

**This model code was created pursuant to a grant awarded to the National Indian Justice Center by the United States Environmental Protection Agency, Office of Environmental Justice Programs, Grant #EQ-98976201. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Environmental Protection Agency.**

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# MODEL TRIBAL SOLID WASTE DISPOSAL ORDINANCE

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## MODEL TRIBAL SOLID WASTE DISPOSAL ORDINANCE

### Section 1 - Short Title, Findings and Purpose

- 101 Short Title:** This Ordinance shall be known as the **Tribal Solid Waste Disposal Ordinance** of the [name of Tribe].

<b>COMMENTARY</b>
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<b>Other terms such as “Code,” “Law,” “Title” or “Act” could be substituted for “Ordinance.” The name of the Tribe could also be inserted into the title.</b>
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- 102 Findings:** The [name of Tribal governing body] hereby finds as follows:

- (A) The increasing volume and variety of solid waste and hazardous waste being generated on the [Reservation/Rancheria] and the often-inadequate existing methods of managing solid waste and hazardous waste are creating conditions that threaten the public health, safety and welfare of tribal members and residents of the [Reservation/Rancheria] by contributing to land, air and water pollution, to the production of flies, rodents and litter, to the waste of dwindling natural resources, and to the general deterioration of the [Reservation/Rancheria] environment.

<b>COMMENTARY</b>
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<b>If Tribe has other reasons for enacting this Ordinance, they should be inserted here either in addition to or in place of the ones listed above.</b>
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- (B) The people of [name of Tribe] have a primary interest in the protection and control of the land and other natural resources affected by the improper disposal of solid waste within the [name of Tribe’s reservation or rancheria], and the quality of such land and other natural resources must be protected to insure the health, economic, aesthetic and cultural well-being of the [name] People.

<b>COMMENTARY</b>
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<b>The term <i>primary</i> in this context means that the Tribe has a fundamental interest in protecting the land and other natural resources on the Reservation or Rancheria, which is higher than the interest of state, county or federal governments.</b>
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<b>The term <i>aesthetic</i> refers to the overall beauty of the Tribe’s lands.</b>
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- (C) Open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies and pollutes the land, air and water of the [Reservation/Rancheria].
- (D) Inadequate and environmentally unsound practices for the disposal or use of solid waste and hazardous waste have created greater amounts of soil, air and water pollution and other problems for public health and the environment on the [Reservation/Rancheria]. The traditional methods of solid waste and hazardous waste management may not meet future requirements for eliminating environmental pollution and conserving natural resources.

<b>COMMENTARY</b>
<b>This Section sets out the current state of solid waste management that exists on the Reservation or Rancheria.</b>

- (E) Pursuant to federal law as determined by the U.S. Supreme Court in such cases as *Montana v. United States*, 450 U.S. 544 (1981) and reaffirmed in *Strate v. A-1 Contractors* 117 S.Ct. 1404 (1997), the [name of Tribe] possesses inherent sovereign authority to regulate on-Reservation solid waste disposal that affect fundamental Tribal interests and public health and safety, including when such activities are conducted by non-members of the Tribe on privately owned land within the Reservation.

<b>COMMENTARY</b>
<b>The test set out in <i>Montana</i> and <i>Strate</i> is that tribes have civil jurisdiction over the actions of non-Indians and nonmember Indians on non-Indian land within the reservation only if:</b>
<b>1) the person or company has entered into a consensual agreement with the tribe or its members; or</b>
<b>2) the conduct of the nonmember threatens or has some direct effect on the political integrity, economic security, health or welfare of the tribe.</b>
<b>[Note: <i>Atkinson</i> case: what impact, if any, does the case have on this analysis.]</b>

- (F) Under the Solid Waste Disposal Act, 42 U.S.C. §6903(13) (as part of the Resource Conservation and Recovery Act), “Indian Tribe” is included within the definition of “municipality” for purposes of the Act. California Public Resources Code §49202 requires agreements between tribes and the State of California for solid waste

disposal facilities located on Indian lands within the State.

### COMMENTARY

**Under California Public Resources Code §49202, tribes in California are required to enter into agreements with the State in order to operate a solid waste facility unless all of the following conditions are met:**

- 1) the facility is owned and operated by the Tribe;**
- 2) all solid waste accepted by the facility is generated by the Tribe; and**
- 3) the appropriate federal agencies have approved of the facility.**

**The State's ability to require these agreements is a direct result of the wording in RCRA, which includes "Indian Tribes" in the definition of "municipality" for purposes of the Act.**

**[Note: 61 Federal Register 30471 *Proposed Rule*, "Authorization of Indian Tribes' Hazardous Waste Programs under RCRA Subtitle C; but see *Back Country Against Dumps v. EPA*, 100 F.3d 147 (D.C. Cir. 1996) (holding that the EPA lacked the authority to treat tribes similar to states by granting tribes the authority to issue permits because tribes were defined as municipalities, not states, under RCRA)]**

- (G) Methods of solid waste management emphasizing source reduction, recovery and recycling of all solid waste are essential to the long-range preservation of the health, safety and welfare of the public, to the economic productivity of the [name of Tribe], to the environmental quality of the [Reservation/Rancheria] and to the conservation of natural resources.
- (H) Disposal of solid waste and hazardous waste in or on the land without careful planning and management will present a danger to public health and the environment.
- (I) Methods are available to separate recoverable materials from solid waste. The recovery and conservation of such materials can produce numerous benefits to the [name of Tribe], the State of California and the United States, including economic benefits in the way of savings realized by conserving material in order to reduce the value or quantity of materials that ultimately become solid waste.
- (J) It is in the best interest of the [name of Tribe] and the residents of the [Reservation/Rancheria] to establish and maintain a comprehensive tribal solid waste management policy, the objectives of which will be to manage and control solid waste and to prohibit the introduction of hazardous waste into the

[Reservation/Rancheria] in order to protect the health, safety and welfare of tribal members; to preserve the environment; and to provide for the maximum reuse of the resources contained in solid waste.

- (K) [Such protection of Reservation resources is not adequately provided for under existing legislation, and such protection will be furthered by the passage, adoption and implementation of this Ordinance.] **[OPTIONAL PROVISION]**

<b>COMMENTARY</b>
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<b>This Section is a sample of the type of issues the Tribe may want to address. However, the Tribe should carefully consider the unique history and needs of the community when adopting the final language.</b>
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**103 Purpose:** The general purposes of this Ordinance are to:

- 1) finance, implement, regulate and enforce environmental standards and criteria, orders and permit conditions, and exercise comprehensive Tribal regulatory authority over all solid waste and hazardous waste disposal matters within the exterior boundaries of the [Reservation/Rancheria];
- 2) protect fundamental Tribal cultural, ceremonial, religious, fishery, and economic stability of residential, agricultural, commercial, industrial, forest, wetlands, riparian and environmentally sensitive lands within the exterior boundaries of the [Reservation/Rancheria];
- 3) prevent the deterioration of the environment, standard of living, quality of life, health, safety and welfare of all persons within the exterior boundaries of the [Reservation/Rancheria];
- 4) provide and promote Tribal environmental protection and services within the [Reservation/Rancheria] and to regulate environmental activities under principles of Tribal sovereignty; and
- 5) prevent air, water and land from solid and hazardous waste pollution, including contamination of the Tribe's aquifers, ground waters, surface waters, drinking water supplies and other natural resources.

<b>COMMENTARY</b>
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<b>Add or delete provisions as applicable.</b>
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**104 Authority and Scope:**

Authority: This Tribal Solid Waste Disposal Ordinance is hereby adopted by [name of

Tribe's governing body] pursuant to [Article/Section of the Tribe's Constitution] authorizing the [name of Tribe's governing body] to undertake such actions.

Scope: The provisions of this Ordinance shall apply to all existing and proposed solid waste disposal activities and to all activities which have the potential to affect cultural, ceremonial, religious, fishery, seasonal residential, public health, safety, welfare, land, air or water quality and other fundamental interests of the Tribe, including such activities conducted by non-members of the Tribe or on privately owned lands. Activities to be regulated hereunder include but are not limited to:

- (A) Landfills and open dumps;
- (B) Storage of animal waste;
- (C) Automobile graveyards and junkyards;
- (D) Landfilling of sludge or septic system waste;
- (E) Individual, residential, industrial, commercial or agricultural sewage treatment facilities; and
- (F) All other activities that involve the storage, collection, transportation or disposal of solid and/or hazardous waste within the exterior boundaries of the [Reservation/Rancheria].

COMMENTARY
<p><b>[Note: the <i>Atkinson</i> case may impact the ability of the Tribe to regulate the activities of non-members on fee land within the reservation. See also, <i>Yankton Sioux Tribe v. Southern Missouri Waste Management District</i>, 890 F.Supp. 878 (1995), <i>aff'd</i>, 99 F.3d 1439 (8<sup>th</sup> Cir. 1996), <i>rev'd</i> 118 S.Ct. 789 (the reversal was not on the RCRA part of the district court decision, but rather on the status of the original boundaries of the reservation) (holding that the Yankton Sioux Tribe lacked regulatory authority over a planned solid waste disposal site that a non-Indian organization intended to build on fee lands within the reservation where the fee land was located on a remote area of the reservation. The court held that, because the land was far from houses of tribal members, the Tribe could not meet the <i>Montana</i> test by showing that the project would have a significant impact on the health, safety or welfare of the Tribe.)]</b></p>

**105 Applicability:** Because any violation of this Ordinance or any regulation adopted thereunder will demonstrably and seriously impact the environment, including land, water and air, natural resources, public health, safety, welfare, political integrity and economic security of the Tribe, this Ordinance, and any regulations adopted thereunder, shall apply to: (1) all persons within the exterior boundaries of the [Reservation/Rancheria], without exception, including but not limited to, all Tribal members, and all other persons on the [Reservation/Rancheria], including any Indians who are members of other Indian tribes, all non-Indians, and any other person as defined under the Ordinance; and (2) all places and lands located anywhere within the exterior boundaries of the [Reservation/Rancheria], including all trust and non-trust lands, and notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, or any real property interest of any kind, held by any person as defined under this Ordinance.

**COMMENTARY**

**The purpose of this provision is to explicitly comply with the test for tribal civil jurisdiction over nonmembers set out in *Strate v. A-1 Contractors* (see Comment to §102(E) above). However, merely placing this language in the Ordinance does not guarantee that a court will allow a particular tribe to enforce the provisions of this Ordinance against non-members (see *Atkinson Trading Company, Inc. v. Shirley, Jr.* holding that the Navajo Nation may not impose a hotel occupancy tax on a hotel or its non-Indian guests that is located on non-Indian fee land, even though the Nation provides police, fire and medical services to the hotel.)**

**106 Consensual Relations Among Non-Members, The Tribe and Tribal Members:** Any person who is not a member of the Tribe who uses land anywhere within the exterior boundaries of the [Reservation/Rancheria], whether trust or non-trust land, enters into consensual relationships with the Tribe or its members, through commercial dealings, contracts, leases or other arrangements. Such person's use of land involving the storage, collection, transportation and disposal of solid or hazardous waste on the [Reservation/Rancheria] will have a demonstrably serious impact upon the environment, natural resources, public health, safety, welfare, political integrity and economic security of the Tribe and its members, unless such use is in compliance with the provisions of this Ordinance, and any regulations promulgated hereunder.

**COMMENTARY**

The purpose of this provision is to explicitly comply with the test for tribal civil jurisdiction over nonmembers set out in *Strate v. A-1 Contractors* (see Comment to §102(E) above). However, merely placing this language in the Ordinance does not guarantee that a court will allow a particular tribe to enforce the provisions of this Ordinance against non-members (see *Atkinson Trading Company, Inc. v. Shirley, Jr.* holding that the Navajo Nation may not impose a hotel occupancy tax on a hotel or its non-Indian guests that is located on non-Indian fee land, even though the Nation provides police, fire and medical services to the hotel.)

## Section 2 - Definitions

For the purposes of this Ordinance, the following words and phrases shall have the following meanings:

**“Applicant”** means any person who has filed an application with the [name of Tribal Agency] for approval to store, collect, transport or dispose of solid waste on the [Reservation/Rancheria].

**“Aquifer”** means any geologic formation capable of yielding a significant amount of potentially recoverable water.

**“Beneficial uses”** means all lawful uses of waters identified in the [name of water quality control plan]. Uses may include but are not limited to domestic, commercial, industrial, agricultural, traditional, cultural and recreational, and uses by fish and wildlife for habitat or propagation.

**“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 post-closure maintenance.

**“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.

**“Composting”** means the controlled microbial degradation of organic solid waste yielding a safe and nuisance-free product.

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

**“Council or Tribal Council”** means the [name of Tribe] Tribal Council [or insert other name of tribal governing body].

**“Designated use”** means a use that is specified in water quality standards as a goal for a water body segment, whether or not it is currently being attained.

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

**“Disposal facility”** means a facility permitted to receive and dispose of solid waste and includes all contiguous land and structures, other appurtenances and improvements on the land. It does not include a facility the principal function of which is handling, treatment or composting of manure or other solid waste not intended for disposal. [NOTE: the term “disposal facility” is used interchangeably with “Municipal Solid Waste Landfill Unit” or “MSWLF.”]

**“Energy recovery”** means the production of energy or energy resources from the handling or disposal of solid waste.

**“Enforcement program”** means the rules, regulations and procedures adopted by [name of Tribal Agency] to enforce this Ordinance.

**“Handling”** means collection, transportation, storage, transfer or processing of solid waste or hazardous waste.

**“Hazardous materials”** means: 1) any substance that poses a threat to human health or the environment. Typical hazardous substances are toxic, corrosive, ignitable, explosive or chemically reactive. 2) Any substance that is hazardous, toxic, ignitable, reactive or corrosive and that is defined and regulated as such by the [name of Tribal Agency], the State of California or the United States of America; or 3) any substance that is defined to be hazardous or toxic by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or the Resource Conservation and Recovery Act of 1976, as either act may be amended from time to time, and by any regulations promulgated thereunder, including but not limited to any substance, material, smoke, gas, particulate matter or combination thereof containing asbestos, petroleum or its byproducts or polychlorobiphenyls (“PCBS”).

<b>COMMENTARY</b>
<b>“Promulgate” means to formally make public.</b>

**“Historical uses”** means all uses that have historical significance for the [name of Tribe].

**“Impervious barrier”** means any material or structure on, above or below the ground that does not allow precipitation or surface water to penetrate directly into the underlying surface.

**“Implementation schedule”** means a schedule that indicates approximate dates for the orderly, timely implementation of Solid Waste Management Plan policies and programs and includes approximate dates for the establishment, expansion and closure of any solid waste facility identified and reserved in the Plan.

**“Mitigation”** means a measure taken to reduce adverse impacts on the environment.

**“Municipal Solid Waste Landfill Unit” or “MSWLF”** shall mean a discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well or waste pile, as those terms are defined under 40 CFR 257. An MSWLF unit also may receive as authorized under the Solid Waste Disposal Act, other types of Resource Conservation and Recovery Act, Subtitle D, wastes, such as commercial solid waste, nonhazardous sludge and industrial solid waste. An MSWLF may be publicly or privately owned. An MSWLF unit may be a new unit, an existing unit or a lateral expansion. A lateral expansion is the horizontal expansion of the waste boundary of an existing unit. An MSWLF must comply with all of the criteria under this Ordinance.

<b>COMMENTARY</b>
<b>This Ordinance, however, prohibits the disposal of certain solid wastes in an MSWLF that would otherwise be permitted under the SWDA, such as, the conditionally exempt small quantity hazardous generator waste.</b>

**“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.

**“Open dump”** means any facility or site at which solid waste or hazardous waste is disposed of in a manner that does not protect the environment, is susceptible to open burning or is exposed to the elements, vectors and scavengers, and includes any facility that fails to satisfy standards found in this Code, Tribal regulations and/or 40 CRF Part 258.

<b>COMMENTARY</b>
<b>See definition of “vector” below.</b>

**“Operator”** means the person to whom the approval to construct and/or operate a solid waste facility or collection system is granted and any person who has filed an application with [name of Tribal Agency] for such approval.

**“Permit”** means any authorization, license or equivalent control document issued by [name of Tribal Agency] under the authority of [name of Tribe] regulating the siting, design, construction, operation, monitoring, corrective actions, closure, post-closure maintenance and financial assurance of solid waste facilities.

**“Permittee”** means a person, including but not limited to an operator, authorized and permitted to construct and/or operate a solid waste facility under this Ordinance.

**“Person”** means any individual, corporation, partnership, association, agency, municipality, commission or department, including the [name of Tribe] or other federally-recognized Tribal government.

**“Plan”** means the Tribe’s Solid Waste Management Plan.

**“Pollutant”** means any substance that will alter the quality of the waters of the Reservation.

**“Pollution”** means the condition caused by the presence in or on soil, air or water of any solid waste, hazardous waste or substance derived therefrom 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.

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

**“Potential uses”** means all uses attainable in the water body, whether or not they are explicitly stated as designated uses in the water quality standards or presently potential uses.

**“Processing”** means the reduction, separation, recovery, treatment or recycling of solid waste or hazardous waste.

**“Quality of the water or waters”** means any chemical, physical, biological, bacteriological, radiological and other properties and characteristics of water which affect its use.

**“Recoverable”** means the capability and likelihood of waste or byproduct being recovered from solid waste for a commercial or industrial use.

**“Recovered material”** means material and byproducts that have been recovered or diverted

from solid waste, but such term does not include those materials and byproducts generated from and commonly reused within an original manufacturing process.

**“Recycling”** means the process of sorting, cleansing, treating and reconstituting solid waste or other discarded materials in order to prepare the altered form for use.

**“Removal”** means the act of taking solid waste or hazardous waste from the place of generation.

**“Reservation [or Rancheria]”** means all land, air and water located within the exterior boundaries of the [name of Reservation or Rancheria].

**“Resource recovery system”** means a solid waste management system that provides for collection, separation, recycling and recovery of solid waste, including disposal of nonrecoverable waste residue.

**“Riparian”** refers to land on the banks of a body of water, such as a lake, river or stream.

**“Sanitary”** means the maintenance of a location or parcel of [Reservation/Rancheria] land in which the following circumstances are avoided, including but not limited to: 1) failure to contain solid waste resulting in windswept garbage; 2) overbearing odors which represent a general public nuisance; 3) on-site materials which present a fire hazard to the community; and 4) on-site materials or a collection of solid or hazardous waste which presents a human health hazard.

**“Sanitary landfill”** means a disposal facility employing a method of disposing of solid waste on land, without creating nuisances or hazards to public health or safety, by using methods to confine the solid waste to the smallest practical area, to reduce it to the smallest practical volume and to cover it with a layer of suitable cover material at specific designated intervals.

**“Segregated from other waste material”** means any of the following:

- (1) the placement of recyclable materials in separate containers;
- (2) the binding of recyclable material separately from the other solid waste; or
- (3) the physical separation of recyclable material from other solid waste.

**“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 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 hazardous waste; 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. §§2011, et seq.

**“Solid waste facility”** means a disposal facility; a transfer/processing station; a recycling facility; a composting facility; any resource recovery system or component thereof; any system, program or facility for resource conservation; and any facility used for the handling, treatment, composting or disposal of solid waste; whether such facility is associated with facilities generating such solid waste or otherwise; and includes all contiguous land and structures, other appurtenances and improvements on the land.

**“Solid waste management”** means a planned program for effectively controlling the generation, handling, treatment, composting and disposal of solid waste in a safe, sanitary, aesthetically acceptable and environmentally sound manner.

**“Solid Waste Management Plan or Plan”** means the formation of the Tribal policies for all solid waste collection, handling, transportation, disposal, treatment, storage, recycling and resource conservation on or off the [Reservation/Rancheria].

**“SWDA”** means the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (“RCRA”) and the 1984 Hazardous and Solid Waste Amendments (“HSWA”) to RCRA, and more particularly, subchapter IV - State or Regional Solid Waste Plans, SWDA §§ 4001-4010, 42 U.S.C.A. §§6941-6949(a), which requires that the EPA promulgate criteria for Municipal Solid Waste Landfill Units (“MSWLF”s) and which prohibits disposal of solid waste at landfills which do not satisfy such criteria. The 40 CFR Part 258 regulations contain the criteria for MSWLF’s, which became generally effective on October 9, 1993, although there are other effective dates under 40 CFR Part 258.

**“Toxic materials”** means any chemical or mixture that presents an unreasonable risk or injury to human health or the environment.

**“Transfer/processing station”** means a facility used to receive, temporarily store, process or transfer solid waste directly from smaller to larger vehicles for transport. “Transfer/processing station” does not include:

- (1) a facility the principal function of which is to receive, handle, process, treat or

compost manure in accordance with Tribal minimum standards;

- (2) a facility the principal function of which is to receive or handle solid waste that has already been separated for reuse and is not intended for disposal; or
- (3) the operations premises of a duly licensed solid waste collection operator who handles solid waste as an activity incidental to the conduct of a refuse collection and disposal business.

**“Treatment”** means any method, technique or process designed or intended to change the physical, chemical or biological characteristics of solid waste or hazardous waste to render it less harmful to the quality of the soil, air and water; safer to handle; or easier to contain, manage or use as fuel, nutrient, soil amendment or other additive.

**“Tribal Court”** means the [name of court].

**“Tribe’s Solid Waste Disposal Program”** means all the authorities, activities and procedures under this Ordinance, the Tribe’s Waste Management Plan and any other Tribal laws or regulations that comprise the Tribe’s system of permits and prior approval and conditions for regulating the collection, handling, transportation and disposal, treatment and storage of solid waste, including all of the location, operation, design, groundwater monitoring, corrective action, closure, post-closure and financial assurance requirements under Part 258 Criteria for MSWLF’s.

**“Variance”** means an authorized written permission for a delay or exception in the application of a given law, ordinance or regulation.

**“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 and well-being.

**“Waste”** includes waste water and any and all other substances, liquid, solid, gaseous, radioactive, heat laden, associated with human habitation, or of human or animal origin, or from any of man’s activities including producing, manufacturing or processing operation of whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal.

**“Waters of the Reservation [or Rancheria]”** or **“Reservation [or Rancheria] waters”** means any water, surface or underground, contained within, flowing through or bordering upon the [name of Reservation or Rancheria] or any portion thereof.

**“Water quality control plan”** is a document designating or establishing for the waters

within a specified area: 1) beneficial uses to be protected; 2) water quality objectives; and 3) a program of implementation needed for achieving and maintaining water quality objectives.

“**Water quality criteria**” means specific levels of water quality which, if reached, are expected to render a body of water suitable for its beneficial use.

### **Section 3 - Tribal Environmental Protection Agency**

#### **301 Designation as Lead Tribal Agency**

The Tribal Environmental Protection Agency [or other department or agency] shall be the lead agency for implementing this Tribal Solid Waste Disposal Ordinance and for all purposes under 40 CFR Part 258.

The Tribal Environmental Protection Agency [or other Tribal agency] shall communicate with the EPA regarding the Tribe’s solid waste program; prepare the application for EPA approval of the Tribe’s solid waste program under the Part 258 Criteria; and make reports to the EPA in a manner and containing such information as the Committee approves, excluding any confidential or privileged information.

#### **302 Creation of Position of Solid Waste Program Manager**

There is hereby created the position of Tribal Solid Waste Program Manager. The Tribal Solid Waste Program Manager shall serve under the direction of the [name of Tribal Agency] and shall be appointed by [name of Tribal Agency], which appointment shall be confirmed by [name of Tribe’s governing body]. The Tribal Solid Waste Program Manager shall cooperate with the Solid Waste Review Committee, the U.S. EPA and other federal agencies or the State of California, as necessary to carry out the intent of this Ordinance and implement the Tribal Solid Waste Management Plan.

#### **303 Establishment of Solid Waste Management Committee**

There is hereby established a Solid Waste Review Committee, which shall be comprised of three Board Members, all of whom shall be members of the Tribe. The Board Members shall be appointed by the Chairperson of the Tribe with the advice and consent of [name of Tribe’s governing body].

**COMMENTARY**

**This Section establishes a Solid Waste Program Manager and Solid Waste Management Committee. It also designates the “Tribal Environmental Protection Agency” as the lead agency for implementing and enforcing this Ordinance. The Tribe should substitute the names of its agencies and decide whether it wants to create the position of Solid Waste Management Program Manager and establish a Solid Waste Management Committee. This Model Ordinance does not name individuals or agencies except in this Section. The term “[name of Tribal Agency]” is used throughout the Model Code, so the Tribe should decide how it wants to structure its Solid Waste Management Plan and implementation of the Plan and substitute the names of the person/agency/committee where appropriate throughout this Ordinance.**

### **304 Powers and Duties of the Solid Waste Management Committee**

The Solid Waste Management Committee shall implement, administer and enforce the this Ordinance and the Tribe’s solid waste program, pursuant to all of the powers and duties delegated to it herein. The Committee is not authorized to consent to jurisdiction, liability or waiver of sovereign immunity. The Committee shall also have the following powers and duties:

- (A) Develop Tribe’s Solid Waste Management Plan: The Committee, with the assistance of the Program Manager, shall develop the Tribe’s Solid Waste Management Plan (“Plan”), which shall include the identification of, and a plan for closing of all “open dumps” within the [Reservation/Rancheria], in accordance with the SWDA and Part 258 Criteria.

#### **COMMENTARY**

**Even if the Tribe does not have any permitted open dumps, this provision should be included in the Ordinance because it allows the Tribe to enforce the Ordinance against anyone who is dumping on the Reservation or Rancheria or has excessive garbage on his or her property.**

The Plan shall also include the formation of Tribal policies for all solid waste collection, transportation, handling, treatment and disposal on or off the [Reservation/Rancheria]. If feasible, the Plan shall include a resource recovery program for the recycling of solid wastes and a program for the disposal of household hazardous wastes other than in the MSWLF on the [Reservation/Rancheria].

The Plan shall also include a description of any MSWFL’s on the [Reservation/Rancheria] that are in compliance with the Part 258 Criteria, which will continue to receive solid waste. Such Plan shall contain a descriptive narration of the

location, design and operation of such MSWLF's and how such MSWLF's will satisfy the Part 258 Criteria.

The Plan shall also include:

(1) An estimation of the volume and composition of all solid waste which is generated on the [Reservation/Rancheria], and an estimation of the volume and composition of solid waste from sources outside the [Reservation/Rancheria] that may be disposed of in any MSWLF on the [Reservation/Rancheria] pursuant to any intergovernmental agreement that the [name of Tribe's governing body] may authorize;

(2) An identification of the responsibilities of other Tribal agencies and entities involved in the implementation of the Tribe's solid waste disposal program and the distribution of federal or state funds to the Tribal authorities responsible for development and implementation of the Tribe's solid waste disposal program;

(3) A review of the Tribal regulatory systems which are necessary to implement the Tribe's solid waste disposal program, and enforce the Ordinance and rules or regulations promulgated hereunder;

(4) A review of any contracts for the closing of all "open dumps" on the [Reservation/Rancheria], or the removal of solid waste disposed of at "open dumps" on the [Reservation/Rancheria] to duly authorized facilities off the [Reservation/Rancheria] and an assessment of such costs;

(5) A review of the 40 CFR Part 257 Criteria and the authorization of the disposal of any solid waste on the [Reservation/Rancheria] under the Part 257 Criteria under the rules and regulations to be adopted by the Committee;

(6) The identification of preferred locations on the [Reservation/Rancheria] for the establishment of new MSWLF's and a review of whether groundwater monitoring could be suspended at such locations under 40 CFR §258.50(b); and

(7) A study of how solid waste will be disposed of on or off the [Reservation/Rancheria], in compliance with the Part 258 Criteria, including an assessment of costs for constructing and operating MSWLF's, or transfer stations on the [Reservation/Rancheria] and an assessment of costs for the collection and transportation of solid waste on or off the [Reservation/Rancheria].

The Plan may also include any other matters which are relevant for the Tribe's solid waste disposal program.

The Committee shall submit the Plan to the [name of Tribe's governing body], in writing, for its review, modification and approval.

- (B) Identify and Close All Open Dumps on the [Reservation/Rancheria]: In compliance with the Solid Waste Disposal Act, the Committee shall identify and shall prohibit the disposal of any solid waste at all “open dumps” on the [Reservation/Rancheria]. The Committee shall also take whatever action is necessary to close in a timely manner all “open dumps” on the [Reservation/Rancheria] as required by the Part 258 Criteria. An “open dump” is a landfill that does not satisfy the 40 CFR Part 258 Criteria.
- (C) Issue Solid Waste Disposal Permits: The Committee shall have the authority and responsibility to issue permits for the location, design, construction, operation, closure, post-closure and financial assurance requirements for an MSWLF's on the [Reservation/Rancheria]. The Committee shall also have the authority and responsibility to issue permits for the collection and transportation of solid waste on the [Reservation/Rancheria]. This authority shall not be delegated to the Director of the Solid Waste Agency.
- (D) Conduct Hearings: In addition to the other powers conferred upon it herein, the Committee shall have the power to hold all public or administrative hearings specifically provided for under this Ordinance.
- (E) Take Remedial Action, Assess Civil Penalties and Revoke, Suspend or Modify Permits: The power of the Committee to enforce compliance with the Tribe's solid waste disposal program includes the power to take remedial action, assess civil penalties and revoke suspend or modify permits.
- (F) Promulgate Rules and Regulations and to Issue Solid Waste Guidance Documents: The Committee shall promulgate rules and regulations from time to time, as required by the Ordinance, or to implement or enforce any provisions or requirements of the Ordinance, including a system of civil fines, sanctions and penalties, for violations of this Ordinance or any rules and regulations promulgated under this Ordinance. All rules and regulations promulgated by the Committee within the scope of its authority and responsibility shall be submitted to the [name of Tribe's governing body] for its approval and adoption, before they are enforceable as Tribal law on the [Reservation/Rancheria]. The Committee shall adopt rules and regulations for landfills on the [Reservation/Rancheria] under the 40 CFR Part 257 Criteria; for the collection and transportation of solid waste; and other rules and regulations as required herein.

The Committee, with the assistance of the Director of the Tribe's Solid Waste

Agency, may also approve and issue “Guidance Documents” as part of the Tribe’s solid waste program, which shall contain specific technical or scientific criteria for implementing the location, construction, design, operation, closure or post-closure requirements for MSWLF’s. Guidance documents may supplement the Part 258 Criteria, but any criteria set forth in any guidance document shall not be in conflict with any Part 258 Criteria, or contain any criteria which are less stringent than the Part 258 Criteria. 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 Ordinance.

- (G) Apply for and Obtain Federal or State Financial and Technical Assistance to Implement the Tribe’s Solid Waste Program: The Committee is authorized to apply, as soon as practicable, for federal or state financial aid, training and technical assistance, for development of the Tribe’s Solid Waste Management Plan and to implement the Tribe’s solid waste program. This shall include grants available from EPA’s Regional Office as may be authorized under the SWDA; and includes any other federal grants, funds or assistance which may be available from the EPA; the U.S. Department of the Interior, Bureau of Indian Affairs; the U.S Department of Housing and Urban Development; the Administration for Native Americans; and any other federal state or other governmental agencies or sources; including any federal appropriations under the Indian Environmental General Assistance Program Act of 1992, P.L. 102-497.
- (H) Hire a Qualified Director for the Tribe’s Solid Waste Agency: The Committee shall hire, subject to the approval of the [name of Tribe’s governing body], a qualified person with professional experience and certifications relating to the management and disposal of solid waste, to be the Director of the Tribe’s Solid Waste Agency. The Director shall be an employee of the Tribe and shall be paid a salary established by the [name of Tribe’s governing body]. The Director shall manage the Solid Waste Agency on a day-to-day basis acting within the scope of his or her duties and powers as set forth herein.
- (I) Prepare and File and Annual Report With [Name of Tribe’s Governing Body]: The Committee shall prepare and file an annual report with the [name of Tribe’s governing body] no later than July 1 of each year, which shall review the progress achieved under the Tribe’s solid waste program, and shall include any reports requested by the [name of Tribe’s governing body]. The Committee shall recommend what specific actions should be taken by the [name of Tribe’s governing body] regarding the Tribe’s solid waste program.

### **303 Powers and Duties of Tribal Solid Waste Program Manager**

The specific duties of the Tribal Solid Waste Program Manager shall include:

- (A) Assisting the Committee in developing the Tribe's Solid Waste Management Plan pursuant to the requirements of the Ordinance; the SWDA; 40 CFR Parts 257 and 258; and 40 CFR Part 239. The goal of this plan shall be the proper collection and disposal of all solid waste on 40 CFR Parts 257 and 158 and this Ordinance.
- (B) The development of rules and regulations and guidance documents which supplement the technical standards and criteria for the location, construction, design, operation, closure and post-closure requirements for MSWLF's and which also provide the technical standards and criteria for the collection and transportation of solid wastes.
- (C) The preparation of an inventory and location of all sites on the [Reservation/Rancheria] where solid waste has been disposed and a plan to close all sites as required under 40 CFR Part 258.
- (D) The location of appropriate sites on the [Reservation/Rancheria] where MSWLF's might be located in compliance with this Ordinance and 40 CFR Part 258.
- (E) The preparation of technical reports for the Committee or [name of Tribe's governing body], as may be requested from time to time, including environmental assessments as may be necessary.
- (F) The preparation of the application to EPA for approval of the Tribe's solid waste program under 40 CFR Part 239 and Part 258.
- (G) The administration, supervision, monitoring, investigation and enforcement of solid waste collection, transportation and disposal on the [Reservation/Rancheria] in compliance with this Ordinance and all laws, rules and regulations and guidance documents promulgated thereunder.
- (H) The investigation and preparation of applications for federal or state grants, funding and financial and technical assistance to implement the Tribe's solid waste program.
- (I) The providing of any assistance to the [name of Tribal Agency] as requested from time to time, in matters involving the Ordinance and the Tribe's solid waste program; assisting in public education as to matters involving solid waste collection and disposal on the [Reservation/Rancheria] collection and disposal on the [Reservation/Rancheria]; and assisting in any public, judicial or administrative hearings, as provided for under this Ordinance.
- (J) The supervision of the daily management of the [name of Tribal Agency], and the

supervision, hiring and management of any employees of the [name of Tribal Agency] who are hired by the Tribe.

- (K) The issuance of compliance, cease and desist and remedial action orders to any permittee under this Ordinance as provided herein; and the application for injunctive relief to abate pollution and other unlawful activities under this Ordinance herein.
- (L) Upon complaint by any person which establishes reasonable grounds, or upon its own motion, the [name of Tribal Agency] shall investigate the activities of any permittee under this Ordinance. In conducting an investigation, the [name of Tribal Agency] shall have the authority, without reasonable notice, if necessary, to enter into the permittee's place of business, operation or facility, to inspect any books or records of the permittee, to inspect any of the permittee's property or sites of possible pollution and to take samples. In addition, the [name of Tribal Agency] may require, or monitor such tests as it deems necessary, to ensure that the provisions of this Ordinance or any permit conditions are being complied with by any owner/operator of an MSWLF, or transporter of solid waste. Such authority may be exercised by the [name of Tribal Agency], including any authorized employee, agent or representative of the [name of Tribal Agency], and including any agents of the U.S. Environmental Protection Agency who are specifically authorized by the [name of Tribal Agency]. The [name of Tribal Agency] shall, in addition, have those powers and duties set forth herein regarding compliance monitoring of permittees.

The [name of Tribal Agency] or its agents, are authorized to investigate the activities of any person who is suspected of violating or being in violation of any provisions of this Ordinance, any rules or regulations promulgated hereunder or any permit conditions.

## **Section 4 - Solid Waste Management Plan and Considerations**

### **401 Approval of Plan**

Within 180 days of the passage of this Ordinance, the [name of Tribal Agency] shall present to the [name of Tribe's governing body] for its approval a Solid Waste Management Plan (Plan). Within thirty (30) days of its presentation by the [name of Tribal Agency] to the [name of Tribe's governing body], the [name of Tribal Agency] shall publicize the existence of the Plan and make it widely available to all interested persons. Within sixty (60) days of its presentation, the [name of Tribal Agency] shall hold public hearings at locations of its choice to permit interested parties to comment on the proposed Plan. The Plan, as proposed by the [name of Tribal Agency], shall go into effect, and the [name of Tribal Agency] shall commence its implementation, upon approval by the [name of Tribe's governing body].

**402 Contents of Plan**

The Plan should include, at a minimum, those items listed in Section 304(A) of this Ordinance.

**403 Prohibitions of Hazardous Waste**

In order to protect the limited land, air and water resources of the [Reservation/Rancheria] from irremediable hazardous pollution and to protect the health, safety and welfare of all residents on the [Reservation/Rancheria] and surrounding communities, receiving, accepting, handling, transporting, treating, storing, composting, processing and disposing of hazardous waste is expressly prohibited within the exterior boundaries of the [Reservation/Rancheria], except that [name of Tribal Agency] may permit the establishment of a program for the collection, storage, transfer, transportation and disposal off the [Reservation/Rancheria] of hazardous waste generated or found on the [Reservation/Rancheria], subject to such conditions as [name of Tribal Agency] may impose.

**ALTERNATIVE LANGUAGE:**

**403 Household Hazardous Waste**

The [name of Tribal Agency] shall include a study regarding the disposal of household hazardous waste on the [Reservation/Rancheria], as part of the Tribe’s Solid Waste Management Plan. Such study shall include an analysis of the economic feasibility of the separate collection of household hazardous waste, and disposal of household hazardous wastes at duly authorized facilities other than at an MSWLF on the [Reservation/Rancheria]. If economically feasible, the [name of Tribal Agency] may issue rules and regulations for the collection and lawful disposal of household hazardous wastes generated on the [Reservation/Rancheria] other than at an MSWLF on the [Reservation/Rancheria].

<b>COMMENTARY</b>
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**RCRA allows for the disposal of small quantity generator hazardous waste and hazardous household waste into landfills. Therefore, the Tribe may decide to permit on-site disposal of such wastes, but if the Tribe does so, it should be certain the facility is properly constructed to hand this waste.**

**In addition, it is important for a Tribe considering allowing the disposal of these types of wastes to realize that the State of California has different standards for “small quantity generator”; in California, the “small quantity generator” threshold is *less than 100 kgs of hazardous waste in a year*, while the federal (RCRA) threshold is 100 kgs of hazardous waste in a *month*.**

#### **404 Prohibited Materials**

The following solid waste materials shall not be accepted at any MSWLF on the [Reservation/Rancheria] under any conditions:

- (1) Radioactive wastes.
- (2) All regulated hazardous waste as defined herein.
- (3) Unregulated small quantity generator hazardous wastes.
- (4) Infectious biomedical wastes which includes human tissue or human anatomical remains.
- (5) Animals or bedding exposed to infective agents.
- (6) 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 compact conditions.
- (7) Bulk quantities of infectious-type wastes including blood, blood products and body fluids.
- (8) Any materials containing friable asbestos waste from building demolition or cleaning, and any friable asbestos materials.
- (9) Sewage or sewage sludge wastes.
- (10) Bulk liquids of any kind.

- (11) Polychlorinated biphenyls (PCBs).
- (12) Car batteries.
- (13) Used oil.
- (14) 55 gallon drums.
- (15) Explosives.
- (16) Tires.
- (17) Oil or gas exploration wastes.

The [name of Tribal Agency] may prohibit the disposal of other solid wastes at MSWLFs on the [Reservation/Rancheria] as it deems necessary in its discretion, under rules and regulations to be adopted by the [name of Tribal Agency]. The [name of Tribal Agency] shall issue rules and regulations governing the disposal or prohibition of disposal of other solid wastes not listed herein, including, but not limited to, ashes and powders, and mineral wastes and soils. The [name of Tribal Agency] shall develop rules and regulations for special wastes, which require special handling, treatment and disposal.

**COMMENTARY**

**California Hazardous Waste Control Act [Cal. H&S Code §25100, et seq.] differs from RCRA in the following significant areas:**

- 1. California does not utilize RCRA two-step procedure to determine if a waste is hazardous;**
- 2. California does not recognize the Small Quantity Generator rule of RCRA;**
- 3. An exempt generator in California is one who does not generate 100 kg or more of hazardous waste in a one year period;**
- 4. California utilizes the WET test as well as the TCLP test to determine if a material is a hazardous waste;**
- 5. California regulates asbestos and PCBs as hazardous wastes, which the federal program does not;**
- 6. The California recycling requirements differ from RCRA requirements;**
- 7. Transfer facilities must be permitted; and**
- 8. There is no provision for citizen suits.**

#### 405 Prohibition on Disposal in Open Dumps

In order to protect the limited land, air and water resources of the [Reservation/Rancheria] from irremediable hazardous pollution and to protect the health, safety and welfare of all residents of the [Reservation/Rancheria] and surrounding communities, disposal of solid waste in any open dump is expressly prohibited within the exterior boundaries of the [Reservation/Rancheria].

<b>COMMENTARY</b>
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<b>25 U.S.C. §§3901-3908, Indian Lands Open Dump Cleanup Act of 1994, authorizes Indian Health Services to identify and assess open dumps on Indian lands.</b>
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#### 406 Solid Waste Facility Sites

(A) Site Considerations.

<b>COMMENTARY</b>
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<b>Many of the following criteria are very technical, but the language reflects the language set out in 40 CFR Part 258 (Part 258 Criteria).</b>
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- 1) **Airport Safety.** No solid waste disposal site or landfill may be located within 10,000 feet of any airport runway end used by jet aircraft, or within 5,000 feet of any airport runway end used only by piston-type aircraft, unless the owner/operator demonstrates that the units are designed and operated so that the MSWLF unit does not pose a bird hazard to aircraft. The owner or operator of the facility shall demonstrate in the facility plan that the facility is designed and operated so that it does not pose a bird hazard to aircraft and place this demonstration in the operating record. Any owner or operator who operates an MSWLF within a five mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the appropriate Federal Aviation Administration office in writing.
- 2) **Floodplains.** If a solid waste disposal site or landfill is located within a 100 year floodplain, the owner or operator must demonstrate that the MSWLF will not restrict the flow of a 100 year flood, reduce the temporary storage capacity of the floodplain or result in any washout of solid waste which would pose a hazard to human health or the environment.
- 3) **Wetlands.** "Wetlands" means those areas which are defined in 40 C.F.R. §232.2(r) and include, but are not limited to, swamps, marshes, bogs and similar areas, and are defined as those areas that are inundated or saturated

by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. No MSWLF shall be located in wetlands, unless the owner/operator can make the demonstrations as required under the Federal criteria set forth in 40 C.F.R. §258.12. The [name of Tribal Agency] may, in its discretion, however, refuse to permit an MSWLF in any areas which are wetlands as defined herein.

- 4) **Fault Areas.** No solid waste disposal facility or landfill shall be located within 200 feet (60 meters) of a fault that has had displacement in Holocene time. For purposes of this section:
  - a) “Fault” means any fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.
  - b) “Displacement” means the relative movement of two sides of a fault measured in any direction.
  - c) “Holocene” means the most recent epoch of the Quaternary period extending from the end of the Pleistocene Epoch to the present.
- 5) **Seismic Impact Zone.** No solid waste disposal facility or landfill shall be located in a seismic impact zone unless the owner/operator demonstrates to the satisfaction of the [name of Tribal Agency], and the [name of Tribal Agency] finds, that all containment structures, including liners, leachate collection systems and surface water control systems, are designed to resist the maximum peak ground acceleration associated with the maximum credible earthquake. For purposes of this Section, “seismic impact zones” are defined as areas having a 10 percent or greater probability that the maximum expected horizontal acceleration in lithified earth material, expressed as a percentage of the earth’s gravitational pull (g), will exceed 0.10 g in 250 years.
- 6) **Unstable Areas.** No solid waste disposal facility or landfill shall be located in an unstable area. “Unstable area” means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terrains.
- 7) **Bodies of Water.** No solid waste disposal site or landfill shall be located within 1,000 feet of a lake, pond, slough, river, stream or other body of water. To the greatest extent possible, MSWLFs will be located at substantially greater distances from any surface water of significance.
- 8) **Adverse Impact.** No MSWLF shall be located in a manner that will cause significant adverse impact to recreational opportunities, wildlife habitat or populations or [Reservation/Rancheria] aesthetics.
- 9) **Dwellings.** To the greatest extent possible, taking into account the

requirements of this Ordinance, no MSWLF shall be located within 3,000 feet of a dwelling inhabited at the time the site is created.

- 10) **Domestic Water Well.** No solid waste disposal site or landfill shall be located within 2,000 feet of a domestic water well, unless the [name of Tribal Agency] determines in writing that the well will not be contaminated by the site and establishes a water monitoring program for the well, or the [name of Tribal Agency] provides a substitute water source of equal or better convenience and quality.

COMMENTARY
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<p><b>40 CFR Part 258 establishes six location restrictions on Municipal Solid Waste Landfills (MSWLFs), including airport safety, floodplain criteria, wetland criteria, fault area criteria, seismic impact zones and unstable area criteria. All MSWLFs created after October 9, 1996, must comply with these restrictions. Before finalizing this portion of the Ordinance, the Tribe should check the most recent version of 40 CFR Part 258 to get the current restrictions.</b></p>
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<p><b>It should also be noted that the Tribe can adopt restrictions that are stricter than the ones set out in the CFR's (i.e., no solid waste facility can be located in any wetland area within the boundary of the Reservation/Rancheria).</b></p>
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(B) Determination Prerequisites for Reservation of Site

The following information shall be submitted to the Director for review and evaluation in order for a potential solid waste landfill site to be considered:

- 1) A map or aerial photograph of the proposed site that shows all land within one mile of the proposed MSWLF site. The map or aerial photograph shall be of sufficient scale to show the entire property owned or leased for the disposal site by the person proposing the landfill, all homes, industrial buildings, wells, watercourses, rock outcroppings, roads and other applicable details and shall indicate the general topography.
- 2) A summary of the geological formations and groundwater table to a depth of at least ten feet below the proposed excavation and at lowest elevation at the site. Such data shall be obtained by soil borings or other appropriate means.
- 3) Identification of source and characteristics of cover material.
- 4) Identification of watercourses within or adjacent to the proposed disposal site and, if no watercourse is involved, name of the watershed which will receive the drainage from the site.
- 5) Any other information pertinent to the proposed site.

#### **407 Storage**

- (A) Sanitary Site Conditions: The owner, agent or occupant of any dwelling, residence, premises or business establishment shall be responsible for the sanitary condition of said residence, premises or business establishment. No person shall place or deposit refuse or allow refuse to be placed or deposited on any public street, road or alley within the [Reservation/Rancheria].
- (B) Storage of Solid Waste for Collection: The owner, agent or occupant of any dwelling, residence, premises or business establishment shall be responsible for the storage and stockpiling of all solid waste accumulated for collection and disposal.
- (C) Container Specifications: Commercial establishments shall be required to store garbage in durable, rust-resistant, non-absorbent and easily cleanable containers with close-fitting covers. Residents who transport solid waste to community transfer stations shall be required to haul their solid waste in such a way that it does not result in littering or wind-swept garbage.
- (D) Ashes: Ashes, warm or cold, shall not be placed in plastic containers.
- (E) Hazardous Waste: No owner, occupant, business establishment or agency shall store hazardous waste within the boundaries of the [Reservation/Rancheria]. It shall be the responsibility of each occupant, business establishment or agency to locate a disposal service operating an EPA-approved site which accepts hazardous material and to arrange for its disposal.

#### **408 Collection**

[This section should reflect the Tribe's collection procedures, and will vary depending on whether the Tribe has its own solid waste collection agency, whether it contracts for an outside agency to collect solid waste, or whether all persons and business entities are responsible for their own collection and disposal.]

#### **409 Disposal**

- (A) Applicability of Standards: This Ordinance shall apply to all MSWLFs and to all equipment used at disposal facilities on the [Reservation/Rancheria]. In addition, 40 CFR §§258.20 through 258.29 are incorporated by reference herein. All owner/operators of MSWLFs shall comply with Part 258 Criteria, in addition to any additional waste management operating criteria specified in this Ordinance, rules or regulations, or in any conditions in the MSWLF facility operation permit, or in

guidance documents, or in orders of the [name of Tribal Agency].

- (B) Prohibition on Hazardous Waste: The receipt, acceptance, handling, storage, processing or disposal of hazardous waste at any MSWLF for disposal on the [Reservation/Rancheria] is prohibited, provided that [name of Tribal Agency] may establish a program for the collection, transfer, storage, transportation and disposal off the [Reservation/Rancheria] of hazardous waste generated or found on the [Reservation/Rancheria]. If an operator knows or has reason to believe that hazardous waste has been received at a solid waste disposal facility, the operator shall notify [name of Tribal Agency] within two (2) hours of discovery of such waste.

<b>COMMENTARY</b>
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<b>See Commentary to Section 403 above regarding small quantity generators and hazardous household waste.</b>
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The owner or operator of a solid waste disposal facility shall implement a program to detect and prevent the receipt, acceptance, handling, storage, processing or disposal of hazardous waste. This program must include at a minimum:

- (1) Random inspections of incoming loads;
  - (2) Inspection of suspicious loads;
  - (3) Maintenance of records of inspections;
  - (4) Training of personnel to recognize hazardous waste; and
  - (5) Procedures for notifying [name of Tribal Agency] if hazardous waste is discovered at the facility.
- (C) Design: The uniform design criteria for MSWLFs contained in 40 CFR §258.40 are incorporated by reference for new MSWLFs. If the EPA has not approved the Tribe's solid waste program, then no new MSWLF unites or lateral expansions shall be constructed unless they comply with Part 258 uniform design criteria, which includes a composite liner and a leachate collection system as set forth in 40 CFR §258.40(a)(2).

If the EPA has approved the Tribe's solid waste program, the [name of Tribal Agency] may approve the design criteria for an MSWLF, on a site-specific basis, in accordance with 40 CFR §258.40(a)(1).

If the Tribe does not have an EPA approved solid waste program, then the uniform design criteria in 40 CFR §258.40(a)(2) shall apply as follows, unless the [name of Tribal Agency] determines that the small landfill exemption under 40 CFR §258.1(f)(1) applies, and that an MSWLF unit is exempt from the design criteria under Subpart D of 40 CFR Part 258.

- (1) There must be a composite liner, as defined in paragraph (2) below, and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner.
- (2) “Composite liner” means a system consisting of two components; the upper component must consist of a minimum 30 mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60-mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component.

If EPA has approved the Tribe’s solid waste program, then the design performance criteria in this section applies, and a composite liner and leachate collection system are not required, but the [name of Tribal Agency] may require the same in his/her discretion.

If the Tribe has an EPA approved solid waste program, or an MSWLF unit is determined to be exempt from Subpart D of 40 CFR Part 258, then the [name of Tribal Agency] in approving an alternative design for an MSWLF, must consider at least the following factors:

- (1) The hydrogeologic characteristics of the facility and surrounding land; and
- (2) The climatic factors of the area; and
- (3) The volume and physical and chemical characteristics of the leachate.

In addition, any site-specific design must ensure that the concentration values for chemicals listed in Table I of 40 CFR Part 258, which is incorporated by reference herein, will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified in 40 CFR §258.40(d) as follows:

The relevant point of compliance specified by the [name of Tribal Agency] shall be no more than 150 meters from the waste management unit boundary and shall be located on land owned by the owner of the MSWLF unit. In determining the relevant

point of compliance the [name of Tribal Agency] shall consider at least the following factors:

- (1) The hydrogeologic characteristics of the facility and surrounding land;
- (2) The volume and physical and chemical characteristics of the leachate;
- (3) The quantity, quality and direction of flow of ground water;
- (4) The proximity and withdrawal rate of the groundwater users;
- (5) The availability of alternative drinking water supplies;
- (6) The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water and whether the ground water is currently used or reasonably expected to be used for drinking water.
- (7) Public health, safety and welfare effects; and
- (8) Practicable capability of the owner/operator.

The design of an MSWLF site shall also be based on the service area, anticipated nature and quantity of solid waste to be received, adjacent land uses, number and type of vehicles anticipated to enter the disposal facility site, whether the facility will be used by the general public, ground and surface water, leachate control, soils, drainage, provisions for monitoring, venting, controlling and possible use of disposal facility decomposition gases and other pertinent information. The owner or operator shall design the disposal facility to maximize the protection of public health.

The MSWLF design shall include one or more proposed ultimate uses of the site or the intent to develop the site as open space graded to harmonize with the setting and landscape of native shrubbery or low-maintenance ground cover.

- (D) Records: Copies of all reports, records, analytical data and other documents required by this Ordinance shall be maintained at the disposal facility, unless the [name of Tribal Agency] has authorized storage of the records at an alternative location.

The owner or operator shall maintain records of weights, volumes and types of solid waste accepted at the facility, and shall be adequate for overall planning and control purposes and for forecasting the rate of filling. The owner or operator shall maintain adequate records regarding length and depth of any cuts made in natural terrain where

fill will be placed, together with the depth to the groundwater table. The owner or operator shall also adequately record other cuts that may affect the safe and proper operation of the disposal facility or cause damage to adjoining properties.

The owner or operator shall maintain a log of the following: fires, earthslides, unusual or sudden settlement, personal injury, property damage, accidents, explosions, deliveries or discharge of hazardous waste or other materials not permitted at the disposal facility site, flooding, vandalism, contamination, pollution and other unusual occurrences. The owner or operator shall maintain inspection records, training procedures and notification procedures required herein. The owner or operator shall record and permanently maintain closure and post-closure maintenance plans as required by this Ordinance, any cost estimates and financial assurance documentation and information demonstrating compliance with the small community exemption as required by 40 CFR §258.1(f)(2)..

Disposal facility records shall be open to inspection by authorized representatives of [name of Tribal Agency], and other regulatory and enforcement agencies during normal business hours. If information is identified as proprietary or confidential pursuant to this Ordinance, the [name of Tribal Agency] shall treat it as such.

- (E) Personnel: The owner or operator shall provide adequate numbers of qualified personnel to staff the disposal facility and deal effectively and promptly with matters of operation, maintenance, environmental controls, records, emergencies, and health and safety. Such personnel shall be adequately trained in the operation and maintenance of a disposal facility, including health, safety and environmental controls and emergency procedures. The owner or operator shall provide adequate supervision to insure proper operation of the disposal facility and compliance with requirements of this Ordinance. The owner or operator shall advise [name of Tribal Agency] of the names, addresses and telephone numbers of the owner or operator, the disposal facility manager and the supervisor. Any disposal facility that is open to the public shall have an attendant on duty during operating hours.
- (F) Security: The disposal facility shall have an adequate perimeter barrier designed to discourage unauthorized entry by persons or vehicles. Areas within the disposal facility where open storage or ponding of material occurs or which [name of Tribal Agency] deems hazardous shall be separately fenced and properly identified to create an adequate level of security.
- (G) Roads: Roads serving the disposal facility shall have reasonably smooth surfaces designed to minimize the generation of dust and the tracking of material onto adjacent paved public roads. Such roads shall allow vehicles using the disposal facility to have reasonable all-weather access to the facility. Roads within the

disposal facility site shall be kept in safe condition, maintained such that vehicle access and unloading can be carried on during inclement weather, and identified with suitable signs showing direction to the operating area.

- (H) Communications Facilities: The owner or operator shall provide communications facilities available to users and disposal facility personnel to allow quick response to emergencies by the appropriate authorities and emergency services.
- (I) Lighting: The owner or operator shall equip the disposal facility and/or equipment with adequate lighting to insure safety and to permit monitoring of the effectiveness of cover and compaction operations.
- (J) Fire Fighting Equipment: The owner or operator shall keep adequate fire suppression equipment available at the disposal facility at all times.
- (K) Confined Unloading: The owner or operator shall confine unloading of solid waste to as small an area as practicable and provide adequate control and collection of windblown material. The owner or operator shall deposit solid waste at the toe of the fill or as otherwise approved by the [name of Tribal Agency].
- (L) Spreading and Compacting: The owner or operator shall spread and compact solid waste in layers with repeated passages of equipment to eliminate voids within the cell that may produce potential harborage for vectors as rapidly as practicable. The loose layer shall not exceed a depth of two feet [or other depth] before compaction.
- (M) Slopes and Cuts: The owner or operator shall maintain the slope of the working face at a ratio that will allow effective compaction of the solid waste. The depth of the cuts and slopes of trench sides shall not exceed horizontal to vertical ratios approved by [name of Tribal Agency].
- (N) Stockpiling: The placement of stockpiled cover material or unsuitable native material shall not interfere with unloading, spreading, compacting, access, safety, drainage or other operations.
- (O) Daily Cover: In order to prevent propagation, harborage or attraction of vectors, to control disposal facility fires and to prevent the creation of nuisances, the owner or operator shall compact cover material to a minimum thickness of six (6) inches and place cover material over all surfaces of the compacted solid waste at the disposal facility on a daily basis or at a more frequent intervals if required by [name of Tribal Agency]. [Tribal Agency] may establish different cover and compaction requirements for special operating practices, including, but not limited to, disposal of shredded waste. Daily cover shall be designed and constructed to minimize percolation of

precipitation through wastes.

- (P) Liquid Waste: The owner or operator may accept liquid waste and sewage sludge at the disposal facility only as specifically approved by [name of Tribal Agency].
- (Q) Dead Animals: Dead animals may be accepted at a disposal facility only as specifically approved by [name of Tribal Agency].
- (R) Nuisance Control: The owner or operator shall operate and maintain the disposal facility to prevent nuisance.
- (S) Dust Control: The owner or operator shall take all necessary measures to minimize the creation of dust.
- (T) Contact With Water: The owner or operator shall not deposit solid waste in such a manner that it has direct contact with either surface water or groundwater.
- (U) Explosive Gas Control: The owner or operator shall implement all necessary measures to prevent concentrations of methane gas at levels in excess of the requirements of this Ordinance.
- (V) Maintenance: Maintenance procedures and programs for equipment and site facilities shall be developed and followed throughout the active life and the closure and post-closure maintenance periods of all solid waste disposal facilities.

The owner or operator shall frequently monitor and promptly repair or correct deteriorated or defective conditions in order to meet the requirements of this Ordinance and the permit conditions. The owner or operator shall develop and follow effective preventive maintenance procedures and programs for disposal facility equipment and facilities.

The owner or operator shall notify [name of Tribal Agency] at least ten (10) days prior to completion or suspension of work at a disposal facility so that a site inspection may be conducted prior to removal of earth moving equipment.

The owner or operator shall, at the beginning of disposal facility use and upon closure of the facility, file a detailed description of the disposal facility, including, but not limited to, a map with [name of Tribal Agency] and the Bureau of Indian Affairs.

- (W) Containment Structures: Containment structures shall be designed by and construction shall be supervised and certified by a registered civil engineer or a certified engineering geologist, and [name of Tribal Agency] shall conduct a final

inspection and approve of the construction before use of the disposal facility commences. The owner or operator shall maintain the integrity of containment structures. Excavations made as part of disposal operations shall not result in removal of any portion of a containment structure.

Material used in containment structures shall have appropriate chemical and physical properties to ensure that such structures do not fail to contain solid waste because of pressure gradients, physical contact with solid waste or leachate, chemical reactions with soil and rock, climate conditions, stress of installation or the stress of daily operation.

Permeabilities specified for containment structures other than cover shall be relative to the liquids, including solid waste and leachate, to be contained. Permeabilities specified for final cover shall be relative to water.

- (X) Liners: Liners shall be installed to cover all natural geologic material at a disposal facility likely to be in contact with solid waste or leachate and shall be made of high-density polyethylene or clay sufficient for the containment of the types of solid waste to be disposed of at the disposal facility.

#### **410 Periodic Review of Plan**

From the date of issuance of the permit, at least once each year, or more frequently as determined by [name of Tribal Agency], the owner or operator shall cause a registered civil engineer to review the disposal facility design, implementation and operation plan to determine if any revisions are necessary and to estimate the remaining facility life. The conclusions and recommendations of this review shall be presented in a report and filed with [name of Tribal Agency].

### **Section 5 - Resource Recovery Program**

#### **501 Policy and Program**

Tribal policy shall be that solid wastes which are reusable shall be recycled if economically feasible. The [name of Tribal Agency] shall include a study regarding the recycling of solid wastes on the [Reservation/Rancheria], as part of the Tribe's Solid Waste Management Plan. Such study shall include an analysis of technological and economically feasible systems for the collection, separation containerization and marketing of solid wastes that are recyclable. The study shall identify potential markets for recyclable solid wastes. The [name of Tribal Agency] shall issue rules and regulations for the recycling of solid wastes on the [Reservation/Rancheria] based on the study.

### **Section 6 - Permit and Inspection Program**

## **601 Solid Waste Facility and Transportation Permits**

Tribally chartered corporations or agencies, private enterprises and any other persons are required to obtain a permit from [name of Tribal Agency] to either collect and transport solid waste or to construct or operate a municipal solid waste landfill within the exterior boundaries of the [Reservation/Rancheria]. Any permittee shall be required to comply with this Ordinance, and any rules or regulations promulgated thereunder, all Tribal environmental standards and criteria, all relevant guidance documents, all permit conditions, all orders issued by the [name of Tribal Agency] under authority of this Ordinance, and all applicable federal or Tribal laws, environmental in nature or otherwise.

No tribally chartered corporation or agency, private enterprise, or person may collect or transport solid waste, or construct or operate an MSWLF within the exterior boundaries of the [Reservation/Rancheria] without first having obtain from the [name of Tribal Agency] either: (1) a solid waste collection and transportation permit; or (2) a solid waste facility construction and/or operation permit.

Any qualified tribally chartered corporation, agency private enterprise or person may file an application with [name of Tribal Agency] for a permit to collect and transport solid waste, or to construct and/or operate an MSWLF on the [Reservation/Rancheria].

## **602 Permits for the Construction and Operation of MSWLFs**

Any application for a permit to construct and/or operate an MSWLF must contain all of the following information, tests, and data that are necessary to demonstrate that the permittee will comply with all of the provisions of this Ordinance; the SWDA; 40 CFR Part 258; and all solid waste rules or regulations, technical standards or criteria or applicable guidance documents. In addition, the [name of Tribal Agency] may require that a permittee acquire or perform such additional information, tests or studies as he/she deems reasonably necessary to demonstrate compliance with this Ordinance.

The permit application to construct and/or operate an MSWLF must contain the following minimum information:

- (1) A legal description and area map of the site of the proposed facility.
- (2) A title report showing ownership of the site of the proposed facility and all encumbrances, covenants, conditions, restrictions, reservations to title and easements and rights of way on or across the site.
- (3) Proof that the applicant is the owner or holds an interest or lease in the proposed site; that all taxes, fees and lease payments are current; and if not, that the applicant has

a notarized consent of the owner approving the use of the land for the purposes set forth in the application; approval from the [name of Tribe's governing body]; and if the land is leased or permitted under Title 25 of the United States Code, approval of the Secretary of the Interior or his/her authorized delegate, and a certified copy of the lease or permit, with all exhibits and attachments thereto.

- (4) A general design plan for the facility certified by a professional engineer.
- (5) A map and aerial photograph of the area to be used for the MSWLF showing all land use and political jurisdiction within five miles of the landfill site. The map and aerial photograph shall be of sufficient scale to show all homes, airports, wells, water ways, topography, roads and other objects that may be affected.
- (6) A report indicating the following:
  - (a) The population and area to be served by the proposed site and life expectancy of the facility;
  - (b) The geological formation, aquifer characteristics and groundwater elevations below the lowest elevation of the site. Such data will be obtained by soil boring and other appropriate means;
  - (c) The source and characteristics of cover material to be used;
  - (d) Reliable data on existing ground water quality within 2,000 feet of the site;
  - (e) Topography of the site and drainage patterns; and
  - (f) Location of the 100 year flood plain as approved by the [name of Tribal Agency] in relation to the site.
- (7) A design and plan of operation for the facility, certified by a professional engineer, which identifies how the landfill will meet the standards and criteria of the Ordinance and 40 CFR Part 258 for the location, design, performance, operating standards, groundwater monitoring, closure, post-closure and financial assurance requirements. The design shall also include one or more topographic maps with contour intervals. The maps should show the proposed fill area, borrow areas, access roads, drainage areas, fencing, equipment and buildings and the groundwater monitoring systems.
- (8) A financial statement, estimating the cost of construction, operation, closure and post-closure of the site, explaining the applicant's financial condition and the applicant's ability to fund the continued operation, closure and post-closure of the

site in compliance with the Ordinance and the financial assurance requirements of 40 CFR Part 258.

- (9) An identification statement certified as to its truth and accuracy, signed by the applicant, and notarized, containing the following information:
  - (a) Name, address, social security number and phone number of all persons owning or holding an interest in the applicant of 5% or more;
  - (b) Name, address, social security number and phone number of all officers, directors or partners;
  - (c) A statement that no officer, director, partner or holder of an interest of 5% or more has ever been convicted of a felony, and that no felony charges are currently pending;
  - (d) A statement which discloses in detail any charge, complaint, fine, order, decree, statement or finding of “no contest” for violation of any Tribal, federal, state, county or municipal environmental or health law, regulation, permit or condition against any officer, director, partner or holder of an interest of 5% or more within the past five (5) years, including the jurisdiction, disposition and name, address and phone number of the person who filed the original charge or complaint, and the name of the director, board, administrative body, judge, justice of the peace, magistrate or arbitrator who levied or entered any fine, order, penalty, decree, statement or finding.
- (10) A current financial statement of the applicant’s net worth, including a description of major assets and liabilities, and any other financial information requested by the [name of Tribal Agency].
- (11) A description of any judgments rendered against any officer, director, partner or holder of an interest of 5% or more in the applicant for five (5) years preceding the date of the application.
- (12) A description of any bankruptcy or insolvency proceedings instituted by any officer, director, partner or holder of an interest of 5% or more in the applicant for five (5) years preceding the date of application.

The [name of Tribal Agency] shall not issue a solid waste construction and/or operation facility permit unless the Tribe has issued a land use permit, or lease, authorizing the operation of the MSWLF facility.

The [name of Tribal Agency] may issue a solid waste construction and/or operation facility permit, only if it finds, on the basis of information contained in the application and otherwise available to it, and only after conducting a public hearing as specified herein, that the applicant will comply with the Ordinance; the 40 CFR Part 258 Criteria; and all rules or regulations, technical standards and criteria, guidance documents and permit conditions.

The [name of Tribal Agency] must also find that the applicant has the financial and technical ability to construct and/or operate, close and post-close the MSWLF as required by the Ordinance.

The burden of proof shall rest on the applicant to demonstrate compliance with all Tribal solid waste criteria and requirements. The issuance or denial of any permit by the [name of Tribal Agency] is completely discretionary. In issuing any permit, the [name of Tribal Agency] may impose permit conditions which are more stringent than provided under the Ordinance, if such are reasonably necessary. The [name of Tribal Agency] shall not issue a solid waste construction and/or operation facility permit, unless it is convinced that the primary consideration of the permittee is to prevent environmental damage and protect the public health. The long-term protection of the Tribe's public health, environment and natural resources shall be a critical consideration for the [name of Tribal Agency]'s issuance or denial of a permit.

A solid waste operation facility permit shall be valid for the operation, closure and post-closure period designated and required for such MSWLF, but such permit is subject to revocation, suspension or modification as provided herein. Any condition imposed on any solid waste construction and/or operation facility permit issued by the [name of Tribal Agency] may only be modified after a public hearing which is duly noticed regarding modification of such permit.

### **603 Permits for the Collection and Transportation of Solid Waste**

As a condition for the issuance of a solid waste collection and transportation permit, the [name of Tribal Agency] shall require every vehicle operated by the transporter to be conspicuously marked to identify the solid waste transported. Every vehicle shall be marked with the trade name of the transporter, and the number of the solid waste transportation permit issued pursuant to this Section. Every vehicle and driver must be licensed by the State of California and must comply with all safety and insurance requirements of the State of California.

As a condition for the issuance of a solid waste collection and transportation permit, a transporter agrees to make an annual report by December 1 of each year to the [name of Tribal Agency] indicating the number and type of installation emptied or cleaned, the volume and nature of solid waste disposed of, the place and manner in which such solid waste was finally disposed and such other information as the [name of Tribal Agency] may require. A renewal may be denied by the [name of Tribal Agency] for failure of the permittee to properly and timely file such annual report.

Solid waste permits for the collection and transportation of solid waste must be renewed annually by the [name of Tribal Agency] on a calendar basis. The [name of Tribal Agency] shall adopt rules and regulations for solid waste collection and transportation on the [Reservation/Rancheria], including the operation of transfer stations, and may impose whatever condition it deems reasonably necessary to protect the environment, and the health, safety and welfare of the Tribe and its members before issuing any permit under this section.

#### **604 Public Hearing on MSWLF Permit Application**

No solid waste construction and/or operation facility permit shall be issued unless there has been a public hearing conducted by the [name of Tribal Agency] at which the applicant and all interested persons shall have an opportunity to present relevant evidence and be heard on whether the permit should be granted, or whether there are any special conditions which should be included in such permit. All applications for a solid waste construction and/or operation facility permit, including all documentation required for such permit, shall be available for public review and inspection at least sixty (60) days in advance of the hearing. The [name of Tribal Agency] shall publish weekly notice of such public hearing on each application beginning at least sixty (60) days in advance of the hearing in the most widely circulated newspaper on the [Reservation/Rancheria] for three consecutive weeks. The [name of Tribal Agency] shall also post notice of the public hearing near the proposed permanent site for an MSWLF, but viewable to the public, at least sixty (60) days in advance of the hearing. The [name of Tribal Agency] may designate issues it deems most relevant for the public hearing in the public notice, but the [name of Tribal Agency] shall consider all issues which are raised at the hearing. The public hearing shall be continued until all persons have had an opportunity to present their views.

#### **605 Oath and Application Filing Fees**

Each report and application filed shall be signed or notarized under oath in a form approved by the [name of Tribal Agency]. Each application shall be accompanied by a reasonable filing fee established by the [name of Tribal Agency] to reflect the Tribe's costs of processing the application or preparing an environmental assessment, the public notice and hearing and the costs of technical and legal consultants to review the application, prepare the permit, exhibits and guidance documents.

#### **606 Other Fees and Taxes**

In order to recover operating costs, the Tribe may impose reasonable fees on each permittee who constructs or operates an MSWLF, or collects and transports solid waste. Any fees to be imposed by the Tribe shall be specifically referred to in each permit. In addition, the Tribe may impose taxes on each permittee who operates an MSWLF, or collects and transports solid waste. The payment of such fees or taxes shall be a condition of maintaining such permit.

### **Section 7 - Closure; Post-Closure and Financial Assurances**

## **Section 701 Closure Care Requirements for MSWLFs**

The owner or operator of an MSWLF which has received solid waste after October 9, 1991, must install a final cover system that is designed to minimize infiltration and erosion in compliance with 40 CFR §258.60.

The final cover system as set forth in 40 CFR §258.60(a) must be comprised of an erosion layer underlain by an infiltration layer as follows:

- (1) The infiltration layer must be comprised of a minimum of 18 inches of earthen material that has a permeability of less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than  $1 \times 10^{-5}$  cm/sec, whichever is less; and
- (2) The erosion layer must consist of a minimum of 6 inches of earthen material that is capable of sustaining native plant growth.

If EPA approves the Tribe's solid waste program, then the [name of Tribal Agency] may approve an alternative final cover design under 40 CFR §258.60(b) that includes:

- (1) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in §258.60(a)(1); and
- (2) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in §258.60(a)(2). This alternative final cover design may not be applied to landfills which ceased to receive solid waste on or after October 9, 1993.

The owner or operator must prepare a written closure plan that describes the steps necessary to close an MSWLF unit at any point during its active life in accordance with the cover design requirements. The closure plan, at a minimum, must include the following information:

- (1) A description of the final cover and the methods and procedures to be used to install the cover;
- (2) An estimate of the largest area of the MSWLF unit ever requiring a final cover at any time during the active life;
- (3) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and
- (4) A schedule for completing all activities necessary to satisfy the closure

criteria in §258.60.

The owner or operator must notify [name of Tribal Agency] that a closure plan has been prepared and placed in the operating record by the date of the first receipt of solid waste.

Prior to beginning closure of each MSWLF unit, the owner or operator must notify the [name of Tribal Agency] that a notice of intent to close the unit has been placed in the operating record.

The owner or operator must begin closure activities of each MSWLF unit no later than 30 days after the date on which the MSWLF unit receives the known final receipt of wastes or, if the MSWLF unit has remaining capacity and there is a reasonable likelihood that the MSWLF unit will receive additional wastes, no later than one year after the most recent receipt of waste. Extensions beyond the one-year deadline for beginning closure may be granted by the [name of Tribal Agency], if the Tribe has an EPA approved solid waste program, and if the owner or operator demonstrates that the MSWLF unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed MSWLF unit.

The owner or operator of any MSWLF unit must complete closure activities of each MSWLF unit in accordance with the closure plan within 180 days following the beginning of closure as specified in 40 CFR §258.60(f). Extensions of the closure period may be granted by the [name of Tribal Agency], if the Tribe has an EPA approved solid waste program, and if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and he/she has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed MSWLF unit.

Following closure of each MSWLF unit, the owner or operator must supply the [name of Tribal Agency] with a certification signed by an independent registered professional engineer that verifies that closure has been completed in accordance with the closure plan, and shall place such certification in the operating record.

The [name of Tribal Agency] shall take whatever action is reasonably necessary in perpetuity to notify any potential users or purchasers of the landfill facility property that the land has been used as a landfill facility and that its use is restricted under 40 CFR §258.61(c)(3). Post-closure use of the property shall not disturb the integrity of the site, final cover, liner(s) or monitoring systems, unless necessary to comply with requirements under 40 CFR Part 258.

<b>COMMENTARY</b>
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**One way to make sure that subsequent owners or lessees are aware that a property was formerly used as an MSWLF would be to require the owner or operator to record a document stating such. This document should be recorded both with the County Recorder where the subject property is located and with the Tribal Recording Office, if any.**

## **702 Post-Closure Care Requirements for MSWLFs**

- (A) Following closure of each MSWLF unit, the owner or operator must conduct post-closure care. Post-closure care must be conducted for thirty (30) years, except as provided under Paragraph B of this section, and must include the following:
- (1) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover; and
  - (2) Maintaining and operating the leachate collection system in accordance with the requirements in 40 CFR §258.40. The [name of Tribal Agency] may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;
  - (3) Monitoring the ground water in accordance with the requirements of Subpart E of 40 CFR Part 258 and maintaining the groundwater monitoring system; and
  - (4) Maintaining and operating the gas monitoring system in accordance with the requirements of 40 CFR §258.23.
- (B) The length of the post-closure care period may be:
- (1) Decreased by the [name of Tribal Agency] if the Tribe has an EPA approved solid waste program and if the owner or operator demonstrates to the satisfaction of the [name of Tribal Agency] that the reduced period is sufficient to protect human health and the environment; or
  - (2) Increased by the [name of Tribal Agency] if the [name of Tribal Agency] determines that the lengthened period is necessary to protect human health and the environment.

- (C) The owner or operator of an MSWLF unit must prepare a written post-closure plan that includes, at a minimum, the following information:
- (1) A description of the monitoring and maintenance activities required in 40 CFR §258.61(a) for each MSWLF unit, and the frequency at which these activities will be performed; and
  - (2) The name, address and telephone number of the person or office to contact about the facility during the post-closure period; and
  - (3) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in 40 CFR Part 258. The [name of Tribal Agency] may, if the Tribe has an EPA approved solid waste plan, approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.
- (D) The owner or operator must notify the [name of Tribal Agency] that a post-closure plan has been prepared and placed in the operating record prior to the initial receipt of waste by the facility.
- (E) Following completion of the post-closure care period for each MSWLF unit, the owner or operator must supply the [name of Tribal Agency] with a certification signed by an independent registered professional engineer which verifies that all post-closure care has been completed in accordance with the post-closure plan, and shall place such certification in the operating record.

### **703 Financial Assurance Requirements for Closure, Post-Closure and Corrective Action**

Owners or operators of MSWLFs on the [Reservation/Rancheria] are required to comply with the financial assurance criteria under Subpart G of 40 CFR Part 258, which are incorporated herein and contained at 40 CFR §258.71 (Financial Assurance for Closure); 40 CFR §258.72 (Financial Assurance For Post-Closure Care); 40 CFR §258.73 (Financial Assurance for Corrective Action); and 40 CFR §258.74 (Allowable Mechanisms To Demonstrate Financial Assurance).

<b>COMMENTARY</b>
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**The Tribal Agency responsible for implementing and enforcing this Ordinance should review 40 CFR Part 258 annually to ensure the Tribe is complying with its provisions.**

(A) Financial Assurance for Closure.

The owner or operator of an MSWLF must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of each MSWLF unit ever requiring a final cover as required under 40 CFR §258.60 at any time during the active life in accordance with the closure plan. The owner or operator must notify the [name of Tribal Agency] that the estimate has been placed in the operating record.

The cost estimate must equal the cost of closing the largest area of an MSWLF unit ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.

During the active life of the MSWLF unit, the owner or operator must annually adjust the closure estimate for inflation.

The owner or operator must increase the closure cost estimate and the amount of financial assurance provided, if changes to the closure plan or MSWLF unit conditions increase the maximum cost of closure at any time during the remaining active life. The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under Section B herein, if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the MSWLF unit. The owner or operator must notify the [name of Tribal Agency] that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.

The owner or operator of each MSWLF unit must establish financial assurance for closure of the MSWLF unit in compliance with 40 CFR §258.74. The owner or operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with 40 CFR §258.60(h) and (i).

(B) Financial Assurance for Post-Closure Care.

The owner or operator must have a detailed estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the MSWLF unit in compliance with the post-closure plan developed under 40 CFR §258.61. The post-closure cost estimate used to demonstrate financial assurance must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator must notify the [name of Tribal Agency] that the estimate has been placed in the

operating record.

The cost estimate for post-closure care must be based on the most expensive cost of post-closure care during the post-closure care period.

During the active life of the MSWLF unit and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation.

The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided if changes in the post-closure care plan or MSWLF unit conditions increase the maximum cost of post-closure care. The owner or operator may reduce the post-closure care cost estimate and the amount of financial assurance provided if the cost estimate exceeds the maximum costs of the post-closure care remaining over the post-closure care period. The owner or operator must notify the [name of Tribal Agency] that the justification for the reduction of the post-closure care cost estimate and the amount of financial assurance has been placed in the operating record.

The owner or operator of each MSWLF unit must establish financial assurance for the costs of post-closure care of the MSWLF unit in compliance with 40 CFR §258.74. The owner or operator must provide continuous coverage and financial assurance for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with 40 CFR §258.61(e).

(C) Financial Assurance for Corrective Action.

An owner or operator of an MSWLF unit required to undertake a corrective action program under 40 CFR §258.58 must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under 40 CFR §258.58. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must notify the [name of Tribal Agency] that the estimate has been placed in the operating record.

The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with 40 CFR §258.58(f).

The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided if changes in the corrective action program or MSWLF unit conditions increase the maximum cost of corrective action.

The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided if the cost estimate exceeds the maximum remaining costs

of corrective action. The owner or operator must notify the [name of Tribal Agency] that the justification for any reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.

The owner or operator of each MSWLF unit required to undertake a corrective action program under 40 CFR §258.58 must establish, in a manner in accordance with 40 CFR §258.74, financial assurance for the most recent corrective action program. The owner or operator must provide continuous coverage and financial assurance for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with 40 CFR §258.58(f) and (g).

(D) Allowable Financial Mechanisms.

40 CFR §258.74 requires that an owner or operator of an MSWLF unit provide financial assurance to ensure that funds necessary to meet the costs of closure, post-closure care and corrective action for known release will be available in a timely fashion when they are needed. There are four mechanisms available to provide financial assurance, including a trust fund; a surety bond; a letter of credit; an insurance policy; or a combination of the four mechanisms. Any mechanism(s) that is/are used by an owner or operator must comply with all of the criteria in 40 CFR §258.74, which is incorporated by reference herein, and must be legally valid, binding and enforceable under state, federal and Tribal law.

The financial assurance mechanism(s) must be obtained by the owner or operator before the initial receipt of waste in the case of closure and post-closure care cost estimates; and no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with the requirements of 40 CFR §258.58, and maintained as required by 40 CFR §§258.71-74.

The [name of Tribal Agency] must approve the actual financial assurance mechanism(s) and financial assurance agreements that is/are provided by the owner or operator. The [name of Tribal Agency] may also require in its discretion, in addition to the criteria for financial assurance under 40 CFR Part 258, that an owner or operator provide financial assurance for corrective action for other than known releases as a condition for issuing an MSWLF permit.

The [name of Tribal Agency] shall also require that liability and property damage insurance coverage be provided by an owner or operator for claims arising from personal injury or property damage, including any claims arising from releases from an MSWLF unit.

If a trust fund mechanism is used, the trustee must be an entity who has the authority to act as a trustee, and whose trust operations are regulated and examined by a federal agency. Trust fund payments must be made as specified in 40 CFR §258.74 criteria. The [name of Tribal Agency] must approve the terms of any trust agreement which is to be used as a financial assurance mechanism. The trust agreement shall be irrevocable. Trust funds shall only be released to reimburse the owner

or operator for closure, post-closure and corrective action costs actually incurred, but only if sufficient funds remain in the trust to cover the remaining costs.

If any surety bond is used, the surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties in federal bonds in Circular 570 of the U.S. Department of the Treasury.

If any letter of credit is used, the issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal agency.

## **Section 8 - Enforcement Program/Administrative Procedures**

**801 Enforcement Policy:** It is the policy of the [name of Tribal Agency] to encourage informal, practical, result-oriented resolution of alleged violations and actions needed to prevent damage to [Reservation/Rancheria] resources or harm to the health, safety or welfare of the [Reservation/Rancheria] population. It is also the policy of the [name of Tribal Agency], consistent with the principles of due process, to provide effective procedures for enforcement.

**802 Enforcement Agency:** The [name of Tribal Agency] shall be responsible for enforcing the provisions of this Ordinance. Specifically, the [name of Tribal Agency] shall conduct investigations when a complaint is received by the [names of Tribal agencies] or other Tribal agency believes that a violation of this Ordinance has occurred.

**803 Enforcement Activities:** Where a written and verified complaint shall be filed with the [name of Tribal Agency] and reviewed by the [name of Tribal Agency] alleging that, or where the [name of Tribal Agency(ies)] itself shall have cause to believe that, any person is violating any solid waste regulation or permit condition, the [name of Tribal Agency] shall cause a prompt investigation to be made.

**804 Notice of Violation; Cease and Desist Order:** If the [name of Tribal Agency] finds after an investigation pursuant to Section 803 of this Ordinance that a violation of any regulation or permit condition exists, the [name of Tribal Agency] shall promptly notify both the alleged violator and the [name of Tribe's governing body] in writing.

In the case of an apparent violation of this Ordinance, the [name of Tribal Agency] is authorized to issue a Notice of Violation to the person(s) apparently responsible for the violation, and, if the apparent violation occurred on property owned by a person other than the alleged violator, a Notice of Violation shall also be issued to the landowner.

In the case of a continuing violation or a threatened violation, the [name of Tribal Agency]

is authorized to issue a Cease and Desist Order to prevent the violation from continuing or occurring.

Failure to comply with a Cease and Desist Order shall constitute a violation of this Ordinance. Both a Notice of Violation and a Cease and Desist Order may be issued for a single incident. A Notice of Violation will include a Summons to appear before the [name of Tribal Agency] at an enforcement hearing at a specified time and date, and shall advise the alleged violator that failure to appear may result in the imposition of civil penalties.

If a Cease and Desist Order is issued without an accompanying Notice of Violation, the Order will inform the recipient that failure to comply with the Order will constitute a violation of this Ordinance which will result in the issuance of a Notice of Violation and may result in the imposition of civil penalties.

**805 Informal Conferences:** The [name of Tribal Agency] shall afford the landowner or his or her representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the [name of Tribal Agency] determines that there may be either imminent environmental damage to a [Reservation/Rancheria] resource or adverse impact upon the health, safety and welfare of the [Reservation/Rancheria] population. Informal conferences may be used at any stage in the enforcement proceedings, except that the [name of Tribal Agency] may refuse to conduct informal conferences with respect to any matter then pending before the [name of Tribal Agency] or [name of Tribal court].

**806 Reports Required:** The [name of Tribal Agency] shall keep written notes of the date and place of the conference, the persons in attendance, the subject matter discussed and any decisions reached with respect to further enforcement action.

**807 Enforcement Hearings:** If the landowner and the [name of Tribal Agency] are unable to resolve the matter via an informal conference, the [name of Tribal Agency] is authorized to conduct adjudicatory hearings to determine if a violation of this Ordinance has occurred. In such a hearing the [designated official or agency], in cooperation with the [name of Tribal official] shall present the case to the [name of Tribal Agency] to establish that the person(s) charged has (have) committed a violation of this Ordinance. Any person so charged shall be entitled, at his or her own expense, to be represented by an attorney or other representative.

(A) Burden of Proof. The [designated official or agency] shall have the burden of proving that a violation of this Ordinance has occurred and that a person charged was responsible for the violation. The [name of Tribal Agency] shall rule that a violation of this Ordinance has occurred if it finds that the charges are supported by substantial evidence and that a preponderance of the credible evidence supports a finding that a violation has occurred.

- (B) Enforcement Orders. Within thirty (30) days after the date of any enforcement hearing, the [name of Tribal Agency] shall issue a written decision. If the [Agency] determines that a violation has occurred and that the person(s) charged was (were) responsible for the violation, the [Agency]'s decision shall include an Enforcement Order.

**808 Civil Penalties and Corrective Action:** An Enforcement Order shall direct any person(s) found to have committed a violation of this Ordinance to take whatever corrective action the [name of Tribal Agency] deems appropriate under the circumstances. An Enforcement Order may impose civil penalties in accordance with a schedule of civil penalties prescribed in the Committee's rules. Alternatively, an Enforcement Order may impose civil penalties in the event that a person found to have committed a violation of this Ordinance does not take corrective action in accordance with the Order within a prescribed time frame. If a person who has been found to have committed a violation does not take corrective action within the prescribed time frame, an appropriate department or agency of the Tribal government may take the necessary corrective action, in which case the amount of any civil penalty shall be increased by twice the amount of the cost incurred by the Tribal department or agency in taking the corrective action.

<b>COMMENTARY</b>
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<p><b>If there is no Tribal administrative procedure act or if the Tribal act does not establish procedures for such hearings, this section, or another section of this Ordinance, should establish minimum requirements for the Agency's rules in order to ensure that the Agency provides due process for all persons who are subject to its rulings. Due process, at a minimum, requires adequate notice to the person being charged with a violation of the Ordinance and an opportunity to present his or her side of the story.</b></p>
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- (A) Emergency Orders. Notwithstanding any other provision of this Ordinance, if the [name of Tribal Agency] determines that noncompliance with this Ordinance is presenting an imminent and substantial threat to the public health, welfare or environment and determines, in consultation with the Tribe's attorneys, that it is not practicable to assure prompt protection of the public health, welfare or environment of an administrative or judicial enforcement action under this Part, the [name of Tribal Agency] may issue such orders as may be necessary to protect the public health, welfare or environment. Any such order shall be effective immediately upon issuance and shall remain in effect for a period not to exceed sixty (60) days.
- (B) Revocation of Permit. Failure of any person to comply with any Enforcement Orders will result in an immediate revocation of his or her permit. In order to obtain a

reinstatement of such permit, the person(s) against whom the Enforcement Order was issued must first demonstrate compliance with the Order and pay all outstanding penalties and then petition for reinstatement of the permit with the [name of Tribal Agency].

**809 Judicial Enforcement:** The [name of Tribal Court] shall have jurisdiction of all cases and controversies arising under this Ordinance.

(A) The [name of Tribal Agency] may request the [name of Tribe's governing body] to authorize the [name of Tribal Agency] to file an action in Tribal Court pursuant to this Ordinance for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties and clean up and administrative costs associated with the enforcement of this Ordinance (except that any suit against the Tribe or a tribal department or agency shall be for injunctive relief only and not for penalties or other money damages), in any of the following instances:

- (1) whenever a person has violated, or is in violation of, any provision of this Ordinance, including but not limited to a regulation, permit or order issued pursuant to this Ordinance;
- (2) whenever a person submits false information under this Ordinance or regulations promulgated under this Ordinance; or
- (3) whenever a person is creating an imminent and substantial endangerment to the public health, welfare, environment or cultural resources of the Tribe, in which case the [name of Tribal Agency] shall pursue injunctive relief but not the assessment of penalties, unless the endangerment is caused by a violation, as specified in paragraphs (1) and (2) above.

(B) Any person who in violation of this Ordinance stores, collects, transports or disposes of any solid waste or hazardous waste within the boundaries of the [Reservation/Rancheria] shall be liable for all costs associated with or necessary to clean up, abate or remove said waste from the [Reservation/Rancheria] and restore the quality of the land and waters of the [Reservation/Rancheria] to their condition as they existed immediately prior to the storage, collection, transportation or disposal.

**810 Special Provisions for Tribal Departments and Agencies:** In any case in which the [name of Tribe's governing body] or any Tribal agency or department is alleged to have violated the terms and conditions of a solid waste permit, or to have conducted activities without a permit, the [name of Tribal Agency] shall bring the matter to the attention of [name of head of tribal governing body] who shall consider taking action to ensure compliance with this

Ordinance. If the matter cannot be resolved informally, the [name of Tribal Agency] shall conduct an enforcement hearing for the purpose of making factual determinations and issuing a decision recommending a course of corrective action if necessary.

## **Section 9 - Appeals**

**901 Judicial Review:** Any person who is aggrieved by the issuance or denial of a solid waste permit without respect to whether that person, corporation or other entity is a party to such permit application, or who is the subject of an Enforcement Order, may file an appeal with the Tribal Court. The Court is authorized to hear such appeal.

## **Section 10 - Other Provisions**

**1001 Severability:** If any provision of this Ordinance, or the application thereof, is held invalid, the remainder of this Ordinance, or applications of such provisions, shall not be affected.

### **1002 Amendments**

The [name of Tribe's governing body] reserves the sole right to amend this [name of Ordinance] and to issue rules effecting all aspects of the Ordinance. Provisions in the Ordinance allow the [name of Tribe's governing body] full flexibility to enact measures which will benefit the Tribe. The inclusion of these provisions does not necessitate their implementation, but allows the [name of Tribe's governing body] flexibility to alter the Ordinance according to the evolving needs of the [name of Tribal community].

### **1003 Modifications and Applicability of Part 258 Criteria**

This Ordinance incorporates by reference all of the criteria contained in 40 CFR Part 258. If any part of 40 CFR Part 258 is modified, any modifications are automatically incorporated by reference and become part of this Ordinance, and supercede any of the provisions that were modified. If any of the part 258 Criteria are not actually restated in this Ordinance, they are nevertheless incorporated by reference and are applicable. If the EPA approves the Tribe's solid waste program, then the Tribe has all of the flexibility granted to it under the Part 258 Criteria, whether or not such flexibility is specifically restated in this Ordinance. Any specific provisions of this Ordinance which are more stringent than the Part 258 Criteria are applicable and controlling.

### **1004 Effective Date**

This Ordinance shall become effective on \_\_\_\_\_ [date].

## **Section 11 - Sovereign Immunity Preserved**

**1101 Sovereign Immunity Preserved:** Nothing in this Ordinance is intended to, nor should be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages from the Tribe.

**APPENDIX A**

**PERMIT APPLICATION FORM**

**[to be completed by Tribe]**

**APPENDIX B**

**FLOW CHART OF ENVIRONMENTAL AGENCIES**

**[to be completed by Tribe]**