to health due to their volume and virulence.
- (2) Pathologic specimens, including but not limited to human or animal tissues, blood elements, excreta, and secretions that contain etiologic agents, and attendant disposable fomites.
- (3) Surgical specimens including but not limited to human or animal parts and tissues removed surgically, or at autopsy that, in that opinion of the attending physician or veterinarian, contain etiologic agents and attendant disposable fomites.
- (4) Human dialysis waste materials including but not limited to arterial lines and dialysate membranes.
- (5) Carcasses of animals infected with etiologic agents that may present substantial hazard to public health if improperly managed.
- (6) Equipment, instruments, utensils, or any other material that is likely to transmit etiologic agents.
- (7) Any other material that is likely to transmit etiologic agents or presents a significant danger of infection because it is contaminated with, or may reasonably be expected to be contaminated with, etiologic agents.

(T) "Landfill" means 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.

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

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

(W) "Litter" means all waste material including but not limited to disposable packages or containers thrown or deposited in a manner prohibited by this Code, including solid waste that is illegally dumped. "Littering" means the act of disposing of litter.

(X) "Mobile home or trailer" means a portable habitable or formally 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.

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

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

- (AA) "Open burning" means the combustion of solid waste without:
- (1) Control of combustion air to maintain adequate temperature for efficient combustion,
 - (2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and
 - (3) Control of the emission of the combustion products.
- (BB) "Open dump" means any facility or site on the Reservation where solid waste has been disposed of that is not a sanitary landfill authorized under the Code and compliant with the criteria prescribed in 40 C.F.R. Parts 257 and 258 as applicable.
- (CC) "Operator" means the person(s) responsible for the overall operation of a solid waste facility or part of a solid waste facility.
- (DD) "Owner" means the person(s) who owns any interest in a solid waste facility or part of a solid waste facility.
- (EE) "Permit" means an authorization and license issued by the EPS for the collection and/or transportation of solid waste, construction and/or operation of a solid waste facility on the Reservation, or other solid waste related activities as provided for in this Code.
- (FF) "Permittee" means a person who is authorized by a permit issued by the EPS pursuant to this Code to engage in solid waste related activities.
- (GG) "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. The term "pesticide" includes insecticides, herbicides, fungicides, rodenticides, and other pest control agents regulated under the Federal Insecticide, Fungicide, and Rodenticide Act.
- (HH) "Pollutant or contaminant" means any element, substance, compound, mixture, or disease-causing agent that, 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 organism or their offspring. The term "pollutant or contaminant" includes but is not limited to hazardous substances, hazardous wastes, toxic substances, controlled substance (as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802)) and petroleum or petroleum product. The term "pollutant or contaminant" also means any pollutant or contaminant that may present an imminent and substantial danger to public health or welfare of the Nation or any person within the exterior boundaries of the Reservation.
- (II) "Pollution" means the unauthorized disposal of any solid waste or hazardous waste into the air, land, surface water, or groundwater. The term "pollution" also means the condition caused by the presence in or on soil, air, or water of any pollutant 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 degraded or adversely altered.
- (JJ) "Premises" means a tract or parcel of land with or without habitable buildings.
- (KK) "Produced oil" means 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.

- (LL) "Putrescible" means organic matter that is capable of being decomposed by micro-organisms and that can result in the formation of foul-smelling products.
- (MM) "Recycle" means to process a material or substance, including solid waste, in order to regain material for human use. "Recyclable material" means material capable of being recycled. "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.
- (NN) "Recovery" means the recovery of material, byproducts, or energy from solid waste.
- (OO) "Regulated hazardous waste" means:
- (1) A solid waste that is a hazardous waste as defined in 40 C.F.R. Part 261 that is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b) or was not generated by a conditionally exempt small quantity generator as defined in 40 C.F.R. § 261.5; and
 - (2) Any other solid waste specifically designated as a regulated hazardous waste in this Code or by regulation promulgated by the EPS pursuant to the requirements of this Code.
- (PP) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding or barrels, containers, and other closed receptacles containing hazardous substances or pollutant or contaminant). "Release" also means threat of release.
- (QQ) "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:
- (1) 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;
 - (2) Off-site transport and off-site storage, treatment, destruction, or secure disposition of hazardous substance, pollutants or contaminants and associated contaminated materials; and
 - (3) Correct actions taken pursuant to the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901-6992k.
- (RR) "Removal" means the act of taking solid waste or hazardous waste from the place of generation either by a permitted collection agency or by the owner of the solid waste or hazardous waste.

- (SS) "Sanitary landfill" means an engineered land burial facility for the disposal of household waste which is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill by definition must comply with all applicable federal law, including the criteria at 40 C.F.R. Parts 257 and 258 as applicable.
- (TT) "Scavenging" means the uncontrolled and unsafe removal of solid waste from containers, vehicles, or any approved solid waste management facility or disposal site.
- (UU) "Sludge" means 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.
- (VV) "Solid Waste" means all putrescible and nonputrescible solid, semisolid, and liquid waste, including but not limited to garbage, trash, refuse, paper, rubbish, ashes, industrial waste, construction and demolition waste, abandoned and junk vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid waste, other discarded solid, liquid and semisolid waste from a wastewater treatment plant, water supply treatment plant or air pollution control facility or other discarded containerized gaseous material resulting from industrial, commercial, mining or agricultural operations, or community activities; but not including solid or dissolved material in domestic sewage; solid or dissolved material in irrigation return flows; industrial discharges that are point sources subject to permits under 33 U.S.C.A. § 1342; or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42, U.S.C.A. §§201 1, et seq. "Solid waste" includes special waste as defined in this Code, liquid waste, garbage, refuse, liquid and semisolid waste from a wastewater treatment plant, human waste that is not sewage sludge, and any other substance or material determined to be solid waste by the EPS pursuant to this Code.
- (WW) "Solid waste facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the management, treatment, storage, or disposal of solid waste or special wastes, such as a transfer station, a solid waste storage building, land on which solid waste processing or resource recovery systems are located, an incinerator, surface impoundment sites, a surface pile, a land treatment area, a MSWLF subject to criteria of 40 C.F.R. Part 258, or an inert landfill subject to the criteria in 40 C.F.R. Part 257. A solid waste facility may or may not be used solely for solid waste management.
- (XX) "SWDA" means the Federal Solid Waste Disposal Act, 41 U.S.C. §§ 6901-6992k, as amended.
- (YY) "Special waste" means solid waste specifically designated as special waste in this Code or by regulation promulgated by the EPS pursuant to the requirements of this Code. Special waste may require special storage, management, transportation, or handling under this Code.
- (ZZ) "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.
- (AAA) "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.
- (BBB) "Transfer station" means a temporary holding facility for solid waste for the purpose of interim collection and transfer to a landfill or other facility.
- (CCC) "Transporter" means any person, contractor, or solid waste facility operator who transports solid waste to solid waste facilities on or off the Reservation.
- (DDD) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or to render such waste nonhazardous, safer for transport, amendable to recovery and storage, or reduced volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.
- (EEE) "Nation's Solid Waste Program" means the authorities, activities, and procedures in the Code, the Nation's Integrated Waste Management Plan, and any other Tribal laws or regulations that comprise the Nation's system for regulating the collection, handling, transportation, disposal, treatment, and storage of solid waste, including all of the provisions of 40 C.F.R. Parts 257 and 258, which are incorporated herein by reference.
- (FFF) "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of this part:
- (1) Batteries as described in 40 CFR § 273.2;
 - (2) Pesticides as described in 40 CFR § 273.3;
 - (3) Mercury-containing equipment as described in 40 CFR § 273.4;
 - (4) Lamps as described in 40 CFR § 273.5; and
 - (5) Aerosol cans as described in 40 CFR § 273.6.
- (GGG) "Vector" means any insect, arthropod, rodent, or other animal capable of transmitting a pathogen from one organism to another or of disrupting the normal enjoyment of life by adversely affecting the public health, safety, or well-being.

Section 2.1.03 Legislative Purpose.

The purpose of this Code is to provide for the establishment of a comprehensive solid waste collection and disposal code to protect the health, safety, and well-being of persons within the exterior boundaries of the Reservation. This Code is intended to:

- (A) Protect the health, welfare, political integrity, and economic security of the Nation, its members, and all persons on the Reservation;
- (B) Protect the historical and cultural values and traditions of the Nation and ensure preservation of the Reservation as a permanent Tribal homeland;
- (C) Prevent the deterioration of the natural environment on the Reservation by minimizing impacts from the improper management or disposal of solid waste to the air, surface water, groundwater, wildlife, and land resources;
- (D) Reduce littering and eliminate disposal of waste in open dumps through regulation of the storage, collection, treatment, transportation, and disposal of solid waste on the Reservation;
- (E) Encourage the development of a Reservation-wide system for recycling;
- (F) Encourage solid waste source reduction on the Reservation;

- (G) Create uniform regulations for the storage, collection, disposal, treatment, and management of solid waste and hazardous waste on the Reservation, and for the remediation of any releases of hazardous substances, pollutants, or contaminants; and
- (H) Comply with the requirements of federal and Tribal law relating to the generation, storage, transportation, treatment, and disposal of solid waste on the Reservation.

Section 2.1.04 Findings.

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

- (A) The existing and increasing volume and variety of solid waste, including hazardous waste, generated and disposed of on the Reservation, in combination with the often-inadequate existing methods of managing solid waste and hazardous waste, contribute to land, air, and water pollution, and threaten the economy, public health, safety, welfare, and wellbeing of the Nation, its members, and residents and other persons on the Reservation. These circumstances also negatively impact the Nation's natural resources and contribute to deterioration of the environment and quality of life on the Reservation.
- (B) The enactment of this Code ensures, promotes, and protects the health and welfare of the Nation, its members, and all persons on the Reservation; the character, culture, and historical significance of the Reservation; and the Reservation's natural environment.

Article 2. Prohibited Practices and Activities

Section 2.2.01 Littering

- (A) It is expressly prohibited and shall be unlawful for any person to dump, deposit, drop, throw, discard, leave, cause or permit the dumping, depositing, dropping, throwing, discarding or leaving of litter upon any lands within the Reservation unless:
 - (1) The property has been designated by EPS for disposal of litter;
 - (2) The litter is placed into a receptacle or other container intended by the owner or tenant in lawful possession of that property for the deposit of litter;
 - (3) The person is the owner or tenant in lawful possession of the property or has first obtained the consent of the owner or tenant in lawful possession, or unless the act is done under the personal direction of the owner or tenant and does not create a public health or safety hazard, a public nuisance, or a fire hazard;
 - (4) The person is acting under the direction of proper public officials during special cleanup days; or
 - (5) The person is lawfully acting in reaction to an emergency situation where health and safety is threatened and removes and properly disposes of such litter when the emergency situation no longer exists.
- (B) Solid waste, while being transported, shall be covered, tied, or otherwise secured so waste will not be blown or dropped from the transport.
- (C) No person may transport by any means garbage or refuse from any dwelling, residence, place of business, farm or other site to and deposit such material in, around, or on top of trash barrels or other receptacles placed on public areas except as permitted by EPS.
- (D) It is expressly prohibited and shall be unlawful for any person to dump, deposit, drop, throw, discard, or otherwise dispose of litter from any motor vehicle upon any public highway, upon any public or private property or body of water.

Section 2.2.02 Prohibition on Dumping of Solid Waste.

- (A) It is unlawful for any person to dispose of any solid waste anywhere on the Reservation except as expressly permitted by this Code, or by regulations promulgated by the EPS pursuant to this Code.
- (B) It shall be unlawful for any person(s) to throw or discharge solid waste into any creek, river, tributary, ditch, other water conveyance system, lake, pond, or other Reservation water.
- (C) Any person who is responsible for illegal dumping or littering on the Reservation shall be required to remove all solid waste disposed of illegally including any releases or leakage, to restore the site to a condition acceptable to the EPS, dispose of the solid waste at an approved disposal site, and may be subject to further enforcement action under this Code.

Section 2.2.03 Open Burning Prohibited.

- (A) Upon adoption of this Code, it is a violation of this Code for any person to burn any solid or hazardous waste within the exterior boundaries of the Reservation, except as the EPS specifically authorizes by permit issued pursuant to this Code.
- (B) The open burning of household trash is prohibited where trash collection and disposal services are readily available.
- (C) Traditional activities associated with campfires and other fires used solely for recreational purposes, cultural or ceremonial practices, or non-commercial preparation of food shall be excluded for the purpose of this Code. Under no circumstances shall the open burning of tires be allowed.

Section 2.2.04 Maintaining a Public Nuisance.

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

Section 2.2.05 Carcasses and Dead Animals.

- (A) No animal carcass or part of an animal carcass shall be disposed of at any solid waste facility within the exterior boundaries of the Reservation unless the facility has a permit issued pursuant to the EPS to accept carcasses. Pets and livestock carcasses may be buried on private property with authorization of the owner.
- (B) No carcass or part of an animal carcass shall be disposed of in any well, spring, pond or stream of water; or leave or deposit the same within one-fourth ($\frac{1}{4}$) mile of any occupied dwelling or of any public highway, without burying the same as provided in subsection (a) of this Section.

Section 2.2.06 Junked or Unserviceable Vehicles.

- (A) It is unlawful to store, collect, or dispose of junked or unserviceable vehicles or farm implements (collectively "junk vehicles") on the Reservation in a manner that causes or creates a public nuisance.
- (B) No person shall store or keep an accumulation of more than four (4) junk vehicles. An accumulation of more than four (4) junk vehicles shall be considered a commercial salvage operation and are required to obtain a permit from the EPS pursuant to this Code.

(C) Junk vehicles shall not be disposed of at any solid waste facility on the Reservation.

Section 2.2.07 Other Prohibitions on Disposal at Solid Waste Facilities.

(A) Except as expressly authorized in the Code or by regulation promulgated by the EPS pursuant to the requirements of this Code, the following solid waste materials shall not be disposed of or accepted at any solid waste facility on the Reservation under any conditions:

- (1) Radioactive wastes emitting over 5 picocuries/gram (pCi/gm).
- (2) Regulated hazardous wastes.
- (3) Infectious biomedical wastes which include human tissue or human anatomical remains.
- (4) Animals or bedding exposed to infective agents.
- (5) Sharps, needles and lancets which have not been contained for disposal in leak-proof, rigid, puncture-resistant containers such as cartons or metal cans which are taped closed or tightly lidded to preclude loss of contents under severe compaction conditions.
- (6) Bulk quantities of infectious-type waste including blood, blood products, and body fluids.
- (7) Any materials containing asbestos.
- (8) Sewage, or sewage sludge.
- (9) Bulk liquids of any kind.
- (10) Polychlorinated biphenyls (PCBs).
- (11) Car batteries and other lead-acid batteries.
- (12) Used oil.
- (13) Explosives.
- (14) Tires.

Section 2.2.08 Scavenging.

Scavenging at solid waste facilities or collection vehicles on the Reservation is prohibited.

Section 2.2.09 Misleading Representations.

It shall be a violation of this Code for any person to knowingly omit material information or make any false statement or representation in any label, record, report, or other document submitted pursuant to this Code or regulations promulgated thereunder.

Article 3. Hazardous Waste

Section 2.3.01 Prohibition on Disposal of Hazardous Waste.

The dumping or disposal of regulated hazardous waste, as defined under 40 C.F.R. Part 261, anywhere within the exterior boundaries of the Reservation, is expressly prohibited and unlawful.

Section 2.3.02 Hazardous Waste Management and Treatment Standards.

This Code 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 Code and supersede any of the provisions that were modified. If any of the Parts 262-279 criteria are not actually restated in this Code, they are

nevertheless incorporated by reference and are applicable. The EPS reserves the right to be more stringent than the federal regulations cited above.

Section 2.3.03 Hazardous Waste Management and Treatment Requirements.

All hazardous waste, as defined in this Code, 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 Code and the following requirements:

- (A) **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:
 - (1) §262.11 for determining whether or not they have a hazardous waste;
 - (2) §261.5 for conditionally exempt small quantity generators;
 - (3) §262.12 for obtaining an EPA identification number;
 - (4) §262.34 for accumulation and temporary storage of hazardous waste;
 - (5) §262.40 (c) and (d) for recordkeeping;
 - (6) §262.43 for additional reporting; and
 - (7) §262.70 for farmers.
- (B) **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.
- (C) **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 Code or 40 CFR Part 261.

Article 4. Management of Special Wastes.

All substances designated as a “special waste” in this Code or by regulation promulgated by the EPS pursuant to the requirements of this Code, must be managed, stored, treated, and disposed of in accordance with the provisions of this chapter, regulations promulgated by the EPS.

Section 2.4.01 Sewage Tank Waste.

Sewage tank waste is designated as a special waste and shall only be disposed of at approved facilities in accordance with 40 C.F.R. § 503.

Section 2.4.02 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 in accordance with 40 C.F.R. § 279.

Section 2.4.03 Major Appliances

Appliances (also known as “white goods”) such as stoves, dish washers, refrigerators, washing machines, clothes dryers, and 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 Code 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 Tribal regulations prior to disposal or recycling.

Section 2.4.04 Infectious Institutional Wastes, Medical Wastes, Laboratory Waste, and Surgical Operating Room Pathological Specimens and Disposal Fomites.

- (A) Infectious institutional wastes, medical waste, laboratory waste, and surgical operating room pathological specimens and disposal fomites are designated as a special waste. Such wastes must be discarded in closable, puncture resistant, leakproof on sides and bottom, and labeled with fluorescent orange or orange-red or predominantly so, with lettering and symbols in a contrasting color. (Red bags or red containers may be substituted for labels) Such waste must be rendered harmless by a regulated medical waste processing facility prior to disposal.
- (B) 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 permitted transporter for such wastes.
- (C) 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 federal authority and disposed of at an approved solid waste disposal site.

Section 2.4.05 Used and Scrap Tires.

- (A) 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 Code.
- (B) Tires may not be delivered to a facility or location within the exterior boundaries of the Reservation that is not in compliance with this Code or abandoned upon any street, alley, highway, public place or private premises.
- (C) Anyone hauling scrap tires to unapproved disposal sites (ravines, dumps, gravel pits, tree rows, etc.) is in violation of this Code and subject to enforcement action. If scrap tires are taken to a location which comes under enforcement action, the transporter and/or the original generator(s) may also be liable for cleanup costs.
- (D) Persons may store up to a maximum of 50 tires for personal use on their own property or residence. Storage of larger quantities of tires requires a permit from the EPS.

Section 2.4.06 Asbestos and Asbestos Containing Materials.

- (A) Asbestos and asbestos containing materials (ACMs) are designated as special waste. The removal, transportation, and disposal of asbestos and asbestos containing materials must be conducted in compliance with the applicable requirements of this Code and the Clean Air Act (42 U.S.C. §§ 7401-7671) and follow U.S. EPA guidelines.
 - (1) Asbestos and asbestos containing materials must be disposed of at an approved landfill facility.
 - (2) 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.

- (3) Friable asbestos containing materials must be placed in leak-tight containers and be properly labeled. Containers should be carefully handled.
- (4) Handling of regulated asbestos containing material must be performed by certified asbestos personnel.

Section 2.4.07 Abandoned Mobile Home or Trailer.

(A) Mobile homes or trailers that are of unsafe structure, unfit for habitation, junked, partially disassembled, 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 EPS and must be managed accordingly and in full compliance with this Code.

- (1) The property owner will be provided with a warning letter by the EPS to properly repair, remove and/or dispose of the mobile home or trailer in accordance with this Code and any other applicable Tribal or federal regulations within 30 days.
- (2) Failure to comply with this warning letter may result in further enforcement action and penalties pursuant to this Code.
- (3) 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.

Section 2.4.08 Petroleum-Contaminated Soils.

Petroleum-contaminated soils 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 a permit pursuant to this Code.

Section 2.4.09 Universal Waste

Universal waste as defined in this Code is designated as special waste and must be disposed of in compliance with 40 C.F.R. part 273.

Section 2.4.10 Biosolids

- (a) Biosolids are designated as special wastes and may be disposed of by incineration, landfill, or land application.
- (b) Land application of biosolids requires a permit from the EPS and comply with the requirements in 40 C.F.R. Part 503.
- (c) Biosolid transportation within the exterior boundaries of the Reservation must be hauled by a transporter certified by the EPS.

Article 5 Permits for Solid Waste Facilities

Section 2.5.01 Required Permits

- (A) Corporations, agencies, private enterprises, or any other persons are required to obtain:
- (1) a solid waste facility construction and/or operations permit; or (2) a solid waste collection and transportation permit, from the EPS to either construct or operate a solid waste facility or to collect and transport solid waste within the exterior boundaries of the Reservation; or (3) any permit required by this Code. Any permittee shall be required to comply with the Code, any rule or regulation promulgated there under, all Tribal environmental standards and criteria, all relevant guidance documents, and all permit

conditions, all orders issued by EPS under authority of the Code, and all applicable Tribal or federal laws.

- (B) The EPS shall develop and promulgate standards and criteria regarding the location; design; performance; operating standards; groundwater monitoring; and other environmental, community, and economic concerns; and financial assurance requirements for the construction and operation of solid waste facilities within the exterior boundaries of the Reservation.
- (C) Solid waste permits for the collection and transportation of solid waste must be renewed annually by EPS on a calendar basis. The EPS shall promulgate rules and regulations for solid waste collection and transportation on the Reservation, including the operation of transfer stations, and may set whatever conditions it deems reasonably necessary to protect the environment, and the health, safety, cultural and general welfare of the Nation and its members before issuing any permit under this section.

Section 2.5.02 Temporary Restraining Orders and Preliminary or Permanent Injunction

If EPS has reason to believe that any person is in violation of any provision of this Code, any rule or regulation promulgated under this Code, any condition of any permit issued under this Code, or that any person is creating an imminent and substantial endangerment to the public health or the environment, EPS may file an action in Tribal Court requesting a temporary restraining order, a preliminary injunction or any other relief necessary to protect the public health or the environment.

Section 2.5.03 Compliance, Abatement, and Remedial Action Orders

- (A) Any permittee who constructs and/or operates a solid waste facility on the Reservation, or who collects and transports solid waste on the Reservation, who violates any of the conditions in his permit; or who violates any part of this Code; or any rules or regulation or guidance document adopted under this Code; or any relevant Tribal environmental criteria or standards for solid waste permittees; or any other Tribal or federal environmental law, shall upon order of EPS, cease and desist from any improper action or violation(s), clean up any solid waste, abate any hazard, pollution, or nuisance, and otherwise comply with any directive, or corrective or remedial action order issued by EPS. The EPS may issue an order requiring compliance immediately or within a specified period of time. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance, if applicable, outline specific remediation actions, if appropriate, and the right to a hearing before EPS. A compliance order shall be hand delivered to the alleged violator. An order issued by the EPS shall become final unless an appeal is filed with EPS for a hearing within thirty days of receipt of the order. A permittee shall have all procedural rights at any administrative hearing held before EPS under this subsection of this Code, including the right to judicial review granted under this Chapter. The EPS may file an action in Tribal Court to enforce final orders issued under this section.
- (B) **Imminent Harm and Remedial Actions by EPS.** If any of the circumstances set forth hereinabove pose an imminent harm to life or health, the EPS may expend any available monies to perform any cleanup, abatement, or remedial work required.

- (C) **Remedial Action by EPS.** If any of the circumstances set forth hereinabove do not pose an imminent threat to life or health, and the permittee fails to perform such work as ordered, EPS is authorized to perform such work and expend monies for such purpose as it deems reasonably necessary for the public health and safety.
- (D) **Liability of Solid Waste Permittees for Remedial Costs.** If solid waste or hazardous waste is cleaned up, the effects thereof abated, or any other necessary remedial action is taken by EPS under this Section, the permittee who committed such violation(s), any solid waste or hazardous waste, abating the effects thereof, or taking other corrective or remedial action, including all damages to the natural resources of the Nation or its members, shall be liable for all costs. The amount of such costs shall be recoverable by the Nation in a civil action brought by EPS in the Tribal Court, together with the costs of suit, including reasonable attorney's fees.

Section 2.5.04 Compliance with Permits

The EPS may develop a compliance schedule for any solid waste facility owner/operator or solid waste transporter who is not in compliance with any permit condition, or any solid waste criteria under this Code, or its rules or regulations, or guidance documents. The compliance schedule shall ensure diligent progress is made by such permittee to bring him or her into compliance within a specified period of time. If any solid waste facility owner/operator or solid waste transporter is not in compliance within the period of time specified may be subjected to a civil penalty of up to Ten Thousand Dollars (\$10,000), for each day each violation(s) continues uncorrected. EPS may revoke, suspend, or modify the permit until such time as the violation(s) are remedied.

Chapter 3. Regulated Storage Tank Code

Article 1. General Provisions

Section 3.1.01 Short Title

This chapter shall be referred to as the Choctaw Nation Regulated Aboveground and Underground Storage Tank Code.

Section 3.1.02 Legislative Purpose

The purpose of this Code is to create an accountability and regulatory system for regulated aboveground and underground storage tanks. This Code is intended to:

- (A) Protect the public and environment from potential harmful effects of hazardous substances;
- (B) Empower EPS to administer federal programs related to regulated storage tanks;
- (C) Establish a framework for the regulation and management of aboveground and underground storage tanks. The Executive Department will carry out all administrative functions necessary and proper for the implementation of this Code, including policies developed pursuant hereto.

Section 3.1.03 Definitions

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

- (1) "Closed system" means a storage tank system which:
 - (a) has been taken permanently out of service as a storage vessel for any reason or is not intended to be returned to services,
 - (b) has been out of service for one (1) year or more prior to April 21, 1989, or
 - (c) has been rendered permanently unfit for use as determined by the EPS.
- (2) "Corrective actions" means action taken to monitor, maintain, minimize, eliminate, or clean up a release from a storage tank system.
- (3) "Corrective action plan" means the plan submitted to the regulatory program of the EPS detailing the method and manner of corrective action to be taken for a release.
- (4) "Environment" means any chemical, physical, or biological component of the earth, including but not limited to water, water vapor, air, land (surface or subsurface), fish, birds, and other wildlife, vegetation, and all other natural resources.
- (5) "Facility" means any location or part thereof containing one or more storage tanks or systems.
- (6) "Hazardous substance" shall include:
 - (a) Any substance regulated as a hazardous waste under Subtitle C of the Solid Waste Disposal Act, Compensation and Liability Act of 1980, 42 U.S.C., Section 9601, but not including:
 - (i) Any substance regulated as a hazardous waste under Subtitle C of the Solid Waste Disposal Act, 42 U.S.C., Section 6903, or
 - (ii) Any substance regulated as a hazardous waste under the Choctaw Nation Environmental Code;
 - (b) A mixture of hazardous substances and petroleum, providing the amount of petroleum is of a de minimus quantity;
 - (c) Substances identified as such in 40 C.F.R. Parts 117 and 302; and

- (d) Any other substances so designated by the EPS.
- (7) "Operator" means any person in control of or having responsibility for the daily operation of the storage tank system, whether it be lease, contract, or other form of agreement.

The term "operator" also includes a past operator at the time of a release or a violation of this Code or of a rule promulgated hereunder.

- (8) "Owner" means:

(a) In the case of a storage tank system in use on November 8, 1984, or brought into use after that date, any person who holds title to, controls, or possesses an interest in a storage tank system used for the storage, use, or dispensing of regulated substances, or

(b) In the case of a storage tank system in use before November 8, 1984, but no longer in service on that date, any person who holds title to, controls, or possesses an interest in a storage tank system immediately before the discontinuation of its use.

The term "owner" does not include a person who holds an interest in a tank system solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank system.

- (9) "Permit" means any registration, permit, license, or other authorization issued or required by the EPS to operate a storage tank system.

- (10) "Petroleum" means ethylene glycol-based antifreeze, crude oil, crude oil fractions, and refined petroleum fractions, including motor fuel, jet fuel, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oil which are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). "Petroleum" also means a mixture of petroleum and hazardous substances provided the amount of the hazardous substances is of a de minimus quantity.

- (11) "Pipeline facilities" means new and existing pipe rights-of-way and any equipment facilities or buildings regulated under any applicable federal, tribal, or state law, including but not limited to:

- (a) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App., 1671, et seq.),
(b) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.),
(c) State Hazardous Liquid Transportation System Safety Act, Section 47.1 et seq. of Title 52 of the Oklahoma Statutes,
(d) Choctaw Nation Environmental Protection Code, or
(e) Intrastate pipeline facilities.

- (12) "Pollutant" includes but is not limited to dredge spoil, solid waste, incinerator residue, medical waste, sewage, garbage, sewage sludge, munitions, chemicals, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agribusiness waste.

- (13) "Pollution" means the presence in the environment of any substance, contaminant or pollutant, or any other alteration of the physical, chemical or biological properties of the environment or the release of any liquid, gaseous or solid substance into the environment in quantities which are or will likely create a nuisance or which render or will likely

render the environment harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property.

- (14) "Regulated substances" means hazardous substances, petroleum and any substance otherwise designated by the EPS or this Code.
- (15) "Release" means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching, or disposing of regulated substances from a storage tank system into the environment of the reservation. The term "release" includes but is not limited to suspected releases identified as a result of positive sampling, testing or monitoring results, or identified in any similarly reliable manner.
- (16) "Tank" means a stationary vessel designed to contain an accumulation of regulated substances, which is constructed of primarily non-earthen materials that provide structural support.
- (17) "Transporter" means any person who transports, delivers, or distributes any quantity of regulated substance from one point to another for the purpose of wholesale or retail gain.
- (18) "Waters of the Nation" means all streams, lakes, ponds, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon the Choctaw Nation Reservation or any portion thereof, and shall include under all circumstances waters which are contained within the boundaries of, flow through or border upon the Choctaw Nation Reservation or any portion thereof.

Section 3.1.04 Interpretation

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

Section 3.1.05 Severability

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

Article 2. Standards for Storage Tanks

Section 3.2.01 Rules governing storage tank systems

- (A) The EPS shall promulgate rules, guidelines, and a schedule of fees for governing storage tank systems. Until such time as superseded, the following minimum requirements and provisions apply:

- (1) Standards and requirements of 40 C.F.R. Part 280 and 281;
- (2) Release detection methods or equipment adequate to identify releases from storage tank systems, or both detection methods and equipment, shall be installed and maintained;
- (3) Written procedures to follow when release detection methods or equipment or both such methods and equipment records indicate any loss or gain which is not

- explainable by spillage, temperature variations or other known causes, shall be prepared and maintained;
- (4) In the event of any release, owners and operators of storage tank systems must report to the Choctaw Nation EPS within 24 hours, or another reasonable time period specified by the Choctaw Nation EPS, as required by this Code, or regulations promulgated thereunder;
 - (5) Records documenting actions taken in accordance with paragraphs (1) through (3) of this subsection shall be prepared and maintained;
 - (6) Notice shall be promptly given to landowners whose property has been or may be affected by a release, and such landowner shall be afforded a meaningful opportunity to have input into any activities impacting such landowners' property;
 - (7) Adjacent property owner(s) whose property has been contaminated by a release may remediate his or her own property under the same requirements as the tank owner or operator responsible for remediating the release, if the release is not otherwise promptly remediated, and the owner or operator shall reimburse such adjacent property owner(s) unless otherwise ordered by the EPS or Tribal court.
- (B) Minimum schedules and standards may be established and imposed by the EPS in the form of written guidelines for the design, construction, installation, operation, maintenance, repair, monitoring, testing, inspection, release detection, performance, abandonment, and closure of storage tank systems, as may be necessary to protect human health, safety and welfare and the environment. Said written schedules and standards shall be enforceable as rules until otherwise modified, superseded or revoked by the EPS or the courts of the Choctaw Nation. Copies of all written guidelines must be provided or made available to the public upon request.
- (C) In promulgating rules establishing schedules and standards pursuant to this section, the EPS may distinguish in such standards between requirement appropriate for new tanks, existing tanks and for abandoned tanks. In making such distinctions, the EPS may consider such factors as:
- (1) Location of the tanks;
 - (2) Soil and climate conditions;
 - (3) Use of the tanks;
 - (4) History of maintenance;
 - (5) Age of the tanks;
 - (6) National industry codes;
 - (7) Hydrogeology;
 - (8) Water table;
 - (9) Size of the tank;
 - (10) Quantity of regulated substances periodically deposited in or dispensed from the tank;
 - (11) The compatibility of the regulated substance and the materials of which the tank is fabricated; and
 - (12) Any other factors as deemed appropriate or necessary by the EPS.

Section 3.2.02 Exemptions and Case-by-case Determinations

(A) Exemptions are:

- (1) Septic tanks systems otherwise approved by the EPS or exempted under regulations promulgated by the EPS.
- (2) Surface impoundments, pits and lagoons that are otherwise covered in a permit issued by the EPS and/or are subject to other provisions of this Title.
- (3) Stormwater and wastewater collection systems.
- (4) Flow-through process tank systems.
- (5) Liquid trap or associated gathering lines directly related to oil or gas productions and gather operations.
- (6) Hydraulic lift tank systems.
- (7) Storage tank systems with a capacity of less than one hundred ten (110) gallons.
- (8) Storage tank systems with a de minimus concentration of regulated substances including but not limited to swimming pools and coffins.
- (9) Storage tank systems that serve as emergency backup tanks, provided that such backup tanks hold regulated substances for only a short period of time and are expeditiously emptied after each use.
- (10) Storage tank systems with a capacity of one thousand one hundred (1,100) gallons or less used for noncommercial agricultural or residential purposes.
- (11) Storage tank systems and residential tanks for noncommercial use for storing heating oil for consumptive use on the premises where stored.
- (12) Storage tanks systems storing hazardous wastes regulated under Subtitle C of the Solid Waste Disposal Act, 42 U.S.C., Section 6921 et seq., or substances regulated as hazardous wastes under Choctaw Nation law.

(B) EPS may require any facility, structure, or activity to comply with this Code, rules promulgated hereunder, EPS guidelines, notification requirements, restrictions, and appropriate EPS orders, and may require any facility, structure, activity, or person to obtain a permit prior to constructing, installing, or operating any facility, whenever it determines that it is necessary or appropriate to protect the environment or public health, safety, or welfare.

Section 3.2.03 Releases from Storage Tank Systems – Reporting

(A) Unless the EPS adopts rules that differ, the following minimum requirements apply to releases from storage tank systems:

- (1) Owners and operators of underground storage tank systems must report to the EPS within twenty-four (24) hours, or such other reasonable time period as is specified by the EPS. Underground storage systems must comply with substantive and procedural requirements of 40 C.F.R. Part 280 including, but not limited to, the procedures of 40 C.F.R. § 280.52.
- (2) Owners and operators of aboveground storage tank systems must report to the EPS within twenty-four (24) hours, or such other reasonable time period as is specified by the EPS.

- (B) In the event of a discharge of a pollutant to Waters of the Nation or in the event that pollution may occur, a release must be immediately reported to the EPS regardless of its source. The initial report may be by telephone or in person but shall be followed with a written report within forty-eight (48) hours.
- (C) Nothing in this Code shall be deemed to supersede reporting requirements elsewhere in the Choctaw Nation Environmental Protection Code or rules promulgated thereunder.

Section 3.2.04 Release from Storage Tank System – Corrective Action

- (A) No owner or operator, employee or agent of such owner or operator, or transporter shall knowingly allow a release from a storage tank system to occur or continue to occur without reporting the release to the EPS within twenty-four (24) hours upon discovering such a release.
- (B) The owner or operator of a storage tank system shall immediately take all corrective actions necessary to prevent or halt a release or a threatened release of regulated substances from a storage tank system and to abate and remove any such releases subject to applicable federal and Tribal requirements. Any corrective action taken by a tank owner or operator or authorized by the EPS shall be in compliance with all applicable Tribal and federal statutes and rules for the protection of air quality and water quality and for the transportation and disposal of any waste.
- (C) If there is a release from a storage tank system, the EPS may:
 - (1) After notice and hearing, order the owner or operator to take reasonable and necessary corrective actions;
 - (2) Without notice and hearing, issue an administrative order to take reasonable and necessary corrective actions;
- (D)
 - (1) The EPS may take corrective action on behalf of the Nation if:
 - (a) An owner or operator of the storage tank system cannot be identified,
 - (b) An identified owner or operator cannot or will not comply with an order issued by the EPS,
 - (c) An administrative or judicial proceeding is pending and the EPS determines corrective action is necessary to protect the public health, safety and welfare or the environment until administrative or judicial proceeding is resolved, or
 - (d) The EPS determines that the release constitutes clear and immediate danger requiring immediate action to prevent, minimize or mitigate damage to the public health and welfare or the environment. Before taking an action under this paragraph, the EPS shall make all reasonable efforts, taking into consideration the urgency of the situation, to order an owner or operator to take a corrective action and notify the owners of real property.
 - (2) The owner or operator is liable for the cost of corrective action taken by the EPS, including cost of investigating the release and administrative and legal expenses, if:

- (a) The owner or operator has failed to take a corrective action ordered by the EPS or otherwise required, or
 - (b) The EPS has taken corrective action in an emergency.
- (3) Reasonable and necessary expenses incurred by the EPS in taking a corrective action, including costs of investigating a release and administrative and legal expenses, may be recovered in a civil action. A certification of expenses by the EPS shall be prima facie evidence that the expenses are reasonable and necessary. Expenses that are recovered under this subsection shall be deposited in the Environmental Protection Service Revolving Fund.
- (4) In addition to corrective action, persons liable for the release shall be responsible for any damage caused to natural resources, costs associated with alternative drinking water supplies if needed, emergency response, and restoration of the area to its previous state to the extent possible.
- (E) Any order issued by the EPS pursuant to this section shall not limit the liability of the owner or operator or both such owner or operator for any injury, damages, or costs incurred by any person as a result of the release. The owner or operator shall not avoid any liability as a result of such release by means of a conveyance of any right, title or interest in real property; or by any indemnification, hold harmless agreement, or similar agreement.
 - (1) This subsection does not:
 - (a) Prohibit a person who may be liable from entering an agreement by which the person is insured, held harmless, or indemnified for part or all of the liability,
 - (b) Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement, or
 - (c) Bar a cause of action brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.
 - (2) Except as otherwise provided by law, if there is more than one person liable, such persons shall be jointly liable for any injury, damages, or costs.

Article 3. Permitting of Storage Tanks

Section 3.3.01 Registration, fees, and permit applications. (RESERVED)

Section 3.3.02 Registration of Existing Tanks.

All persons who already own, operate, or use regulated storage tanks on lands under the jurisdiction of the Choctaw Nation on the effective date of this Code shall register such tanks with the EPS no later than October 1, 2025. If registered before October 1, 2025, and otherwise in compliance with applicable requirements, such existing tanks are not required to have an individual permit issued under this Code until October 1, 2030 unless the EPS otherwise determines a permit is appropriate.

Section 3.3.03 Permit Application (RESERVED)