

The Chippewa Cree Tribe of the Rocky Boy's Reservation

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31 Agency Square
Box Elder, Montana 59521

Resolution No. 111-19

HEREBY ADOPTING TITLE 12 – THE CHIPPEWA CREE TRIBE ENVIRONMENTAL PROTECTION CODE.

WHEREAS, the Business Committee is the governing body of the Chippewa Cree Tribe of the Rocky Boy's Federal Indian Reservation, located in Box Elder, Montana, ("Tribe") by the authority of the Constitution and Bylaws of the Tribe approved on November 23, 1935; and

WHEREAS, pursuant to the Tribe's inherent sovereignty and Constitution and Bylaws of the Tribe, the Business committee is charged with the duty to promote and protect the health, security, and general welfare of the Tribe; and

WHEREAS, the Cree Business Committee has the power and duty to exercise its inherent regulatory authority over environmental protection on the Rocky Boy's Reservation as defined within the Constitution & By-Laws of the Chippewa Cree Tribe [Constitution & By-laws, Article VI ---Powers of the Committee, Section (l) and (p)]; and

WHEREAS, the Business Committee wishes to adopt Title 12 the Chippewa Cree Tribe Environmental Protection Code to protect the environment of the Rocky Boy's Indian reservation for present and future generations; that protects and conserves land, water, air, fish, wildlife and plant species; to establish a procedure for reviewing any proposed actions that may affect or threaten tribal environment; and to protect the tribal health, safety, welfare, economy, environment and natural resources and cultural resources of the Tribe and the reservation; and

WHEREAS, the Business Committee understands that Title 12 the Chippewa Cree Tribe Environmental Protection Code shall preserve important historic, cultural, and natural aspects of Chippewa Cree tribal heritage, and maintain, wherever possible, an environment, which supports diversity. Establish an administrative and legal infrastructure for the environmental review and permitting process to protect and preserve the natural and physical environment of the Rocky Boy's Reservation. To ensure that environmental protection and health of the tribe shall be given priority over any economic or other benefits recognizing that the reservation is the sustainable homeland of the Tribe; and

WHEREAS, the Chippewa Cree Environmental Department has had an opportunity to draft, review, opine, and not object to the proposed Title 12 the Chippewa Cree Tribe Environmental Protection Code; and

WHEREAS, the Business Committee agree to incorporate and codify the *attached* Title 12 the Chippewa Cree Tribe Environmental Protection Code with the Chippewa Cree Tribal Law and Order Code; and

WHEREAS, the effective date of this adoption shall be December 23, 2019; and

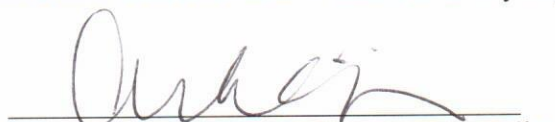
WHEREAS, the Business Committee affirms that all resolutions, or parts of the same, are consistent with the provisions with this Resolution, are hereby repealed to the extent of such inconsistency; and

NOW, THEREFORE, BE IT RESOLVED that the Business Committee hereby adopts Title 12 the Chippewa Cree Tribe Environmental Protection Code.

CERTIFICATION

We, the undersigned, as the Chairman and as the Secretary of the Business Committee of the Chippewa Cree Tribe hereby certify that the Business Committee is composed of nine (9) members of whom eight(8) members constituting a quorum were present at the meeting thereof, duly and specially called, noticed, convened and held this 23rd day of December, 2019, and that the foregoing Resolution was duly adopted at said meeting by the affirmative vote of seven (7) members for and zero(0) members against, zero(0) members abstained and that the Resolution has not been rescinded or amended in any way.


Chairman, Chippewa Cree Tribe


Secretary-Treasurer, Chippewa Cree Tribe

**CHIPPEWA CREE TRIBE
TITLE 12
ENVIRONMENTAL PROTECTION CODE**

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CHAPTER ONE
ENVIRONMENTAL PROTECTION CODE

GENERAL PROVISIONS

I. Title:

The title of this Code is the Chippewa Cree Environmental Protection Code.

II. Authority:

The Chippewa Cree Business Committee has the power and duty to exercise its inherent regulatory authority over environmental protection on the Rocky Boy's Reservation as defined within the Constitution & By-Laws of the Chippewa Cree Tribe [Constitution & By-laws, Article VI --- Powers of the Committee, Section (l) and (p)].

III. Findings, Intents and Purposes:

A. The Chippewa Cree Tribe declares that: Environmental regulation is required to protect the environment of the Tribe's reservation for present and future generations; that protects and conserves land, water, air, fish, wildlife and plant species; to establish a procedure for reviewing any proposed actions that may affect or threaten Tribal environment; and to protect the Tribal health, safety, welfare, economy, environment and natural resources and cultural resources of the Chippewa Cree Tribe and the reservation.

B. Preserve important historic, cultural, and natural aspects of Chippewa Cree Tribal heritage, and maintain, wherever possible, an environment, which supports diversity.

C. Establish an administrative and legal infrastructure for the environmental review and permitting process to protect and preserve the natural and physical environment of the Rocky Boy's Reservation.

D. To ensure that environmental protection and health of the Tribe shall be given priority over any economic or other benefits recognizing that the reservation is the sustainable homeland of the Chippewa Cree Tribe.

IV. Jurisdiction:

All administrative and enforcement actions under this Code shall be matters of civil jurisdiction. Appeals of permit denials, revocations or suspensions shall be to the Chippewa Cree Tribal Court after exhaustion of administrative remedies. Any other causes of action arising under this Code shall be under the sole jurisdiction of the Chippewa Cree Tribal Court.

IV. Sovereign Immunity.

Nothing in this Code waives the sovereign immunity of the Chippewa Cree Tribe.

SECTION TWO
DEFINITIONS

I. Definitions:

Unless the Chippewa Cree Environmental Protection Code otherwise indicates, the following definitions apply herein:

A. Categorical Exclusion means a class of actions which either individually or cumulatively would not have a significant effect on the human environment and therefore would not require preparation of an environmental assessment or environmental impact statement under this Code.

B. Chippewa Cree Register of Historic Archaeological Properties or Chippewa Cree Register means the Tribal register of districts, sites, building, structures and objects significant in Tribal history, architecture, archeology or culture.

C. Department means respective departments of the Chippewa Cree Tribe.

D. Development means any building operation, any material change in a structure, or any material change in or appearance of land.

E. Director means the respective director of the Tribal department with the responsibilities define within this Code.

F. Environment means water, air, and land and the interrelationship, which exists among and between water, air, and land and all living things. The sum of all external conditions affecting the life, development and survival or an organism.

G. Environmental Assessment means a written analysis which is prepared pursuant to this Code to determine whether an action would significantly affect the environment and thus require a more detailed environmental impact statement.

H. Environmental Impact Statement means a process required pursuant to this Code for major projects or legislative proposals significantly affecting the Tribal health and environment.

I. Finding of no significant impact means a document prepared by potential permittees that presents the reasons why a proposed action would not have a significant impact on the environment and thus would not require preparation of any environmental impact statement.

J. Governing Board means the respective official body with authority to oversee the operations of the Department. The term “Governing Board” can be interchangeable used a Sub Committee of the respective departments.

K. Reservation means the Rocky Boy’s Reservation, including all land within the exterior boundaries thereof.

L. Traditional law means oral, Chippewa Cree traditional Tribal customs and traditions, and qualification. Panel of elders arrive at a consensus that is a matter of public record.

M. Tribe means the governing body of officials elected by the enrolled members of the Chippewa Cree Tribe of the Rock Boy’s Reservation.

SECTION THREE

I. Guidelines to Implement this Code:

A. Laws, regulations and policies shall be implemented and administered to the fullest extent possible, in accordance with this code and all Tribal departments and entities of the Tribe shall include an environmental impact statement in every recommendation or proposal significantly affecting the Tribal health and environment.

B. Each Department, Tribal entity and respective Board shall be responsible to implement and be in compliance with this code’s permitting process and other requirements within the respective scope of work of any project.

II. Governing Board or Sub Committee:

The Governing Board or the Sub Committee shall have authority to protect and enhance the environmental quality of the Rocky Boy’s Reservation under respective jurisdiction. As so authorized, the Governing Board or Subcommittee shall:

A. Oversee the implementation and compliance of this code and regulations thereof in relation to applicable project by each Tribal Department, including all tribal entities;

B. Recommend, reject or amend Tribal environmental protection standards developed by the Department through the respective Director in accordance with this Code;

C. Determine the fees charged for environmental services provided beyond the typical scope of work performed by the Department including development permits and licenses;

D. Recommend, by itself or as identified by respective director, those properties that qualify as significant in Tribal history, architecture, archaeology, or culture to the Business Committee for listing in the Chippewa Cree Register as provided by the Cultural Resource Protection Code;

E. Participate in the environmental review or permitting process pursuant to archaeological, historical, cultural or religious importance to the Tribe under Tribal and federal laws that an application is being considered for a permit, which might adversely affect any off- reservation archaeological resource or historic property of significance to the Tribe.

III. Director:

A. Administration of the environmental protection activities and compliance of the Code and regulations.

B. Provide assistance, as necessary, to concerned and affected Tribal members upon request.

C. Facilitate and document a public comment and public input process into Tribal environmental protection decision-making.

D. Act as a liaison between the Tribal Departments, Tribal entities, state, and federal governments on environmental protection matters.

E. Assure that planned and on-going activities on the Reservation are in compliance with this code and regulations thereof.

V. Advisory Committees:

Each Board or Sub Committee may create its own Advisory Committee to consist of a minimum of three (3) and up to seven (7) members to provide specific or unique advice on economic development, environmental or cultural protection of the reservation. The criteria, terms of membership and the functions of the Advisory Committee shall be as set forth by the regulations.

VI. Enforcement:

Under the authority of the Governing Board or Sub Committee, the designated Environmental Enforcement Officer shall enforce this Code. The authority to enforce this Code included the following duties and powers:

A. Inspection:

1. The Environmental Enforcement Officer for the Department or its designated representative, for the purpose of compliance with this code and regulations thereof, shall inspect, at any reasonable time, any property, premises, or place.

2. A person may not refuse entry to access to an authorized representative of the Department who represents appropriate credentials when Department request entry for purposes of inspection.

B. Violation and Penalties:

1. It is unlawful to engage in any activities without environmental review process set forth by this code and regulations thereof.
2. The Director shall have the authority to commence a civil action seeking appropriate relief, including a temporary or permanent injunction for any violation of this law, regulations, and standards thereof.
3. Any development activities engaged in by any person who violates, disobeys or disregards any provisions of this code, regulations, or order issued pursuant thereto shall be liable to the people of the reservation for a civil and criminal penalty as set forth in the Title I of the Chapter 2 and Title IV Part Two of the Law and Order Code.

VII. Modifications, Suspension and Revocation:

The Department may, upon a finding of non-compliance or violations of this Code or regulations thereof; modify, suspend or revoke permits or license after the responsible person has afforded notice and an opportunity to be heard.

A. Appeal and Review

1. Administrative Appeal – A person aggrieved by a final action of the Director may seek review of such action. A decision of the Director is appealable to the Governing Board and the decision of the Board shall be final.
2. Judicial Review – The Tribal Court of the Chippewa Cree Tribe shall have jurisdiction to hear appeals from those final decisions of the Governing Board or the Sub Committee that have not met due process requirements or that are unconstitutional.

SECTION FOUR
TRIBAL ENVIRONMENTAL PROTECTION ADMINISTRATION

I. Permit Requirement for Development:

Permit or license is required for any development activities under this code other than exception as set forth by this code and the regulations thereof. There shall be three categories of development including categorical exclusion, low-impact, and general development.

II. Categorical Exclusion:

Any party proposing to undertake a development project where there will be no impact to the environment shall file with the Director, a categorical exclusion application. The Executive Director shall approve all categorical exclusion permits upon finding that proposed activities are covered under the categorical exclusion checklist adopted by the governing Board.

III. Low-Impact Development Permit:

Any party proposing to undertake a development project where there will be low-impact to the environment shall file with the Director, a low-impact application. The Director shall have the authority to approve all low-impact permits and may attach conditions to the permit, when necessary.

VIII. General Development Permit:

All parties, including all state or federal governmental agencies operating on or near the reservation and all private entities operating on or near the reservation, and any party proposing to undertake a general development project shall file with the Director, a general development application.

IX. Application for Permit

A. One must file an application for a permit to undertake a general development project. An application shall include but not limited to:

1. Name of applicant;
2. A definite outline of the proposed work with scope, location, and specific purpose, the date proposed for beginning the work, the length of time proposed to be devoted to it;
3. An estimated cost of the proposed development project;
4. A sketch plan, a legal description of the particular site or area to be affected or developed, so definite that it can be located on a map with accuracy;
5. Any other information as set forth by the regulations or as the Board deems necessary;

B. Application must be signed by the applicant and verified on oath or affirmation and shall contain the promise of the applicant to abide and be bound by all of the provisions of the Code and by all other Tribal laws.

C. If the permit is for excavation, removal, altering, damaging, or otherwise adversely affecting archaeological resources, historic properties, or cultural sites through examination, excavation or gathering, at least two mitigation alternatives must be developed and submitted by the applicant to address how the resources, properties, or sites will be protected for the on-going preservation of the Chippewa Cree culture.

X. Public Comment:

A period of time as set forth by the regulation shall be provided for the public comment after an application for a permit is received. The process for the public comment shall be as set forth by the regulations.

XI. Permit Terms and Conditions;
Any permit may contain such terms and conditions that the Governing Board or the Director deems necessary to carry out the purposes of this Code and regulation thereof.

XII. Duration of Permit:

Each permit shall be effective for one year from the date of its issuance or at the Director's discretion for such shorter period as may be specified therein.

XII. Interim Permit:

Prior to the date of enactment of this Code, applicants may receive an interim permit to continue work during the period that their application for a permit is filed with the Director. The Director with consultation of an applicant shall determine the procedure of an interim permit. Such procedure shall be final upon approval of the Governing Board.

XIII. Environmental Assessment:

A. For all General Development Permits, the applicant is required to prepare a draft environmental assessment and to include it with the application.

B. If Department determines that the environmental impacts of the proposed development is sufficiently addressed in an earlier environmental assessment or environmental impact statement, then Department shall advise the applicant that a new environmental assessment is not require.

C. The Department may, upon request, assist applicants in the preparation of environmental assessments. The Department shall establish a schedule of fees for this service, which shall be published in public documents. Such fees may be waived in case of financial hardship.

D. The Department shall review applications to determine the adequacy of environmental assessments prepared by the applicant and to determine consistency with all other Tribal and Federal law.

XIV. Preliminary Determination of Significance:

A. After reviewing and analyzing general development permit applications and accompanying environmental assessments, the Department shall issue a Preliminary Determination of Significance. In making this preliminary determination the Department shall consider:

1. Whether the proposed action is controversial;
2. Whether an otherwise minor action will have a cumulatively significant impact;
3. Any potential secondary effects;
4. The natural, cultural, religious, archeological or historical significance of the geographic location, including the surrounding area where the proposed action would take place;
5. All known and all probably beneficial and detrimental environmental effect, even if the Department believes that upon balance the major effect will be otherwise beneficial, the action may be determined to favor environmental protection and health of the Tribe for the present and future generations.
6. The compliance of the Archeological Resource Protection Act of 1979, the National Historic Preservation Act of 1955, 1992 Amendments to the NHPA Native American Graves Protection Repatriation Act of 1990 and the Tribal Cultural Resource Protection Code or in absence of such code, Tribal practice of cultural, historical, archeological or religious protection including identified traditional cultural properties and sacred sites.

XV. Use of the Preliminary Determination:

A. If a department determines that the action is not major, and the proposed action does not significantly affect the Tribal health and environment, respective Department shall issue a Finding of No Significant Impact and shall be open for public inspection.

B. If a Department determines that the action is major and has a significant effect upon the Tribal health and environment, it shall issue a Declaration of Significance and shall be for public inspection. Such proposed general development applications require preparation of an Environmental Impact Statement.

XVI. Environmental Impact Statements:

The Environmental Impact Statement shall contain the following information:

A. The environmental impact(s) of the proposed action. Such impacts include but are not limited to environmental, cultural, religious, socioeconomic impacts to residents of the Reservation, all lands, animals, airspace, natural resources, water resources, on or near the Reservation;

B. Any adverse environmental effects that cannot be avoided should the proposal be implemented;

C. Alternatives to the proposed action;

D. The relationship between local, short term uses of the environment and the maintenance and enhancement of long-term productivity;

E. Any irreversible commitment of resources which would be involved should the proposed action be implemented;

F. The applicant or entity proposing the major action shall be held responsible for all costs associated with the development and implementation of any and all mitigation measures. The Tribe shall retain authority for engaging

CHAPTER TWO WATER CODE

- I. Short Title: This code may be cited as the “Chippewa Cree Water Code” (Water Code).

- II. Authority: The Chippewa Cree Water Code is enacted by the Tribal Business Committee, as the governing body of the Rocky Boy’s Reservation pursuant to:
 - A. Chippewa Cree Tribe Constitution and Bylaws, Article VI-Powers of the Committee:
 - 1. “Section 1. The Business Committee shall exercise the following powers subject to any limitations imposed by the Statutes or the Constitution of the United States and subject further to all express restrictions upon such powers contained in this Constitution and Bylaws.”
 - 2. “Section 1 (p), which provides for the powers of the Business Committee to enact ordinances for the Tribe.”

 - B. Title I, Section 102(b)(2), of the Chippewa Cree Tribe of the Rocky Boy’s Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999, P.L. 106-163, hereinafter referred to as the “Water Settlement Act”; and

 - C. Article IV, Section A (2), of the Water Rights Compact entered into by the State of Montana, the Chippewa Cree Tribe of the Rocky Boy’s Reservation and the United States of America, Montana Statute 85-20-601, hereinafter referred to as the “Water Compact”. The Water Compact places a moratorium on processing or granting permits to appropriate water from a source in the Big Sandy Creek Basin (excluding Sage Creek and Lonesome Lake Coulee), and in the Beaver Creek drainage after the date this Compact is ratified by the Montana Legislature and by the Chippewa Cree Business Committee, whichever date is later. This moratorium shall remain in effect for a minimum of 10 years and shall only be lifted pursuant to the procedures set forth in Section A.7.b of Article IV of the Water Compact. This moratorium is not intended to apply to applications for change in appropriation under state law.

 - D. Article I (Definitions), Article III (Tribal Water Right) and Article IV (Implementation of Tribal Water Right) of the Water Compact, including the appendices to Article III and Article IV of the Water Compact are hereby incorporated by reference into this Water Code in full for easy reference.

III. Findings

The Tribe finds and declares that:

- A. Water resources are vital to a sustainable homeland for the Tribe, to the health and welfare of Reservation residents, and to the vitality of the Reservation economy, culture and environment.

- B. The management and protection of Tribal water is a central attribute of Tribal

sovereignty and critical to the health and welfare of Tribal members and to the economic development of the Reservation.

- C. All underlying waters reserved to the Tribe by the Water Compact and Water Settlement Act are held in trust by the United States for the benefit of the Tribe.

IV. Purposes

- A. To implement the provisions of the Water Compact and to manage and administer the use of Tribal water rights through an orderly system;
- B. To maintain and restore the quantity and quality of Reservation water resources and to administer them through appropriate management approaches for the present and future benefit of the Tribe;
- C. To protect the Tribal water rights from over-appropriation, degradation, contamination, exploitation, and any acts injurious to the quantity, quality, and integrity of the Reservation water resources; and
- D. To encourage optimal development and multiple use of the Tribal water rights.

- V. Construction: This Water Code shall not be construed in any manner which is inconsistent with the provisions of the Water Compact and Water Settlement Act, and other applicable Tribal and Federal law. Articles III and IV of the Water Compact are incorporated by reference into this Water Code, and are attached to this Water Code in full for easy reference.

- VI. Scope: This Water Code applies to all waters reserved to the United States of America in trust for the Tribe, as confirmed by the Water Compact and Water Settlement Act. This Water Code applies to all persons desiring to use or using or undertaking activities on Reservation lands affecting Tribal water resources.

VII. Definitions

- A. The definitions in the Water Compact and Water Settlement Act are incorporated by reference into this Water Code. The following definitions shall apply for purposes of this Water Code; provided, however, that in the event of a conflict, the provision in the Water Settlement Act or Water Compact shall govern.
 - 1. "Acre-foot" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet.
 - 2. "Acre feet per year" or "AFY" means the quantity of water to which the Tribe has a right each year measured in acre-feet over a period of a year.
 - 3. "Appendix" means any appendix to this Water Code, which specifically includes Articles III and IV of the Water Compact.
 - 4. "Beneficial Use" means any use of water for Municipal/Domestic Uses, irrigation, hydropower generation, recreation, stockwatering, fish propagation, Fish and

- Wildlife Enhancement, as well as any other uses that provide a benefit to the user of the water.
5. "Board" means the Chippewa Cree - Montana Compact Board established by Section D. of Article IV of the Water Compact.
 6. "Bonneau Release Committee" means the three-member panel elected to ensure 240 AFY is released from the Bonneau Reservoir.
 7. "Business Council" means the Business Council of the Chippewa Cree Tribe of the Rocky Boy's Reservation.
 8. "Current Existing Uses" means the current and future consumptive and non-consumptive uses of the Tribal water right consistent with the terms of the Water Compact.
 9. "Diversion" means the removal of water from its natural course or location by means of a ditch, flume, bypass, pipeline, conduit, well, pump, or other act of man, or the impoundment of water in a reservoir.
 10. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.
 11. "Fish and Wildlife Enhancement" means the use of water to improve existing habitat for fish and wildlife use, protection, conservation or management through physical or operational modifications of impoundments.
 12. "Municipal/Domestic Uses" means water for domestic, public, commercial and industrial uses.
 13. "Net Depletion" means the difference between the quantities of water diverted from a source and the quantity of water returned to the same source at or near the point of diversion.
 14. "New reserved water rights" means any reserved water rights created with acquisition of land by the Tribe or the United States to be held in trust by the United States for the Tribe, after the date of ratification of this Compact by the State and the Tribe, whichever is later.
 15. "Non-consumptive use" means a use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream or groundwater conditions.
 16. "Non-Irrigation Water Uses" means the use of water for purposes other than the production of agricultural commodities, such as, but not limited to domestic, livestock, fish and wildlife, and recreational uses, including development of golf courses.
 17. "Permit" means a water permit issued by the Tribal Water Resources Department for the withdrawal, diversion, impoundment or consumptive use of Tribal water in compliance with the provisions set forth in Appendix I of this Code.
 18. "Person" means an individual or any other entity, public or private, including the State, the Tribe and the government of the United States and all officers, agents, and departments thereof.
 19. "Place of Use" means the location where the water is used.
 20. "Point of Diversion" means any location at which water is diverted from the water system.

21. "Priority Use" means the use of the Tribal water as determined by the Tribe based on the Tribal needs and historical practices.
22. "Purpose of Use" means the nature of use of the water right.
23. "Relinquishment" means the abandonment of a water claim or water right.
24. "Reservation" means the Rocky Boy's Reservation and includes all lands and interests in lands which are held in trust by the United States for the Chippewa Cree Tribe, including future additions to the Reservation.
25. "Reservation water resources" means any and all waters underlying, flowing through, or otherwise occurring or contained within the Reservation over which the Tribe has jurisdiction.
24. "State" means the state of Montana and all officers, agents, departments, and political subdivisions thereof.
25. "Stock watering" means the storage and use of water for the purpose of providing water to domesticated animals and wildlife.
26. "Sub Committee" means Tribal Water Resources Department Sub-Committee under this Code.
27. "Transfer" means (verb) to authorize a person to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration; (noun) a service contract, lease, or other similar agreement of limited duration authorizing the use of all or any part of the Tribal Water Right.
28. "Tribal Water Resources Department" or "TWRD" means the Chippewa Cree Tribal Water Resources Department.
29. "Tribal water rights" means those water rights confirmed in the Water Compact and Water Settlement Act as rights held in trust for the Tribe by the United States, and any water hereafter acquired by the Tribe.
30. "Tribe" means the Chippewa Cree Tribe of the Rocky Boy's Reservation and all officers, agents and departments thereof.
31. "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof.
32. "Water Compact" means the water rights compact entered into by the State of Montana, the Chippewa Cree Tribe of the Rocky Boy's Reservation, and the United States of America; Montana Statute 85-20-601.
33. "Water Settlement Act" means the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999; P.L. 106-163.
34. "Water Use Regulations" means the policies and procedures for allocating and prioritizing uses of the Tribal water rights.

VII. The Tribal Water Resources Department and Subcommittee

A. Tribal Water Resources Department

1. This Water Code recognizes the existing Tribal Water Resources Department as the management and implementation agency for Tribal water rights and Reservation water resources.

2. The TWRD shall proceed with existing policies and procedures regarding appointments, staff conduct, and qualifications. The Business Council shall have the authority to amend or clarify any policy or procedural matter for the TWRD.
3. The power, duties, and responsibilities of the TWRD are to include:

Enforcement

- a. Administer Tribal water rights and ensure compliance with the Water Compact, Water Settlement Act, this Water Code, and with the conditions of all permits, determinations, orders, regulations, plans, policies, guidelines, and other actions taken by the Sub Committee and Business Council;
- b. Permit water diversions and use on the Reservation, including but not limited to new uses and development of surface water, groundwater or storage of the Tribal Water Right;
- c. Enter upon Reservation lands with reasonable notice to owner or occupant to investigate and inspect methods of diversion, withdrawal, and other activities, with respect to both surface and groundwater, affecting water quantity or quality, and to install measuring devices on diversions for the purpose of enforcing and administering this Water Code, and to monitor water use, water quality, and water diversions;
- d. In an emergency, remove, render inoperative, shut down, close, seal, cap, modify, or otherwise control methods of diversion, obstructions to the flow of water, and activities adversely affecting Reservation water resources, including both surface and groundwater;
- e. Initiate, by citation or other means, enforcement proceedings before the Sub Committee and Business Council, or in Tribal Court, for violations of this Water Code, including injunctive relief, provided that the TWRD ensures that such enforcement is consistent with the Water Compact, Water Settlement Act, and any applicable Tribal and Federal law;
- f. Ensure that the water delivery systems on the Reservation shall divert only the quantity of water to which they are legally permitted; and
- g. Maintain a comprehensive inventory of all water uses on the Reservation, including groundwater wells, and all uses of Tribal water rights. The Tribe shall provide a report of these existing uses to the State of Montana and United States following the adoption of this Water Code and completion of an inventory of water uses by the TWRD.

Advisory

- a. Advise the Sub Committee and Business Council on all water resource related issues, and provide regular updates on the status of water quantity and quality, and provide suggestions and recommendations for water management;
- b. Declare water supply conditions and prepare alternative water supply scenarios for different conditions, particularly for drought periods;

- c. Recommend, in consultation and coordination with other agencies and departments, the designation of certain land areas, waters, and regions of the Reservation as critical management areas requiring specialized management;
- d. Work cooperatively with the Montana Department of Fish, Wildlife and Parks to develop a fishery and recreational management plan for the Beaver Creek drainage;
- e. Recommend to the Sub Committee any proposed changes to this Water Code and to its regulations; and
- f. Assist applicants for permits and licenses in assembling and analyzing data and information required to be submitted with the application.

Information & Research

- a. Develop policies and procedures for monitoring water use, water quality, water quantity, water development, and diversions;
- b. Conduct hydrologic investigations to determine water supply and water quality characteristics, analyze existing water uses, identify water needs and development possibilities, and study means of developing, managing, conserving, and protecting Reservation water resources;
- c. Collect, maintain, and analyze information regarding Reservation water resources and off-Reservation water resources affecting Tribal water rights and uses;
- d. Perform research regarding the capacity of the Reservation water systems;
- e. Establish a minimum pool at all water storage reservoirs located within the exterior boundaries of the Reservation;
- f. Survey the placement and size of stock water impoundments and Fish and Wildlife Enhancement areas at least once every five years;
- g. Monitor water quality within the Stoneman Reservoir area;
- h. Conduct public educational programs and develop educational material regarding Reservation water resources and any water-related issues determined by the Sub Committee or Business Council;
- i. Identify sources of financial support for water management and development; and
- j. Investigate potential effects on existing water uses from proposed water uses.

Administrative

- a. Employ staff to enforce and administer this Water Code, consistent with all Tribal personnel policies and procedures;
- b. Contract with entities for technical, legal, and other water-related services to enhance the capability to carry out its duties and functions;

- c. Form a Bonneau Release Committee to ensure the release of 240 AFY from Bonneau Reservoir; and
- d. Provide an annual report to the State of Montana and United States with a listing of all new development of the Tribal water rights, the net depletion in the Beaver Creek drainage, and the net depletion for irrigation in the Upper Big Sandy Creek drainage, and of all changes in use or transfer of the Tribal water rights since the last report.

Water Use Rules, Regulations and Procedures

- a. Any water use rules, regulations and procedures promulgated under this Water Code shall be consistent with the Water Compact and Settlement Act including any applicable Tribal and federal law.
- b. The TWRD shall establish fair and equitable rules, regulations, and procedures necessary for the efficient administration and enforcement of the Water Code. These rules may include but are not limited to:
 - 1. Govern the issuance, conditions, and terms of permits under this Water Code;
 - 2. Require permit holders to install and maintain suitable controlling and measuring devices;
 - 3. Regulate the construction, use, and sealing of wells to prevent waste, contamination, or pollution of ground water;
 - 4. Govern temporary emergency appropriations, without prior application for a permit, necessary to protect life or property;
 - 5. Enforce the terms and conditions of permits issued by the TWRD;
 - 6. Prohibit unauthorized use, waste, and contamination of water; and
 - 7. Prohibit or limit use of water likely to cause damage to the property of others.
- c. Prior to recommending any proposed rules or regulations to the Sub Committee, the Tribal legal department and Tribal water engineer shall review and comment on the proposed regulations.
- d. Before the formal adoption of proposed regulations, the Sub Committee shall publish such regulations in order to provide interested parties an opportunity to comment. The notice will invite written comments give a deadline for their submission of not less than seven (7) days after publication of notice. The Sub Committee will hold a public hearing in order to receive oral testimony to the proposed regulations. The Sub Committee shall also establish procedures for emergency regulations.
 - 1. A regulation will become effective twenty-four (24) hours after the closing date for comments or on the date otherwise specified therein.
 - 2. A copy of the regulations will be filed and made available for public inspection at the Tribal Water Resource Department.

VIII. TWRD Director

- A. The TWRD Director shall serve as the manager of the TWRD, and the executive and technical arm of the Sub Committee. The Director has the authority to administer laws of the Tribe, enforce regulations established pursuant to this Water Code, and carry out general instructions of the Business Council.
- B. The TWRD Director shall be a qualified water resources manager with a minimum education level of a Bachelor's degree in civil or agricultural engineering, watershed science, geology, or a water resource related field, and not less than three years' experience in water management, administration, development and/or engineering; or shall be a trainee who will be selected to undertake training under a water engineering program approved by the Business Council.
- C. The TWRD Director shall have the right to delegate responsibilities to staff provided that the ultimate responsibility to carry out the duties and functions of the TWRD shall remain with the Director.
- D. The TWRD Director may not serve as a member of the TWRD Sub Committee, but may provide information and recommendations to the Sub Committee and participate in discussions of the Sub Committee.

IX. TWRD Sub-Committee

- A. This Water Code recognizes the existing Tribal Water Resources Department Sub Committee as the supervisory agency for administering Tribal water rights on the Reservation.
- B. The Sub Committee shall proceed with existing policies regarding appointments, service terms, removal, replacements, meeting quorum, procedures, and qualifications. The Business Council shall have the authority to amend or clarify any procedural or policy matters regarding the Sub Committee.
- C. No Sub Committee member shall vote on a decision that could have a direct financial effect or other conflict of interest. A member shall disclose to the Sub Committee any such conflict of interest at the time of such vote and may participate in the discussion of the matter without voting upon it.
- D. The powers, duties, and responsibilities of the Sub Committee are to:
 - 1. Supervise the execution and enforcement of this Water Code and regulations there under;

2. Hear disputes regarding the water management decisions and actions of the TWRD Director and/or water management staff in accordance with the procedures adopted pursuant to this Water Code and regulations;
3. Serve as the appellate body for all decisions made by the TWRD Director;
4. Adopt such rules, regulations, and additional materials, and propose amendments to this Water Code as necessary to interpret and execute its authority and to implement the objectives and purposes of this Water Code.
5. Organize and operate in order to discharge its duties and responsibilities effectively;
6. Coordinate with other Tribal departments and commissions, and other State and Federal agencies to ensure comprehensive oversight of the Reservation water and other natural resources;
7. Ensure that the Water Code is administered and enforced in compliance with the provisions of the Water Compact and Water Settlement Act;
8. Perform other functions as delegated by the Business Committee or as prescribed in this Water Code and regulations thereof.

X. Water Use Administration

A. Tribal Water Rights

1. Articles III and IV of the Water Compact define the Tribal water rights and shall serve as Appendix I to this Water Code.
2. The Tribe may acquire, by contracting or other means, water rights in addition to the rights acquired under the Water Compact, and will administer such new water rights in accordance with this Water Code.

B. General Policies

1. Existing water uses, established duties of water, and relative priorities of water use are to be protected and preserved, subject to the Tribe's obligations to protect Tribal water rights.
2. Water uses may be adjusted for the varying water supply conditions, and overall water use allocation decisions will be guided by such hydrologic conditions, which may require differing water management strategies.
3. Water development decisions shall recognize hydrologic variability and will consider alternative sources of water supply and potential impacts to existing water uses.
4. All land, water, and other resource strategies, decisions, and regulations shall consider the potential effect on all Reservation natural resources and will safeguard against degradation of Reservation water resources.
5. Decisions involving land uses, particularly those affecting water quantity and quality on the Reservation, shall be coordinated with the TWRD.

C. Water Allocation Guidelines

1. The Tribe, through the Sub Committee and Business Council, shall develop and adopt Water Use Regulations which define the policies and procedures for allocating and prioritizing uses of the Tribal water rights. The Water Use Regulations shall consider the

type of use, date of initial use (priority date), water user, historic and customary water use practices, and water supply conditions, among other elements, when defining Tribal water use priorities.

2. In drought conditions, which are temporary conditions of water demands exceeding the current available water supply, water will be strictly allocated according to the priority structure defined in the Water Use Regulations, as well as any special agreements between the Tribe and other entities. In the event that water supply is insufficient to satisfy all permitted water uses, allowable diversion rates will be set according to specific demands in relation to the available water supply.

3. In critical management areas, which are permanent or long-term conditions of water demands exceeding the average available water supply, water will be strictly allocated according to a critical water management plan developed by the TWRD and the TWRD Sub Committee. The management plan may revoke certain permitted water uses due to a lack of available water supplies or degradation to the Reservation water resources.

D. Change of Use Policies

1. On-Reservation Changes in Use or Transfers. The Tribe may make a change in use or transfer of Tribal water rights on the Reservation, including the use of water salvaged through the application of water saving methods to expand irrigation, provided that any change in use or transfer shall not:

- a. Result in uses that exceed the water amount quantified for that source;
- b. Result in an increase in net depletion in the Beaver Creek drainage in excess of the amount specified for that source;
- c. Have an adverse effect on a water right recognized under state law with a priority date before the date of the change or transfer, provided that for a change in use or transfer of groundwater, the burden as to adverse effect relates to the date of the original water right priority date;
- d. Change the source of the water involved in any such changes.

2. Off-Reservation Changes in Use or Transfers. The Tribe may make or permit a change in use or transfer of the Tribal water rights for use off of the Reservation, with the following provisions:

- a. Any change in use or transfer shall be for a term not to exceed 100 years, and may include provisions authorizing renewal for an additional term not to exceed 100 years;
- b. No water transfer shall be a permanent alienation of the Tribal water rights;
- c. No water transfer shall be made that constitutes a change in the place of use to a location outside of the watershed that forms the Missouri River drainage;
- d. Any off-Reservation water use shall not be deemed to convert such Tribal water rights to rights arising under state law.
- e. Releases or diversions from Lake Elwell for use on the Reservation shall not be considered an off-Reservation use.
- f. No person may initiate an off-Reservation use, change in use, or transfer of a Tribal water right without first applying for and receiving authorization for the use, change in use, or transfer pursuant to Montana law in effect at the time of application. Approval of an application for a use, change in use, or transfer off of

the Reservation by the State of Montana shall be conditioned on a valid Tribal permit and approval of such use, change in use, or transfer by the Tribe.

g. With respect to diversion or transportation facilities located off of the Reservation which are to be used in exercise of a Tribal water right, the Tribe or persons using such Tribal water rights shall apply for all permits, certificates, variances and other authorizations required by state laws.

h. All off-Reservation uses of Tribal water rights shall comply with the state law approvals set forth in the Water Compact until such time as the statutory or common law of the United States or the State of Montana establish that off-Reservation uses of Indian water rights may occur without regard to state law.

3. The Tribe may not make a change in use or transfer of water for either stockwatering or fish and wildlife enhancement, beyond the specific stockwatering or fish and wildlife enhancement allocations and uses defined in the Water Compact; provided that the Tribe may repair or relocate an impoundment for stockwatering or fish and wildlife enhancement within the drainage of origin, and provided further that the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of, the location of the point of diversion of a water right recognized under state law with a priority date before the date the Water Compact was ratified by the State and the Tribe.

4. The Tribe may make a change in use or transfer of the Tribal water rights identified from the following sources:

- a. Gravel Coulee/Lower Big Sandy Creek Drainages, for water rights identified for irrigation and non-irrigation purposes;
- b. Box Elder Creek Drainage, for water rights identified for irrigation, non-irrigation, and municipal/domestic purposes; and
- c. Beaver Creek Basin, for non-irrigation purposes.

5. The Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion, or place or means of storage to a place outside of the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of, the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact was ratified by the State and the Tribe, for the Tribal water rights identified from the following sources:

- a. Camp Creek and Duck Creek;
- b. Gorman Creek Drainage; and
- c. Upper Big Sandy Creek Drainage.

E. Specific Administration Roles

1. Administration of Tribal water rights includes the following specific responsibilities within the broader duties and functions of the TWRD and Sub Committee:

- a. Installation, operation, and maintenance of streamflow gages, groundwater monitoring wells, weather stations, and other equipment to characterize the

- water supply conditions of Reservation water resources;
 - b. Operation and maintenance of a diversion and bypass structure on Big Sandy Creek;
 - c. Aerial surveys of Fish and Wildlife Enhancement areas and stock water impoundments;
 - d. Development and execution of a water quality monitoring program, including groundwater monitoring wells and surface water sampling; and
 - e. Operation and maintenance of a conveyance structure on Box Elder Creek.
2. The Tribe shall administer a municipal, rural, and industrial water system adequate to meet the present and future Municipal / Domestic water uses of the Reservation.
 3. To the extent authorized and implemented pursuant to Section 103 of the Water Settlement Act and the Water Compact, the Tribe shall plan, design, and construct the following water development projects on the Reservation:
 - a. Bonneau Dam and Reservoir Enlargement;
 - b. East Fork of Beaver Creek Dam and Enlargement;
 - c. Brown's Dam Enlargement;
 - d. Towe Ponds Enlargement; and
 - e. Such other water development projects as authorized and considered appropriate by the Business Council.

F. Tribal Water Marketing

1. The Tribes may market the right to use a portion of the Tribal water rights either within or outside of the Reservation, as authorized by the Water Compact, Water Settlement Act and Federal law, but may not permanently alienate any part of the Tribal water rights. The approval of the Secretary of the Interior or its designee is required by the Water Settlement if the Tribal water right is marketed outside of the Reservation.
2. Any water rental entered into by the Tribe shall be subject to the priority of uses as set forth in the Water Use Regulations adopted pursuant to this Water Code.
3. Any rental of Tribal water rights shall comply with the provisions for off-Reservation water transfers and changes in use defined in this Water Code and the Water Compact.
4. No person other than the Tribe, acting through the Business Council, shall have any authority to market any portion of the Tribal water rights. Any water marketing action by any person other than the Tribe shall be null and void.
5. Applications for the rental of any portion of the Tribal water rights shall be made in writing to the TWRD, and the TWRD shall send a copy of the application to the Sub Committee and Business Council. The Business Council has exclusive authority to accept or reject applications to market the Tribal water rights, with consideration given to the recommendations of the Sub Committee and TWRD.
6. If the Tribe receives a good faith rental offer from a third person located outside of the Milk River drainage and the Tribe is willing to accept the terms of the rental offer, then the Tribe, before accepting such an offer, shall allow the water users in

the Milk River drainage the opportunity to instead rent the water under the same terms, conditions, and price contained in the rental offer.

XI. Permit System

A. Permit Requirements

1. No person shall divert Reservation water resources or Tribal water rights or undertake an activity on the Reservation affecting or involving such water without first obtaining a permit. A permit is required for any of the following activities:
 - a. Diversion of water from any stream course, spring, or well;
 - b. Drilling of any new well, modification of any existing well used for any purpose,
 - c. Discharging, injecting, or depositing any waste, wastewater, or other contaminant into Reservation water resources;
 - d. Altering any stream course or stream bank for any purpose;
 - e. Developing groundwater recharge projects;
 - f. Generating hydropower;
 - g. Storing or impounding water;
 - h. Dedicating water to instream flows; and
 - i. Other activities not listed herein but determined as necessary by the TWRD Director.
2. The issuance of a permit allows the activity therein described and constitutes an undertaking by the permittee to comply with the conditions therein stated and all Tribal laws and regulation of general application and applicable Federal laws covering such activity;
3. Any person proposing to undertake an activity that may affect Reservation water resources may apply to the TWRD Director for an exemption from obtaining a permit. The Director may issue such an exemption if the Director finds the activity will have a minimal impact on Reservation water resources. Consideration of an exemption shall be based on the facts represented by the applicant, and no fee shall be required for such an exemption application.
4. The following wells are exempt from the requirement of showing no adverse effect as required by the Water Compact:
 - a. Existing Tribal wells are exempt from the burden to show no adverse effect. The Tribe may develop existing wells, or replacements therefor, to their full capacity. The primary municipal and domestic wells are listed in Appendix 8 of the Water Compact. A comprehensive list of existing wells will be kept on file in TWRD offices as required by the Water Compact.
 - b. New Tribal groundwater wells producing from the Volcanic Bedrock Aquifer may be developed without a showing of no adverse effect.
5. All permits issued under this Water Code are provisional and shall not be construed to create an entitlement in the user beyond the provisional period or to allow reliance thereon by any other person.
6. No person shall be authorized to use or otherwise take any action affecting the Reservation water resources administered under this Water Code unless he or she

shall consent to reasonable entry upon his or her land by TWRD staff engaged in the administration of this Water Code.

7. The TWRD Director shall have authority to make conditions on any permit to ensure adequate quantity and quality of Reservation water resources, and to assist in the effective administration of the Water Compact, this Water Code and regulations thereof.

B. Permits

1. The TWRD shall issue permits for the following activities:

- a. **Water Use Permit.** Grants or confirms the right to use a share of the Tribal water rights and guides the use of water as set forth in the permit. There shall be one water permit for any use of Reservation water resources or Tribal water rights. Water use permits may be granted for instream flow uses and storage / impoundment of water as a beneficial use. The TWRD shall develop and the Business Council shall adopt Water Use Regulations that define the preference and priority structure for administration of Tribal water use permits. Water use permits may be granted for a period of not less than five (5) years and not more than twenty (20) years, unless special circumstances dictate a different period.
- b. **Change of Use Permit.** Grants the right to change the location or purpose of water use, method of application, or method or point of diversion for an existing permitted water use. Such permits shall comply with change of use and transfer provisions in this Water Code and the Water Compact.
- c. **Stream Alteration Permit.** Grants the right to alter the streambed or banks. A permit is required for all persons engaging in any activity that affects the bed or banks of Reservation water resources, including but not limited to construction of diversion structures, roads, bridges, culverts, logging, grazing, and other activities affecting the stability of the stream channel.
- d. **Discharge Permit.** Grants the right to discharge waste, or wastewater, or other media, into the surface or ground water of the Reservation. This includes the point discharge of any substance, the non-point discharge of landfills, septic tanks, disposal pits, or groundwater injection.
- e. **Well Construction Permit.** Grants the right to drill or construct a new well, or to deepen or modify an existing well. This permit requires, after completion of the permitted activity, the submission of specific technical data, including construction plans, effects on aquifer water levels and water quality, well pump test data, and lithologic logs. Issuance of this permit is contingent upon the well contractor meeting requirements for technical competence, posting a bond conditioned upon the performance and completion of all permit conditions, and any other requirements established by the TWRD.

2. The TWRD shall complete an inventory of all current water uses on the Reservation within five years of adoption of this Water Code. At the completion

of this water use inventory, the TWRD shall provide a report to the State of Montana and United States that lists the current water uses of Tribal water rights. The TWRD shall publish a public notice via newspaper and internet that the water use inventory has been completed and that such current uses will be granted Tribal water use permits subject to any objections or other revisions. The TWRD will maintain an updated version of this current water use listing at the TWRD office for public review. No water use permit application shall be required for any water use listed on the inventory. Once this initial inventory is completed, any water use not included in the inventory and not granted an associated Tribal water permit, shall require application to the TWRD.

C. Application for Permit

1. Applications for any permit described above shall be made on forms developed by the TWRD, including particular information of facts that in the judgment of the TWRD is required for the proper processing of such applications. All water use permit applications filed shall include, at a minimum, the following information:
 - a. The name, phone number and mailing address of the applicant;
 - b. Purpose and description of water use;
 - c. Legal description of point of diversion and source from which water will be withdrawn, diverted, used, or affected.
 - d. The quantity of use as a volume and flow rate;
 - e. The period of use within the calendar year;
 - f. A description of the method of diversion or withdrawal;
 - g. The estimated date on which the use or uses will be commenced;
 - h. A reasonable estimate of how much water will be returned to the source or sources, how, when, at what point or points, and with what changes in quality and temperature; and
 - i. In case of a pre-existing use, an indication whether problems of water quantity and quality have been encountered in the past.
2. The TWRD shall establish in regulations, a schedule of application fees for permits, which shall be paid in advance to and collected by the TWRD. The Sub Committee may waive the fee in the case of financial hardship for Tribal members. Such application fees shall be used to defray the cost of reviewing and processing permit applications.
3. Within sixty (60) days of the receipt of a permit application, the TWRD Director shall perform the following actions:
 - a. Review the application for compliance with this Water Code and to ensure that it is consistent with Tribal policy and interests;
 - b. Provide public notice;
 - c. Review the application and request any additional information from the applicant, if necessary; and
 - d. Approve, with or without special conditions, or deny the permit application.
4. If the TWRD Director approves the permit application, then the TWRD shall issue the appropriate permit within ten (10) days of such decision. If the TWRD Director

does not approve the application or approves it with conditions which are not acceptable to the applicant, then the applicant shall be entitled to a hearing before the Sub Committee.

5. The TWRD Director shall develop criteria, subject to approval by the Business Council, for approving or denying a permit, or imposing special conditions on a permit. Prior to the adoption of such criteria, the TWRD shall deny those permit applications that indicate:
 - a. A proposed water use or activity that is not in compliance with the Water Compact and/or Water Settlement Act;
 - b. A proposed water use or activity that would injure or interfere with an existing permit, outside of typical priority administration;
 - c. A proposed water use or activity that is not a beneficial use of water authorized by the Water Compact or Water Settlement Act; or
 - d. A lack of complete or accurate information required for the permit application;

D. Objections

1. Any decision of the TWRD Director on an application for a permit may be administratively appealed to the TWRD Sub Committee by the applicant or any person with a direct interest in or who is otherwise directly and adversely affected by the decision made under the provisions of this Water Code.
2. Persons intending to file an administrative appeal must file a Statement of Administrative Appeal with the TWRD Sub Committee within fifteen (15) calendar days after the date of the decision by the TWRD Director. Any decision that is not appealed within the fifteen (15) daytime limitation shall be final and binding as rendered by the TWRD Director.
3. The administrative appeal to the TWRD Sub Committee is limited to the question of whether the decision of the TWRD Director is in accordance with Tribal law. The administrative appeal of the TWRD Director's decision shall be heard on the record of the hearing.
4. The TWRD Sub Committee shall render a decision on the administrative appeal no later than thirty (30) days from the date the Statement of Appeal is filed.
5. Any decision rendered by the TWRD Sub Committee shall set forth findings of fact and conclusions of law justifying the decision. If necessary, the TWRD Sub Committee shall remand the case to the TWRD Director to act in accordance with its decision.

E. Permit Provisions

1. No permit granted by the TWRD may be transferred, exchanged, sold, or otherwise conveyed except as provided by this Water Code and any special conditions on the permit; except that a Tribal water use permit may be transferred from one party to another party only upon the transfer of the associated land on the Reservation, and such transfers shall require approval of the TWRD Director.

2. No person may create a security interest or authorize the creation of a security interest, in a water use permit without the express consent of the TWRD Director. Upon foreclosure of any property, a permit may be transferred to a mortgage lender or an assignee only for the use of water on the land described in the permit, and only for the purposes designated in the permit. Any such transfer shall require approval of the TWRD Director.
3. No right to use or otherwise affect the quantity, level, flow, pressure, or quality of water may be acquired by adverse possession, prescription, estoppels, or acquiescence.
4. The TWRD Director shall modify, suspend, or revoke a permit upon finding that the permit holder has not fulfilled the requirements as prescribed in the permit, or to carry out and implement this Water Code and regulations thereof.
5. A water use permit shall become null and void, in whole or in part, if the permit holder fails to use all or a portion of the water for a period of five consecutive years, without sufficient cause. The TWRD shall serve notice of loss by nonuse on the permit holder, and any objection to such notice shall be issued by the permit holder within thirty (30) days of issuance. Sufficient cause shall include:
 - a. Drought or other unavailability of water;
 - b. Active service in the armed forces of the United States;
 - c. The operation of legal proceedings;
 - d. The application of any laws restricting water use;
 - e. Incarceration in a penal institution;
 - f. Confinement in a mental institution;
 - g. Incompetence by reason of age or mental incapacity; or
 - h. Other causes of nonuse beyond the control of the permit holder.

XII. ENFORCEMENT

A. Prohibited Acts

It shall be unlawful for any entity or person to:

1. Forcibly, or through bribery, threat, or other corrupt practice, obstruct or impede the due administration of this Water Code;
2. Commit fraud, or knowingly assist another in the commission of fraud, with the intent to evade or defeat the administration of this Water Code;
3. Falsely verify by written declaration any permit, form, application, or other document, or to intentionally withhold data required to be submitted;
4. Violate the conditions or stipulations of a permit, including taking more water than is allowed by a permit;
5. Willfully take, waste, alter, or damage Reservation water resources or Tribal water

- rights;
6. Knowingly make use or take action affecting the use of Tribal water rights within the Reservation without the authorization required; or
 7. Willfully obstruct or interfere with Tribal employees performing their duties under this Water Code.

B. Penalties

Any person that commits any of the prohibited acts, or who violates provisions set forth in this Water Code, shall be subject to civil proceedings under the Law and Order Code of the Tribe.

C. Inspection and Assessment

The TWRD shall have the duty and right to inspect and assess any water uses and activities that may affect water quality, water quantity, and the overall health of Reservation water resources.

D. Injunctions

In the case of an impairment or the eminent threat of an impairment the power to issue a temporary order to stop any and all activities under a permit for up to three days.

F. Administrative Appeal

All decisions of the TWRD Director and TWRD Sub Committee shall be sent via certified mail to the address on file for affected persons, and also posted in a public space at the TWRD office. Any person who is affected by any action or decision of the TWRD and/or Director can file an appeal to the TWRD Sub Committee within fifteen (15) days of the date of action or decision mailing. The Sub Committee shall conduct a hearing within thirty (30) days of the request for an appeal. If an appeal has not been filed as described, the decision or action of the Director shall be final. Decisions of the Sub Committee shall be sent via certified mail to the address on file for affected parties.

G. Judicial Review

1. Decisions of the TWRD Sub Committee may be appealed to Tribal Court within thirty (30) days of mailing of notice of the decision.
2. No person may seek review by the Tribal Court of a decision or ruling of the TWRD Director or Sub Committee unless such person has first exhausted all administrative appeal rights provided by this Water Code.
3. Appeals to the Tribal Court shall be limited to review of the record of the Sub Committee's administrative decisions or rulings and shall not be trial de novo. The Tribal Court may modify, reverse, or remand a decision or ruling of the Sub Committee only where such decision or ruling is without substantial basis in fact, is contrary to Tribal policy or Tribal law, or is clearly arbitrary or capricious.

XIII. Miscellaneous Provisions

A. Regulations

The Sub Committee shall adopt and amend such rules, regulations, policy guidelines or procedures, as it deems necessary to implement the objectives and purposes of this Water Code.

B. Records Access

All records required to be maintained by the TWRD are considered Tribal records and may not be disclosed unless authorized by the Business Council. No employee may alter or destroy these records unless authorized by the Business Council. This shall not prohibit sharing data and information with other Tribal departments in the performance of TWRD duties. All permit files and permit applications shall be available for public review at the TWRD office during normal business hours.

C. Amendment

The Business Council may amend this Water Code and the TWRD shall notify Tribal members of any amendments in a manner considered appropriate under Tribal laws.

D. Severability

In the event any provision of this Water Code or the application thereof to any person or circumstance is held invalid, the remainder of this Water Code shall not be affected thereby and to this end the provisions of this Water Code are declared to be severable.

E. Repeal

Any act, ordinance, resolution, rule, regulation, or provision of law of the Tribe in conflict with the provisions of this Water Code are hereby repealed to the extent that they are inconsistent with, conflict with, or are contrary to, the purposes of this Water Code. Those acts, ordinances, resolutions, rules, regulations, or provisions of law that do not conflict shall remain in effect.

F. Effective Date

This Water Code shall be in effect ten (10) days after the Secretary of Interior approves of this Water Code and the Business Council approves this Water Code by ordinance. This ordinance shall remain in effect until repealed or amended.

CHAPTER THREE
WETLANDS/AQUATIC LANDS PROTECTION CODE

SECTION ONE
INTRODUCTION

I. Authority

The Chippewa Cree Tribe retains the inherent sovereign power to carry out governmental functions that are essential to preserve the health, safety and welfare of the Tribe. The Chippewa Cree Tribe has the right and duty to regulate wetlands/aquatic lands on the Rocky Boy's Indian Reservation. This Code is enacted pursuant to the Constitution and Bylaws of the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation, Article VI, Section 1 (p), approved by the Secretary of the Interior on December 13, 1935.

II. Purpose

By Protecting wetlands, we protect our heritage for the next generations. The purposes of this Code are:

A. Protection, preservation, proper maintenance, and use in accordance with the character, adaptability, and stability of the Reservations' Wetlands/Aquatic Lands in order to prevent pollution, or contamination; outlaw their disturbance to the natural habitat therein; and prevent damage from erosion, and flooding.

B. To prevent the degradation of Reservation Wetlands/Aquatic lands by regulating construction or installation of projects upon Wetland/Aquatic lands whenever such project may cause erosion, sedimentation, or other disturbances adversely impacting the quality of Reservation Wetland/Aquatic life.

C. Encourage education and proper cultural uses of our Wetlands/Aquatic Lands, for preservation for future generations.

D. The coordination with, and support for the enforcement of any applicable federal statutes, ordinances and regulations involving Wetlands/Aquatic Protection and enhancement.

E. The establishment of standards and procedures for review of the regulation and uses of Wetlands/Aquatic Lands.

F. The establishment of enforcement procedures and penalties for the violation of the Code.

G. To prevent the loss of Wetlands/Aquatic lands within the jurisdiction of the Chippewa Cree Tribe.

III. Findings

The Chippewa Cree Tribe finds that healthy wetlands are important to the health, safety, and welfare of the Tribe, and fully functioning wetlands are a conservation priority:

A. Tribal control, regulation, and protection of Wetlands/Aquatic lands are critical to the preservation of water quality and to conform to the reservation-wide Tribal Watershed Management Strategy.

B. Article VI, Section 1 (p) of the Constitution and Bylaws of the Chippewa Cree Tribe of the Rocky Boy's Reservation confers broad powers to the Business Committee to protect the reservation environment for the exclusive use of that tribe and its tribal members.

C. Reservation population growth and increased unregulated utilization of Wetlands/Aquatic lands are causing adverse impacts upon the quality of Reservation waters, fisheries, and wildlife habitat. There exists an immediate need to regulate and manage the use of Wetlands/Aquatic lands to preserve and protect for the future of the Chippewa Cree Tribe.

D. The conservational goal is to develop a Wetlands/Aquatic program to achieve no net loss of the wetlands and wetland functions and values. Through conservation, restoration, enhancement, and creation the Chippewa Cree Tribe will experience no net loss of wetlands.

SECTION TWO DEFINITIONS

I. Definitions – For the purposes of this Code the following definitions will apply:

A. Adjacent: bordering, contiguous or neighboring. Wetlands separated from other Reservation lands or waters by natural or man-made barriers are “adjacent wetlands.”

B. Aquatic Lands: all land below the mean annual high-water mark of a Reservation water body.

C. Committee: comprised of the Director of Tribal Water Resource Department, Wetland Coordinator, Natural Resources Director, Planning Director, and a Game Warden.

D. Department: the Chippewa Cree Environmental Department.

E. Director: means the individual responsible for enforcement and oversight of this code.

F. Discharge of Dredged Material: any addition or placement of dredged materials into Reservation waters or on wetlands/aquatic lands whether through direct placement, or by secondary means such as run-off, slumping or overflow from a disposal site.

G. Discharge of Fill Material: any addition or placement of fill materials into Reservation waters on onto wetlands/aquatic land.

H. Dredged Material: material that is excavated, displaced, or removed from wetlands/aquatic lands.

I. Fill Material: any material used for the purpose of replacing Reservation waters with dry land or dredged material.

J. Mean Annual High-Water Mark: line on the shore of Reservation waters established by the fluctuations of water and indicated by physical characteristics such as a clear, naturally occurring line impressed on the bank; shelving changes in the character of soil; paucity or lack of terrestrial vegetation; or the presence of water borne litter or debris.

K. Person: any individual, partnership, association, corporation, and any other entity composed of individuals and governmental entities.

L. Project: a physical alteration of aquatic lands, wetlands, or Reservation waters, not otherwise exempted by this Code or implementing regulations, which has the potential to cause a material change in the condition of such lands or water in contravention of the policy of this Code, and includes but is not limited to dredging, filling, unregulated access detrimental to aquatic lands, irrigation diversions and returns, drainage ditches and construction on aquatic lands, and furthermore, includes maintenance or repair involving any of the above activities.

M. Reservation Waters:

1. All naturally occurring bodies of water within the exterior boundaries of the Reservation regardless of alteration by man, including but not limited to lakes, rivers, streams (including intermittent streams), mudflats, wetlands, sloughs, potholes and ponds, and any bodies of water classifiable as “water of the United States” under federal law; this includes isolated wetlands that have no nexus to navigable waters.

2. Tributaries of waters.

3. Wetlands adjacent to Reservation Waters.

4. Riparian Lands – areas adjacent to creeks, streams, lakes, and rivers that support vegetation dependent upon free water in the soil.

N. Responsible Person: any person who undertakes a project or causes a project to be undertaken on aquatic lands.

O. Subcommittee: the Tribal Water Resources/Environmental Subcommittee of the Chippewa Cree Tribe.

P. Tribal Business Committee: the duly elected governing body of the Chippewa Cree Tribe of the Rocky Boy Indian Reservation.

Q Tribal Department: all departments established by the Chippewa Cree Tribal Business Committee located within the exterior boundaries of the Rocky Boy's Indian Reservation.

R. Undertaking: means any governmental, governmental assisted or licensed action, activity, or program or the approval, sanction, assistance, or support of any non- governmental action, activity or program. Undertakings include new and continuing projects and program activities that are: 1) directly undertaking by governmental agencies; 2) support in whole or part through government contracts, grants, loans, subsidies, loan guarantees, or other forms of direct or indirect funding assistance; 3) carried out pursuant to a governmental lease, permit license, certificate approval, or other forms of entitlement or permission; or 4) proposed by Federal, State, or other governmental agencies for legislative authorization or appropriation.

S. Wetlands: those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to, swamp, marshes, bogs, potholes, and similar areas, whether or not a nexus to navigable waters, as defined in the Federal Clean Water Act, has been determined.

SECTION THREE REGULATIONS

I. Uses Allowed Without a Permit:

The following uses shall be allowed in a wetland without a permit:

- A. Fishing, trapping, or hunting with appropriate Tribal licensing or authorization.
- B. Swimming or boating.
- C. Hiking.
- D. Grazing of animals adhering to the Chippewa Cree Grazing Ordinance.
- E. Regular operation and maintenance of an existing project that involves no pollutants, toxins, dredging, filling, excavation or other similar agents or activities.

F. After the effective date of this order but immediately prior to the approval of a program under section 401 of Title 4 of the Clean Water Act Section 518(e), where a project solely involves the discharge of fill material subject to the individual permit requirements of

section 404 of Title 4 of the Clean Water Order of 1977, 33 U.S.C. 1344 and additional permit shall not be required.

G. Emergency Situations, which are defined as an unforeseeable circumstance that poses an immediate and substantial endangerment to life or property. The person shall notify the Director in writing of the emergency undertaking within ten (10) days of commencement of such undertaking. The notification shall include the following information:

1. Name, address and telephone number of the person seeking emergency action.
2. A map showing the location of the action taken.
3. The circumstances that precipitated the emergency action.
4. A description of the action taken, including type of action, materials used, size of action, and affected lands and waters.
5. The person's determination of whether or not the action taken will constitute a permanent solution.
6. An application for a project if the person deems further work is necessary to either permanently resolve the problem or stabilize the action taken under this Part.

H. The Director shall make on-site inspection of an action and cause a written report of such observations to be filed with the Committee and copy shall be sent to the person within ten (10) days from the date of such inspection. The report shall include the following information:

1. A finding as to whether or not an emergency situation existed at the time the action was taken.
2. A finding as to whether the action constitutes a project.
3. If the findings required in subparagraphs (1) and (2) above are affirmative, and a permanent solution is feasible, recommend in writing that the person put the solution into effect within a specified reasonable amount of time pursuant to a duly issued permit. Failure of the person to put the solution into effect is not a violation unless a substantially similar emergency action results from such failure to act.
4. If the action taken is determined to constitute a project and there is a finding made of no emergency, the Director shall issue a denial of application as required under Chapter 4.3.

SECTION FOUR ADMINISTRATIVE PROCEDURES

I. Permit Application

Except as provided in Section 3, a person desiring the permit shall file a written application with the Committee on a form provided by the Department accompanied by a non-refundable fee to cover costs associated with permit review, issuance, and administration. The amount of the fee shall be fixed from time to time by regulation, shall take into account the scope

of the proposal, and shall be reasonable. The application shall be on a form provided by the Department and shall include, but is not limited to shall include:

- A. The responsible person's name and address.
- B. The location of the wetland/aquatic lands.
- C. A description of the wetland/aquatic lands on which the use or development is to be made.
- D. A statement describing the proposed use or development.
- E. The wetlands/aquatic landowner's name and address.
- F. An environmental assessment on form supplied by the Department of the proposed use or development if requested by the Department which shall include effects upon wetland benefits, mitigation plan, and the effects upon the water quality, flow and levels, the wildlife, fish, and vegetation within a contiguous lake, river, or stream.
- G. A proposed use or development of a wetland/aquatic land shall be considered as a single permit application under this order if the scope, extends, and purpose of a use or development are made known at the time of the application for the permit.
- H. Approved mitigation plan must be presented with the proposed application.

II. Permit for Activity Listed in Section Four

A permit for an activity listed in Section 4 shall not be approved unless the Director determines that the issuance of a permit is in the public interest, that the permit is necessary to realize the benefits derived from the activity, and that the activity is otherwise lawful.

A. In determining whether the activity is in the public interest, the benefit, which reasonably may be expected to accrue from the proposal, shall be balanced against the reasonably foreseeable detriments of the activity. The decision shall reflect the national, tribal, and state concern for the protection of natural resources from pollution, impairment, and destruction. The following general criteria shall be considered:

- 1. The relative extent of the public and private need for the proposed activity.
- 2. The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.
- 3. The extent permanence of the beneficial or detrimental effects which the proposed activity may have on the public and private uses to which they are suited include the benefits and functions the wetland(s) provides.
- 4. The probable impact of each proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed.

5. The probable impact on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.
6. The size of the wetland being considered.
7. The amount of remaining wetland in the general area.
8. Proximity to any waterway.
9. Economic value, both public and private, of the proposed land change to the general area.

B. A permit shall not be issued unless it is shown that an unacceptable disruption will not result to the wetland/aquatic resources. A permit shall not be issued unless the applicant also shows either of the following:

1. The proposed activity is primarily dependent upon being located in the wetland.
2. A feasible and prudent alternative does not exist.
 3. The impact on the esthetic value of the wetland.

III. Approval, Modification, and/or Denial of Application.

The Director may approve a permit application, request modifications in the application, or deny the permit application. The Director shall approve or disapprove the permit application within thirty (30) days after the completed permit application is filed with the Committee. If the Committee does not approve or disapprove the permit application within the time provided above, the permit application shall be considered denied. The Director shall evaluate the proposed application as follows:

A. The Director shall review a permit application for adequacy and for project technical feasibility within fourteen (14) days of receipt of such proposal, and shall determine if the proposal constitutes a project, as defined herein, and may make such on-site investigations as are necessary to perform these duties

B. If the Director determines that the proposal is not a project, the Director shall so state in a written notice to the responsible person for the project within fourteen (14) days of receipt of the application. The responsible person for the project may submit an amended application; however, the amended application shall be processed as a new application.

C. If the Director determines that the proposal is a project, the Director shall also evaluate the following conditions:

1. Impacts Upon Fish, Wildlife and Plants: The following list of considerations shall be evaluated by the Director, in consultation with scientific and technical staff, in determining if an application constitutes a project and by the Board in determining whether to disapprove, approve, or approve with modifications or alternatives, an application brought before it. Such evaluation will address the immediate impacts, reasonably foreseeable long-term impacts, and cumulative impacts of the proposed project on: fish, wildlife, and plant life of any dredge or fill activities on aquatic lands; fish, wildlife, and plant life of construction

upon aquatic lands; changes to, or creation of, flow patterns, currents, turbidity, and volume of Reservation waters resulting from construction of the proposed project; and disruptions of life cycles, seasonal uses, and populations of fish, wildlife, and plant life existent on or in or dependent upon aquatic lands.

2. Construction Activities:

a. General Requirements. The following list of considerations will be evaluated by the Director, in consultation with scientific and technical staff, in determining if an application constitutes a project and by the Department in determining whether to disapprove, approve, or approve with modifications or alterations, an application brought before it. Such evaluation will address the immediate impacts, any reasonable, foreseeable long-term impacts, and cumulative impacts as follows:

i. The proposed project will be designed and constructed in such a manner as to provide for the smallest, least obtrusive structure that will satisfy the stated need for the project;

ii. All construction activities shall be accomplished in such a manner as to minimize or preclude adverse impacts on the human and natural environment;

iii. If the application is for a permanent structure, it shall be designed and constructed in such a manner as to assure permanence;

iv. The project will pass reasonably anticipated water flows, currents, or fluctuations in surface elevation without creating erosional situations upstream, downstream, or on the project location;

v. The project will maximize or preclude adverse impacts upon fish, wildlife and plants existent in or dependent upon Reservation waters and aquatic lands;

vi. The project will minimize or preclude adverse impacts of turbidity or other water quality problems;

vii. The project will be constructed in such a manner as to minimize or preclude use of gravels and other materials constituting aquatic lands as construction or fill material, and further, that such materials are to the extent possible left in an undisturbed condition during the course of construction and during the life of the project.

b. Specific Requirements: In furtherance of the concerns and considerations discussed in Subsection 2 above, the following list of construction regulations will apply:

i. Wetlands shall not be filled, dredged, drained or otherwise impacted unless no feasible alternative exists and such action, after consideration of all relevant factors, is necessary for the completion of a project that has been determined by the Department to satisfy all other requirements of these regulations;

ii. No construction equipment shall be operated below the existing water surface without specific authorization contained in a permit;

iii. All temporary methods of ingress and egress, crossings, bridge supports, coffer dams, culverts or other structures that will be needed during the period of construction shall be designed to satisfactorily pass and withstand high water conditions and to minimize or preclude siltation, turbidity, and the introduction or reactivation of pollutants or toxic substances into Reservation waters. All such temporary structures shall be removed upon conclusion of construction and the affected areas shall be restored to their pre-construction condition, subject to any conditions placed upon restoration during the permitting process;

iv. All technical feasible steps shall be taken to minimize or preclude removal, relocation, siltation or other adverse impacts to wetland/aquatic lands;

v. Heavy equipment used in construction of projects or portions thereof, when occurring in or on wetland/aquatic lands, shall be placed on industrial strength mats to minimize or preclude adverse impacts to such wetlands if required by the terms of the permit;

vi. Construction of roads, bridges, culverts, water lines, and similar methods of crossing or channeling Reservation waters and wetland/aquatic lands, shall be designed and constructed in such a manner as to allow free and unrestricted passage of flowing waters and to accommodate and interfere to the least degrees technically possible with any current or bed load patterns or erosional and

depositional characteristics of Reservation waters at or near the project location. Such structures will be designed and constructed so as to cause the least change in sediment load and turbidity of Reservation waters and to minimize or preclude adverse impacts to wetland/aquatic lands;

vii. Riprap of banks and shorelines will be allowed upon showing of no or minimal adverse impact to riparian lands, wetland/aquatic lands, and Reservation waters due to changes in velocity, sediment load, current and wave pattern or channel readjustment, and then only as a last alternative solution to resolve the matter the proposed project has been formulated to address.

viii. Diversions to obtain water for agricultural purposes shall be designed and constructed in such a manner as to minimize or preclude adverse impacts to wetland/aquatic lands. Furthermore, diversions shall be constructed in such a manner as to minimize or preclude loss of fish from the source waters. Diversions may involve, depending upon technical feasibility, screening of open diversions, construction of a return flow structure of sufficient quality to provide an avenue for fish that enter an open diversion to return to the source water in a healthy condition, or pumping in lieu of open diversion.

ix. Use of explosives on or near Reservation wetland/aquatic lands shall be evaluated on a case by case basis and shall take into account alternatives to blasting, the impact upon resident fish, wildlife or plants, and any special seasonal requirements such as spawning or nesting;

x. Creation of impoundments may be permitted if the impacts to flora and fauna, Reservation wetland/aquatic lands is otherwise acceptable under these regulations and such impoundment is the only technically feasible method to achieve the purposes of the project;

xi. Scientific devices such as staff gauges, recording devices and fish weirs will require application to the Department prior to commencing placement;

xii. Pipelines and other similar structures either buried or placed above ground shall be constructed in such a manner as to preclude the potential for leakage of the transported substance into or on Reservation

wetland/aquatic lands and shall be built to incorporate the highest degree of technologically available safety and environmental standards;

xiii. Power lines, utility lines, guy lines, and similar structures shall be located as to incorporate the most direct and fewest number of crossing over or under Reservation wetland/aquatic lands so as to minimize or preclude interference or other disturbance or destruction of flyways for avian species and to minimize or preclude the potential for adverse impacts upon the natural, scenic, and esthetic values of Reservation waters and aquatic lands;

xiv. Docks, weirs, breakwaters, jetties, and similar structures not otherwise subject to regulation under applicable Tribal Code shall be constructed in such a manner as to minimize or preclude interference with navigation, fish, wildlife and plant life cycles and habitat, natural and scenic values, existent water flow patterns and sediment loads, public health, and property interest.

c. Variances: The Committee may grant variances from these regulations upon the motion of the Applicant when it is presented with clear and convincing evidence that due to unusual circumstances a strict enforcement of these regulations would result in undue hardship and the Department determines that no reasonable alternatives exist to meet the standards herein.

d. Supplement Review Criteria: The Director or the Committee may, in furtherance of review of an application, utilize project criteria contained in either the Technical Guide for Statewide Standards and Specifications of the Soil Conservation Service or Fact Sheets of the Army Corps of Engineers that outline compliance with the Clean Water Act and related Federal law.

D. If the Director determines that the proposal is for a project, the Director shall notify the Committee of the project, and provide the Committee with the complete application and supporting scientific and technical information within thirty (30) days. The Committee shall approve, approve with modifications or alternatives, or disapprove an application and shall state its decision in writing to the responsible person during the next regularly scheduled meeting, or upon a special meeting. The Committee may, upon written notice to an applicant, extend the time limitations contained in this Chapter for an additional forty-five (45) days upon determination that the time provided herein is insufficient to carry out consultation and technical review of an application.

E. Upon Committee approval or upon approval with modification or alternatives, the Director shall forward to the responsible person a permit which shall related to the plan for the project approved, and which may include provisions for mitigation of adverse impacts associated with the project. No work on a project may commence unless the Department has issued a permit for the project.

IV. Public Hearings.

A. The Committee may direct the Director to conduct a public hearing for the purpose of soliciting comment relative to an application that has the potential to cause substantial adverse impacts to the aquatic environment or if the application is for a project that has the potential to adversely affect the public or if the application is for a project without precedent.

B. If the Committee finds that a public hearing is necessary, it will direct the Director to conduct a hearing. The Director shall then cause a public notice to be published in at least two newspapers of general circulation within the Reservation once a week for two weeks prior to the hearing. At the hearing the Director shall explain the application. Any member of the public may present oral or written comment at the hearing. Comments shall be compiled by the Director for review by the Board at the next scheduled Subcommittee meeting.

C. If a public hearing is called, time frames for review of an application contained in the Ordinance and these regulations shall be held in abeyance from the date the Committee calls for such hearing until such time as the Department is presented with the compilation of public comments.

V. Termination or Modification of Permit

A. A general permit may be revoked or modified if the Director determines that the activities authorized by the general permit have an adverse impact on the environment or the activities would be more appropriately authorized by an individual permit. A permit may be terminated or modified for cause, including:

1. A violation of condition of the permit. An order issued under this Section shall state with reasonable specificity the nature of the violation, that the person has fifteen (15) days of receipt of order to file a written answer with Committee, the consequences of failing to answer, and shall specify a time for compliance, not to exceed 30 days, which the Subcommittee determines is reasonable, taking into account the seriousness of the violation and good faith efforts to comply with applicable requirements. An answer shall admit or deny the violation, raise all affirmative defenses, and state whether or not the person in non-compliance will undertake curative measures. If an Answer states that a person will undertake curative measures, the hearing scheduled in the order may be held in abeyance for a reasonable amount of time and to the satisfaction of the Director the hearing may be cancelled at the discretion of the Director.

2. Obtaining a permit by misrepresentation or failure to fully disclose relevant facts.

3. A change in a condition that requires a temporary or permanent change in the activity.

SECTION FIVE ADMINISTRATION BY DIRECTOR

I. Administration by Director

The Director shall perform the duties and responsibilities under this Code or other qualified staff within the Department as determined by the Committee. Director's duties and responsibilities:

- A. Enforce Regulations and Administrative Procedures promulgated pursuant to this Code.
- B. Maintain a record of all correspondence, consultation, conference, scientific and technical findings, and Subcommittee meetings relative to each application.
- C. Wetlands permitting and activities review.
- D. Wetlands Delineation with clearly marked boundary and map that clearly identifies data collection points and the boundaries of delineated wetland.
- E. Conduct an annual review of this Code, and the Regulations and Administrative Procedures. Recommend changes and identify conflicts between this Code, the Regulations and Administrative Procedures and other government ordinances and zoning laws/ordinances, and address accordingly.
- F. Inspect any project for the purpose of determining compliance with this Code and the Regulations and Administrative Procedures.
- G. Serve as a liaison between Tribal, Federal County, State and local units of government.

SECTION SIX ADMINISTRATION BY THE COMMITTEE

I. Administration by the Committee

The Committee shall have the powers and duties associated with implementation of this Code and the Regulations and Administrative Procedures promulgated hereunder. The Subcommittee mandates:

- A. Hear permit application appeals under Section 8 of this Code. Also, see Section 5, of the Wetlands/Aquatic Lands Protection Regulations and Administrative Procedures.

B. Develop regulations for activities in a wetland with or without a permit, and prohibited activities in a wetland. See Section 3, of the Wetlands/Aquatic Lands Protection Regulations and Administrative Procedures.

C. Develop administrative procedures for permit application, termination or modification of permit, appeal hearings. See Section 4, of the Wetlands/Aquatic Lands Protection Regulations and Administrative Procedures.

SECTION SEVEN WATER RIGHTS

I. Water Rights

This Code shall not be construed to diminish or divest any existing water uses established in accordance with applicable law.

SECTION EIGHT LANDS TO WHICH THIS CODE APPLIES

I. Applicable Lands

This Code shall apply to:

A. All wetlands/aquatic lands, regardless of size, located on lands held in fee by, or trust for, Chippewa Cree Tribe, or otherwise under the jurisdiction of Chippewa Cree Tribe.

SECTION NINE WETLAND VERIFICATION AND DELINEATION AND ASSESSMENT

I. Wetland Verification and Delineation

The Department, along with any other departments or staff assigned by the Tribal Business Committee, shall prepare and keep current an inventory of all wetlands to which this Code applies, including the preparation of composite Wetland maps, using available resources. The inventory and maps shall note areas of particular cultural significance. This inventory shall be in compliance with the Cultural Resources Protection Ordinance (CRPO).

SECTION TEN APPEALS

I. Administrative Appeal of Director's Action

A person aggrieved by a final action of the Director may seek review of such action pursuant to an appeal to the Committee. For purposes of administrative review a decision of the Committee

shall constitute a final agency action. See Section 5, of the Wetlands/Aquatic Lands Protection Regulations and Administrative Procedures.

II. Judicial Review

Upon the exhaustion of administrative remedies, the Tribal Court of the Chippewa Cree Tribe shall have jurisdiction to review a final decision rendered by the Committee. The Tribal Court judicial review shall be limited to any Tribal constitutional, civil rights violations, or due process violations. The decision of the Tribal Court shall be final.

SECTION ELEVEN ENFORCEMENT AND PENALTIES

I. Enforcement

A. Upon reasonable cause or obtaining a search warrant, the Director may enter on, upon, or through the premises on which an activity is required to be maintained.

1. I, on the basis of information available to the Director, the Director finds that a person is in violation of this Code or the Wetlands/Aquatic Lands Protection Regulations and Administrative Procedures promulgated pursuant to this Code, the Director shall issue an order requiring the person to comply with the prohibitions or conditions as required under Section 4 of the Wetlands/Aquatic Lands Protection Regulations and Administrative Procedures or the Department shall request the Tribal prosecutor to bring a civil action.

2. The Tribal Court shall have jurisdiction to hear and adjudicate alleged violations of this Code or the Wetlands/Aquatic Lands Protection Regulations and Administrative Procedures promulgated pursuant to this Code. The Chippewa Cree Tribal Law Enforcement Officers shall have the authority to issue civil citations for violations of any of the provisions of this Code, or the Wetlands/Aquatic Lands Protection Regulations and Administrative Procedures promulgated pursuant to this Code.

B. Penalties

If the Chippewa Cree Tribal Court finds that any person or entity destroyed or harmed wetlands in violation of this Code, or the Wetlands/Aquatic Lands Protection Regulations and Administrative Procedures promulgated pursuant to this Code, it shall enter such orders as it deems necessary to restore such wetlands; including the issuance of injunctions requiring the restoration of such wetlands, or the assessment of monetary fees in amounts adequate to cover restoration costs, but not to exceed \$5,000 per offense, or any other appropriate civil penalty.

SECTION TWELVE SEVERABILITY

I. Severability

If any Chapter, paragraph, sentence, phrase or portion of this Code is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION THIRTEEN
EFFECTIVE DATE

I. Effective Date

This Code shall become effective upon adoption and approval by the Tribal Business Committee.

CHAPTER FOUR
SOLID WASTE

SECTION ONE

An Ordinance authorizing and regulation the planning, maintenance, and operation of a comprehensive solid waste management system the enforcement of necessary and proper regulations for the management of solid waste, the establishment of service charges for storage, collection, transportation, and disposal; and for other purposes as the Chippewa Cree Tribe deems necessary and proper.

I. Title:
Chippewa Cree Solid Waste Ordinance

II. Authority:

The Chippewa Cree Solid Waste Ordinance is enacted by the Chippewa Cree Tribal Business Committee, as the governing body of the Rocky Boy's Reservation pursuant to Article VI – Powers of the Committee, of the Constitution and Bylaws.

A. Section 1. The Business Committee shall exercise the following powers subject to any limitations imposed by the Statutes or the constitution of the United States and subject further to all express restrictions upon such powers contained in this constitution and bylaws.

B. Article VI, Section 1 (p), of the Constitution and Bylaws of the Chippewa Cree Tribe of the Rocky Boy's Reservation which provides for the powers of the Business Committee to enact ordinances for the Tribe.

III. Declaration of Policy:

It is hereby declared to be the purpose of this Ordinance to regulate the storage, collection, transportation, and disposal of solid waste in order to protect the public safety, health, welfare, and environment of the people of the Rocky Boy's Indian Reservation.

SECTION TWO
DEFINITIONS

I. Definitions – For the purposes of this Ordinance, the following definitions will apply:

- A. Agricultural Waste: means the solid waste that results from the raising and slaughtering of animals, and the processing of animal products and orchard and field crops.
- B. Approved Storage Container: means a container that is leak proof, has a lid that is inaccessible to flies and is structurally compatible with the waste collection system.
- C. Bulky Waste: means those items whose large size precludes or complicates handling by normal collection, processing, or disposal methods. Bulky waste includes, but is not limited to: carpet, logs, limbs, stumps, furniture, junk vehicles, bed frames, mattresses, wooden crates, white goods (stoves, refrigerators, dryers, etc.), wires and demolition and construction waste (such as lumber, bricks, pavement, etc.).
- D. Central Storage Point: means the point at which solid waste is collected from a tribally authorized collection agency responsible for the transfer of the solid waste to an approved transfer site and/or to an approved landfill.
- E. Collection: means the act of removing solid waste from the central storage point at the source of generation such as from dumpsters or canisters located at household, institutional, commercial business, or special project sites.
- F. Commercial Solid Waste: means solid waste generate by stores, offices, and other activities that do not actually turn out a product.
- G. Construction and Demolition Waste: means discarded material resulting from construction or demolition of structures that is generally considered to be not water soluble and non-hazardous or inert in nature, including but not limited to steel, glass, brick, concrete, shingles, and lumber.
- H. Council: means the Chippewa Cree Tribe Business Committee.
- I. Compactable Waste: means the smaller, light and pliable portion of solid waste generated through normal household, commercial, and institutional activities. Compactable waste includes, but is not limited to: containers (metal, glass, plastic, paper, etc.), textiles, food parcels, floor sweeping and yard trimmings.

- J. Dead Animal: means animals that have died from any cause except those slaughtered for human consumption.
- K. Director: means the individual responsible for enforcement and oversight of this ordinance.
- L. Disposal: means the orderly process of discarding useless or unwanted materials.
- M. Generation: means the act or process of producing solid waste.
- N. Hazardous Waste: means any waste material that poses a threat to human health or environment. Typical hazardous wastes are toxic, corrosive, ignitable, explosive, or chemically reactive, the disposal and handling of which is regulated by federal law.
- O. Household Solid Waste: means all solid waste that normally originates in a residential environment.
- P. Industrial Solid Waste: means solid waste originating from educational, health care, and government activities.
- R. Non-Residential Solid Waste: means solid waste from agriculture, commercial, industrial, recreational, or institution activities, or from a building or group of buildings.
- S. Open Burning: means the combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustions, containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion and control of the emission of the combustion products.
- T. Open Dump: means a site used for the disposal of solid waste that is not a state or Tribally permitted solid waste disposal facility.
- U. Person: means any individual, partnership, co-partnership, company, public or private corporation, association, joint stock company, trust estate, or any legal representative, agent or assignee.
- V. Pollution: means the condition caused by the presence in the environment of substances of such character and in such quantities that the quality of the environment is impaired.
- W. Recovered Resources: means materials which still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reclaimed or recycled for the same or other purposes.

- X. Reservation: means the Rocky Boy's Indian Reservation, Montana.
- Y. RCRA: means the fe3deral Resource Conservation and Recovery Act of 1976 as amended.
- Z. Rubble: means inert construction debris (soil, rock, stone, etc.).
- AA. Sanitary Landfill: means a site where solid waste is disposed of using sanitary landfill techniques as permitted by the Tribe or State.
- BB. Sanitary Landfilling: means a method of disposing solid waste on land in a manner that protects the environment by spreading the waste in thin layers, compacting it to the smallest volume practicable, and covering it with soil in accordance with 40 CFR Parts 257 or 258.
- CC. Scavenging: means the uncontrolled removal of materials at any point in the solid waste management system.
- DD. Solid Waste: means any garbage, or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial,, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S. C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).
- EE. Solid Waste Management: means the purposeful and systematic control of the generation, storage, collection, transport and disposal of solid waste.
- FF. Storage: means the interim containment of solid waste in an approved manner after generation and prior to ultimate disposal.
- GG. Transport: means the movement of solid waste subsequent to collection.
- HH. User Fee: means the fee collected for the development, operation, and management of a solid waste management system.

SECTION THREE
ADMINISTRATIVE COUNCIL

I. Administrative Council:

The Council shall be responsible for the administration and management of this Ordinance and compliance with the rules and regulations authorized in Chapter 1G.

II. Powers and Duties of the Administrative Council:

The Council has the full power and authority to carry out and administer the provisions of this Ordinance. The Council shall have jurisdiction and authority over all persons and property, tribal, institutional and private necessary to lawfully enforce the provisions of this Ordinance.

III. Promulgate Rules and Regulations:

Pursuant to the purposes of the Ordinance, the Council shall promulgate such rules and regulations as are necessary and feasible for the protection of the environment through the implementation and operation of a solid waste management system of the Rocky Boy's Indian Reservation. The rules and regulations shall be part of the Ordinance and shall have the full force of the effect of the law.

IV. Delegation of Authority:

The Council shall delegate administrative and enforcement authority to carry out the provisions of this Ordinance.

V. Enforcement Agency:

The Director shall be responsible for the enforcement of this Ordinance, and any rules and regulations authorized in Section 1 G.

SECTION FOUR
GENERAL PROVISIONS

I. General Provisions:

A. The Director shall plan for and regulate the storage, collection, transportation, and disposal of solid waste in order to protect the public health, safety, and welfare and to enhance and protect the environment of the residents within the external boundaries of the Reservation that meets or exceeds RCRA criteria.

B. Upon recommendation of the Director, the Council may amend or repeal any provisions of the rules or regulations promulgated pursuant to this Ordinance.

C. The Director is authorized to approve or disapprove the development and or operation of any solid waste storage, collection, transportation, and disposal system and/or site.

D. Rocky Boy Utilities shall maintain a solid waste management system through Tribal ownership, contract services, or approved operation or any combination of these methods that is self-supporting through the collection of user fees.

E. Rocky Boy Utilities shall determine the number and type of solid waste storage, collection, transportation, and disposal systems and sites within the exterior boundaries of the Reservation.

F. To ensure efficient and thorough management of solid waste, Rocky Boy Utilities shall designate service areas that may encompass all or part of the Rocky Boy's Reservation. Each service area shall be provided with storage and collection facilities for compactible waste and for the disposal of bulky waste.

G. Consistent with other provision of this Ordinance, Rocky Boy Utilities may enter into intergovernmental agreements to provide for the efficient, thorough, and economical management of solid waste on the Rocky Boy's Reservation.

H. Rocky Boy Utilities is authorized to establish and shall collect reasonable user fees from all persons within the exterior boundaries of the Rocky Boy's Indian Reservation.

II. Approval for the Management of Solid Waste Facilities and Services

A. Following the enactment of this Ordinance, it shall be unlawful for any person to own, operate, or use a facility for solid waste collection (including both compactible and bulky waste), transport, or disposal, without approval of the Director.

B. The Director shall approve an application for the ownership, operation, or use of any facility for solid waste collection, transport, or disposal after the application has been reviewed by the Council or designated authority and undergone a ten-day public comment period.

C. Approval from the Director is required for:

1. The operation of any and all solid waste, storage, collection, and transportation systems and service.
2. The operation of public sanitary landfills and bulky waste facilities.

SECTION FIVE
REQUIREMENTS FOR OPERATION

I. Requirements for Operation:

A. Operation and storage, collection, and transportation service must:

1. Provide approved storage containers sufficient to store for one week the residential compactable solid waste, generated by the population of the service area.
2. Provide approved storage containers and timely collection of all compactable non-residential solid waste generated in the service area.
3. Provide enclosed, sealed compacting vehicles, sufficient to maintain the collection schedule specified in the application.
4. Operate collection services as described in the application provided for Department approval.
5. Clean-up any spillage and maintain the area around storage containers in a condition free of refuse.
6. Maintain collection and transportation vehicles in a condition that prevents waste from escaping from the vehicle during transportation.
7. Maintain insurance.

II. Operation of public sanitary landfills and bulky waste facilities must:

- A. Meet, at minimum, the criteria in 40CFR Parts 257 and 258.
- B. Tribal criteria, if or when, it is established.

SECTION SIX
PROHIBITED ACTIVITIES/PENALTIES

I. Prohibited Activities:

The following activities in the handling and disposal of solid wastes, whether compactable or bulky, shall be illegal and subject to the penalties prescribed in Chapter 2 E.

A. Any landfill or site where solid waste may have previously been disposed at anywhere within the exterior boundaries of the reservation is deemed to be permanently closed, unless before then:

1. Such site is specifically determined by the Director to be in compliance with 40 CFR Part 258; and
2. Such site is specifically determined by the Director to be a Municipal Solid Waste Landfill (“MSWLF”) where solid waste may be disposed of under 40 CFR Part 258; or
3. Such site is specifically determined by the Director to be a landfill where solid waste may be disposed of under 40 CFR Part 257.

B. Any landfill site on the reservation which has not been determined by the Director to be a MSWLF, or a landfill authorized to accept waste under 40 CFR Part 257, is considered to be an open dump site.

C. It is expressly prohibited and shall be unlawful for any person to dispose of, or dump, scatter, or place, or cause to be dumped, scattered or placed, any solid waste as define under this Ordinance, at or near an open dump site within the exterior boundaries of the reservation or on any other land with the exterior boundaries of the reservation, except as disposal may be permitted under the code at a duly authorized and designated MSWLF or Part 257 landfill.

D. Dead Animals: It shall be unlawful to place any dead animals, or parts thereof, in a storage container, bulky waste disposal facility, stream, lake or on any roadway within the Rocky Boy’s Indian Reservation.

E. Flammable Liquids: It shall be unlawful to place flammable liquids upon the roads, streets, in the waterways, or on public or private property, in storage containers, bulky waste facilities, or sanitary landfills within the Rocky Boy’s Indian Reservation.

F. Hot Ashes: It shall be unlawful to place hot ashes in any storage container, bulky waste disposal facility, or sanitary landfill.

G. Used Oil: It shall be unlawful to place used oil liquids upon the roads, streets, in the waterways, or on public or private property, in storage containers, bulky waste facilities, or sanitary landfills within the Rocky Boy's Indian Reservation.

H. Littering: It shall be unlawful to place, or allow to be placed, and solid waste upon the roads, streets, highways, and public or private properties within the Rocky Boy's Indian Reservation other than at Tribally-approved solid waste facilities.

I. Burning Materials: It shall be unlawful for any person to burn solid waste in any manner (including but not limited to grass clippings, leaves, tree limbs, etc.). This prohibition shall not apply to farm waste created in the course of farm production. It shall likewise be unlawful to place burning material in any storage container, bulky waste disposal facility, or sanitary landfill.

J. Open Dump: It shall be unlawful for any person to use or operate an open dump within the Rocky Boy's Indian Reservation.

K. Oversized Material: It shall be Unlawful to place oversized material such as appliances, large tree limbs, construction/demolition waste, etc., in any storage container, bulky waste disposal facility or sanitary landfill.

L. Compactible Waste: It shall be Unlawful for any person to dispose of any compactible waste in a bulky waste facility.

M. Hazardous Waste: It shall be unlawful for any person to store, transport, or dispose of hazardous waste upon the roads, streets, in the waterways, or on public or private property, in storage containers, bulky waste facilities, or sanitary landfills within the Rocky Boy's Indian Reservation unless it is done in accordance with federal law and regulation. This does not include the small quantities of household hazardous waste disposed of in residential solid waste.

N. User Fee: It shall be unlawful for any person not to pay fees established by the Director.

II. Penalties:

A. Any person who violates or fails to comply with any provision of this Ordinance, or any amendments duly approved to this Ordinance, shall be liable for misdemeanor penalty, and in the case of approved activities, disapproval, revocation or suspension.

1. Any person violating any provision of Chapter 2 D of this Ordinance shall be subject to a penalty not to exceed fifty (50) dollars or 30 days in jail.

2. The Judge may, at his/her discretion, permit those charge with violations under Chapter 2 D, to take remedial action or to correct the non-compliance within five (5) working days in lieu of assessing penalties, provided that the person charged with the violation or the non-compliance provides proof that remedial action has been taken and that no damage has resulted from this violation.

3. All fines must be paid within 10 days of the time of assessment.

B. Any person or entity that violates any of the provisions of this Ordinance, is subject to the imposition of civil penalties for such unlawful activities. The Director, through the Tribal Prosecutor, is authorized to file a civil action against such person on behalf of the Tribe in the Tribal Court for civil penalties, including reasonable attorney fees and cost of litigation. Any civil action concerning such violation(s) shall be heard in the Tribal Court, and the alleged violator shall be served and have an opportunity to be heard. Any person who is subject to a monetary civil penalty to assessed on a daily basis and as recommended by the prosecutor or as set the court.

C. The Director is authorized to initiate a civil action on behalf of the Tribe or its members, in the Tribal Court, or any other court of law, against any person who has committed any violation under this Ordinance. This includes any and all civil damages cause, including damages to the land or natural resources of the Tribe or its members. The damages shall include all reasonable costs actually incurred or to be incurred by the Tribe for cleaning up any solid or hazardous waste, or abating the effect thereof, together with the cost of litigation, including reasonable attorney fees. The Tribal Business Committee must approve of the filing of any civil action for damages before such action is filed.

D. Payment of Penalties and Damages:

1. All penalties assess by the Tribal Court shall be paid to the Tribe and shall be retained in a trust fund designated for paying costs or remedial responses to environmental emergencies occurring on the reservation and shall only be expended for such purposes. This includes any property which forfeited to the Tribe for payment of civil penalties.

2. All damages shall be paid to the Tribe. This includes any property which is forfeited to the Tribe for payment of civil damages. Reasonable attorney fees awarded in any civil action shall be paid to the Tribe. All costs of suit awarded in any civil action shall be paid to the Tribe.

E. Appeals: The parties must comply with the appellate procedures and requirements set forth in the Tribal Law and Order Code.

F. Inspections:

1. The Director may enter upon any approved facility at reasonable times for the purpose of inspection to determine compliance with all applicable requirements of this Ordinance and approvals issued pursuant to it. Inspection officers need not provide advance notice of inspections.
2. Inspections may also be conducted, without notice, of any open dumps that have not yet been subject to enforcement.
3. The Director may also require the presentation at reasonable times, but without notice, of any records required under the terms of approval.
4. The Director may require, pursuant to approval issues, the period inspection of compacting vehicles involved in the collection and transportation of solid waste.

G. Savings Clause: Nothing in the Ordinance shall be deemed to effect, modify, amend, or repeal any existing provisions of a code administered by the Council or the Director or any other department, board, commission, or agency of this locality.

H. Severability: The provisions of this Ordinance are severable, and if any provision or part thereof shall be held invalid or unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality, or inapplicability shall not affect or impair the remaining provisions of this Ordinance.

CHAPTER FIVE
RECYCLING CODE

I. Authority

The Chippewa Cree Tribe retains the inherent sovereign power to carry out governmental functions that are essential to preserve the health, safety and welfare of the Tribe. The Chippewa Cree Tribe has the right and duty to regulate recycling requirements on the Rocky Boy's Indian Reservation. This Code is enacted pursuant to the Constitution and Bylaws of the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation, Article VI, Section 1 (p), approved by the Secretary of the Interior on December 13, 1935.

II. Findings

A. The Chippewa Cree Tribe finds that:

1. It has governmental authority over the lands within the Rocky Boy's Indian Reservation.
2. Pollution of the land and water on the reservation poses a threat to the health and welfare of the Tribe and its members;
3. Littering on the reservation, in addition to being unsightly, poses a threat to the fish and animals upon which the Tribe and its members depend;
4. The Tribe desires to keep the reservation dumpsites pollution and hazard free of old batteries and other hazardous materials that should not be placed there;
5. It is necessary to protect the environment, natural resources and the lands and waters of the reservation in order to protect the health and welfare of the Tribe and its members; and
6. It is important to the health, welfare, and economy of the Tribe and its members that all materials which can be recycled are in fact recycled.

III. Purpose

A. The purposes of the recycling code are to:

- a. Protect the lands and waters of the Tribe and reservation so that pollution and littering do not adversely affect the health, welfare, And safety of the Tribe and its members.
- b. Ensure that the reservation dump sites are constructed and managed in a manner that assures the health, welfare, and safety of the Tribe and its members.
- c. Adopt and implement a comprehensive recycling program for the Tribe and its members.

IV. Definitions.

A. The following definitions apply to the recycling code:

- a. The term “member” means a member of the Chippewa Cree Tribe and other persons, including non-members visiting or residing on the reservation.
- b. The term “non-member” means any person(s) who is not a member of the Tribe.
- c. The term “enforcement officer” means the person appointed by the Tribe to carry out the duties set forth in section 12 of this code.
- d. The term “Tribal lands” means those lands owned by the Tribe or within its territorial jurisdiction, including but not limited to the boundaries of the Rocky Boy’s Indian Reservation.
- e. The term “traditional or cultural use areas” means designated traditional or cultural areas by the Tribe, including other historical sites located on the reservation.

V. Scope.

This code governs the activities of members and non-members of the Tribe within the boundaries of the reservation and at specific traditional use areas as designated by the Tribe.

VI. Littering.

A. Littering is strictly forbidden both on the reservation and in traditional use areas designated by the Tribe. All trash either shall be recycled or shall be deposited at the reservation dump sites, or in recycling receptacles as designated for that purpose by the Tribe.

B. No trash shall be left at any public places, including campsites. All paper shall be burned at the campsite unless fire restrictions prohibit burning due to fire danger, and all cans, plastic, and other un-burnable materials shall be packed out of public places, including campsites and either recycled or deposited at the recycling receptacles at the dump sites.

B. Signs and notices will be placed at appropriate places on the reservation, along water bodies and at well-used campsites reminding members and non-members of their responsibilities under this section.

a. Each household will be solely responsible to have their trash cans emptied and keep area clean at all times.

VII. Pollution.

A. There shall be no pollution of any lands or waters within the scope of this code. This includes, but is not limited to, dumping of oil, fuel, or gas on the ground, or in the reservation waters.

B. No materials shall be burned except paper, wood and similarly combustible materials. In no event shall plastics be burned.

C. Human waste shall be buried in one place well away from any waters.

D. Each oil or fuel spill must be reported to Tribe and appropriate action will be taken to have area cleaned.

E. The Tribe shall study the effects of hazardous materials to humans and establish permanent rules to control the handling and transport for safety of hazardous materials.

F. Wastewater will be separate from human wastes and be dumped at proper locations as designated by the Tribe.

VIII. Operation of the Reservation Dump Sites.

A. The dump sites on the reservation in shall be the sole depository of all trash and no hazardous materials.

B. The Tribe shall commission a study to determine the best way to manage the reservation dump sites. The study shall include, but not be limited to:

a. Whether the existing location of the dump sites is the best location and if not

where the dump sites should be Located?

- b. How best to manage hazardous wastes (such as old Batteries) and other wastes (such as used oil);
 - c. The most appropriate design for the dumps;
 - d. Any changes to the design or management system of the current dumps; and
 - e. How the Tribe can finance the operation of the dump.
- C. Pending completion of the study, the Tribe shall manage the dumps in the following manner:
- a. A special designated area shall be set aside for the storage of hazardous and other wastes;
 - b. If economically feasible, a fence shall be constructed around the dump and a manager shall be hired to manage the use of the dumps.

IX. Recycling.

- A. All materials which can be recycled shall be recycled. These include, but are not limited to aluminum cans, Styrofoam cups, and glass bottles.
- B. A recycling center shall be established at the dump site or at some other location if the Tribe so determines. All recyclable materials shall be brought to this center.
- C. The Tribe shall develop a program to determine the best use of recycled materials. This program shall include, but need not be limited to, the reuse of these materials, the sale of these materials (such as aluminum cans) off-reservation, and how the proceeds from any such sale could be best used (such as allowing the children to be responsible for recycling cans and keeping any proceeds).
- D. The Tribe shall enter into a study as to what shall be done with the old equipment in the villages. Upon completion of the study, the Tribe shall designate a person to implement the study, including making plans to get rid of any equipment the study finds cannot be used.

X. Education.

The Tribe shall institute an educational program for reservation residents and the schools to educate members, non-members, and their children about the importance of keeping the reservation and the traditional use areas clean and of recycling all materials that can be recycled.

XI. Consequences.

- A. Violation of any provision of this Ordinance shall be prosecuted in the Chippewa Cree Tribal Court.

- B. Upon conviction, violations by a member or a non-member shall be punished as follows;
 - a. For a first offense, the Court shall discuss the nature of the violation with the offender, explaining to him or her why his or her behavior was inappropriate and contrary to tribal law, and shall place the offender on probation for a period of no more than one (1) month.
 - b. For a second offense, or for any offense judged by the Court to be particularly damaging to the best interests of the Tribe, the Court may choose one or more of the Following:
 - i. a fine of not more than \$50.00/or seventy-two (72) hours community service work; and
 - ii. depending on the severity, total or partial expulsion from the area within the jurisdiction of the Tribal Court.
- C. Upon conviction, non-members who are not married to members shall be fined in the amount of \$50.00, shall be placed on probation, shall have their permit revoked and/or shall be banished from Tribal lands for a period of time determined by the Court.
- D. In the event that the Court imposes a fine on the offender, an offender may complete community service instead of Paying a fine – community service shall be valued by work Assignment.

XII. Enforcement.

- A. The Tribal Council shall appoint a qualified resident who is a member of the Tribe to be a Tribal enforcement officer, who shall be responsible for enforcing this Ordinance.
- B. In the case of an alleged violation of this Ordinance, the Tribal enforcement officer shall prosecute any violation of this code. The action shall be commenced by filing a complaint in the Tribal Court. The complaint shall state the name of the person charged and describe the conduct alleged to be in violation of this Ordinance. The person charged shall be given a copy of the complaint and have five (5) days from receipt of the complaint to prepare for the initial hearing in the Court. The accused shall have the rights set forth in 25 U.S.C. 1302 (Indian Civil Rights Act) and shall receive notice of those rights when served with the complaint.

XIII. Civil Rights.

All proceedings conducted pursuant to this Ordinance Shall be subject to the provisions of the Indian Civil Rights Act, 25 U.S.C. 1302, and any other applicable laws.

XIV. Severability.

If any portion of this Ordinance is deemed by a Court of Competent jurisdiction to be unconstitutional or otherwise invalid, that portion may be stricken, but the remaining provisions shall Remain effective.

CHAPTER SIX

PESTICIDE CONTROL CODE

SECTION ONE

PURPOSE, DEFINITIONS, PESTICIDE CONTROL COMMITTEE

- I. Purpose – The Chippewa Cree Tribe Business Committee finds that:
 - A. The economic welfare of the Tribe, its members, and other residing or working within the reservation is dependent upon agricultural use and development of lands within the exterior boundaries of the reservation;
 - B. Maximum benefit from such use and development requires application of various pesticides within the reservation;
 - C. Use of pesticides may be required periodically for maintenance of healthful conditions within the reservation; and
 - D. Improper use may jeopardize the public health, safety and welfare.
 - E. Therefore, the Chippewa Cree Tribe Business Committee finds its necessary to provide for the safe production, sale, purchase, processing, transportation, handling, storage, application, disposal and other use of pesticides within the reservation by the enactment of this ordinance; by the creation to the Pesticide Control Committee; and by the authorization delegated to the Committee to adopt a pesticide control program and rules and regulation, and to enforce this Ordinance, that program and those rules and regulations.

SECTION TWO

DEFINITION OF TERMS

- I. Definition of Terms – As used in this ordinance, the terms set forth below shall have the following meanings:
 - A. Pesticide: Any substance or mixture of substances intended to be used for (i) preventing, destroying, repelling or mitigating any pest, or (ii) causing the leaves or foliage to drop from a plant or artificially accelerating the drying of plant tissue, or (iii) accelerating or retarding the rate of growth or maturation, or otherwise altering the behavior of plants or produce thereof, but not to include the substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soli amendments. Any substance or mixture of substances defined or designated as a pesticide or a plant regulator pursuant to FIFRA and Tribal regulations shall be a pesticide pursuant to this ordinance.

B. Restricted Pesticide: Any pesticide designated as such by the Committee upon a determination that it is or may be so toxic, hazardous or otherwise detrimental to humans, or to their environment, animals or crops, that particular provisions should be made applicable to its sale, production, processing, transportation, handling, storage, application, disposal or other use in order to adequately protect the public health, safety and welfare. Any pesticide defined or classified for restricted use, or for both restricted use and general use, pursuant to FIFRA and Tribal regulations shall be a restricted pesticide pursuant to this ordinance.

C. Pests: For all purposes of this ordinance, pests are all things included within the definition of that term in FIFRA and Tribal regulations.

D. Reservation: The Rocky Boy's Indian Reservation, as established, existing and geographically defined under the laws of the United State, encompassing all territory within its exterior boundaries as now or hereafter prescribed or ascertained, including all trust lands, fee lands, allotted lands, town sites, roads, waters and lands with rights of way owned, used or claimed by any person. The term reservation lands shall also include lands that the Tribe assumes pesticide regulatory jurisdiction over via a cooperative agreement with any other governmental agency pursuant to Paragraph 9 of this article. References herein, and in the rules, regulations or orders of the Committee to "within the Reservation" shall be deemed to include the air space both over the surface of the Reservation and such proximity to it that any pesticide released in such air space is deposited or reasonably could be expected to drift over or otherwise be deposited within the exterior boundaries of the Reservation.

E. FIFRA: The Federal Insecticide, Fungicide and Rodenticide Act of 1972, Public Law 92-516, Section 2, 86 Stat. 973 et seq., 7 U.S. C. Sections 136 et seq., as amended and as it may be amended from time to time hereafter. Reference in this ordinance to FIFRA shall be deemed to be reference to FIFRA as it shall have been amended as of the time of the application of the reference.

F. Committee: The Pesticide Control Committee created by this Ordinance.

G. Person: Any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not, including a person acting in a fiduciary or representative capacity, and further including any governmental agency.

H. Certified Applicator: the term "certified applicator" means any individual who is certified under FIFRA as authorized to sue or supervise the use of a any pesticide which is classified for restricted use.

I. Private Applicator: the term "private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for

purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

J. Commercial Applicator: the term “commercial applicator” means an applicator whether or not he is a private applicator with respect to some uses; who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or an any property other than as provided by the above definitions set forth in Private Applicator.

SECTION THREE PESTICIDE CONTROL COMMITTEE

I. Pesticide Control Committee:

A. Establishment: There is hereby established a Pesticide Control Committee to consist of five (5) members of the Tribe, to be appointed by the Chippewa Cree Tribe Business Committee for terms of three (3) years. To provide for a staggering of terms of Committee members, the first three (3) Committee member(s) shall be appointed for one term of three (3) years and the other two (2) Committee member shall be appointed for a term of two (2) years. Committee members may be removed by the Business Committee at any time, with or without cause. If a member of the Committee is removed, resigns or otherwise unable to serve, a replacement shall be appointed by the Business Committee and such replacement shall serve the remaining term of the replaced member. One of the members shall be designated by the Tribal Chairman as the Chairman of the Pesticide Committee. The expenses of the Committee, including staff, equipment and training shall be pursuant to a budge to be approved by the Business Committee.

B. Function: The Committee shall adopt and implement a pesticide control program; and rules and regulations pursuant thereto; and it shall enforce this ordinance, that program and those rules and regulations to protect the health, safety and welfare of all residents of the reservation against adverse health effects of the production, processing, sale, purchase; transportation, handling, storage application and other use, and disposal of pesticides within the reservation. The Business Committee recognizes that technical and scientific aspects of pesticides, and their production, processing, transportation, handling, storage, application and use, and disposal are subject continuously to new discoveries, modifications and requirements which cannot be adequately provided for specifically by an ordinance therefore, the Committee is authorized and directed to utilize all reasonable available resource and serves to regularly monitor such developments, and by its rules and regulations to adopt and impose such restrictions, requirements, and controls upon the sale, purchase, production, processing, transportation, handling, storage, application, disposal and other use of pesticides within the reservation as, considering all reasonably

available and material data and information, appear technically and scientifically reasonable for the protection of the public health, safety and welfare.

C. Authority: The authority of the Committee shall include but shall not be limited to the following procedures and undertakings, as may be necessary, reasonable or appropriate for the protection of public health, safety and welfare, and to prevent harm to desirable plants and animals, and the environment.

1. To designate restricted pesticides.
2. To restrict, regulate or prohibit the sale, purchase, production, processing, transportation, handling, storage application, disposal or other use of restricted pesticides within the Reservation.
3. To require, restrict, regulate or prohibit the use of designated facilities, equipment, materials and methods for the purchase, sale, production, processing, transportation, handling, storage, application, disposal or other use of restricted pesticides within the reservation.
4. To enter in a lawful manner any public or private premises within the Reservation to observe or inspect:
 - a. any stores of any pesticide; and
 - b. any apparatus, aircraft, vehicle, equipment, supplies, materials, storage and handling areas and facilities, disposal sites and devices which are used or intended for the use for production, processing, transportation, handling, storage, application, disposal or other use of restricted pesticides.
5. To designate geographical areas, and times and circumstances, where or when within the Reservation and production, processing, transportation, handling, storage, application or disposal or other use of restricted pesticides shall be restricted, regulated or prohibited.
 - a. To require, issue or approved certifications, permits and licenses for productions, processing, sale, distribution, transportation; storage applications or disposal r use of restricted within the reservation.
 - b. To issue and enforce rules, regulations and order to implement this ordinance and the pesticide control program. Such committee rules, regulations and orders may include adoption or incorporation of laws, rules, regulations, orders or other requirements prescribed by the United States of America or by any State or States with respect to pesticides.

- c. To impose civil fines and penalties for violation of this ordinance, and rules, regulations, orders, certificates, licenses and permits issued pursuant hereto, not to exceed \$1000.00 for each violation.
- d. To obtain advice and assistance of Federal, Tribal, State, County and municipal government agencies, and private agencies, and persons with technical expertise, in the adoption and implementation of a pesticide control program; to coordinate activities and cooperate with such other governmental agencies having similar or related responsibilities within their respective jurisdictions; and to utilize the Chippewa Cree Tribal Court to enforce the pesticide control program, this ordinance, and the rules regulations and orders adopted pursuant to this ordinance. The Committee may enter into cooperative agreements with such other governmental agencies providing for coordination in regulation and controlling restricted pesticides; including the Tribe's assumption of regulatory jurisdiction over any lands outside the boundaries of the Reservation that are or may be affected by pesticides.
- e. To designate authorized representatives of the Committee and to q delegate to them authority to act on behalf of the Committee in the conduction of inspections, observations, inquiries and enforcement of this ordinance, the pesticide control program, rules, regulations and orders adopted by the Committee. Such representatives may include employees, agent and representatives of federal, Tribal, state, county and municipal government agencies.
- f. To make such reports to the Administrator of the Environmental Protection Agency in a manner an containing the information that the Administrator may, from time to time, require.

All rules, regulations and order issued by the Committee within the scope of its authority and responsibility hereunder, and consistent with the stated purpose of the Business Committee and Tribal law shall have the force of law as if set forth in full in this ordinance.

SECTION FOUR TRIBAL CERTIFICATES, PERMITS AND LICENSES

I. Tribal Certificates, Permits and Licenses:

- A. General Pesticide License – No person shall produce, store, process, transport, distribute, handle, sell or offer to sell, apply, dispose or otherwise use any pesticide within the Reservation without a Tribal Pesticide License.
- B. Restricted Pesticide License – No person who would be a “certified operator”, “commercial applicator” or “private applicator” of restricted pesticide under FIFRA shall apply or otherwise use or supervise the application or other usage of any restricted pesticide within the reservation without a current Tribal Restricted Pesticide License issued by the Committee.
- C. Revocation – Revocation, suspension or expiration or other termination of any federal or state certificate, license or permit issued pursuant to FIFRA and Tribal regulation shall constitute automatic cancellation of the Tribal license issued by the Committee.
- D. Applications – Application for Tribal license for pesticides or for restricted pesticides shall be in such form as is prescribed by the Committee.
- E. Issuance – Issuance of a Tribal license for restricted pesticides shall be dependent upon the applicant demonstrating to the Committee, or its designated representative, that the applicant:
1. is certified with respect to the application, use and handling of restricted pesticides; (ii) is familiar with the nature and characteristics of them, and the dangers which may result from their application, use and handling;
 2. is knowledgeable about, and able and willing to take appropriate precautions to protect the public health, safety and welfare;
 3. has suitable equipment, in safe and proper operating condition, for such application or other usage, with trained, reliable and responsible operators, as appropriate;
 4. has not demonstrated lack of reasonable care and responsibility in prior processing, transportation, handling, storage, application, disposal or other usage of pesticides within the Reservation or elsewhere.

The demonstration or other satisfaction of the foregoing requirements may be by oral or written examination, completion of training courses, actual field operation, questionnaires or reports from other agencies or person, reliance upon federal and state certifications and licenses, or any combination of all or any of the foregoing; or such other appropriate means which may be adopted by the Committee.

F. Qualification, Conditions and Restrictions – Any Tribal license issued by the Committee may be made subject to any reasonable qualifications, conditions, restrictions and limitations deemed appropriate by the Committee.

G. Financial Responsibility – Before issuing a Tribal license, the Committee shall require proof of financial responsibility consisting of either a deposit of money, liability insurance, surety bond or certified check protecting persons, and those claiming under them, who may suffer death, injury, illness or property damage as a result of the operations of the applicant. The Committee shall not accept any bond or liability insurance except from companies authorized to do business in the State of Montana. The amount of the deposit, insurance or bond, unless a greater amount is specified by the Committee, shall be \$1,000,000.00 for property damage, personal death, injury, or illness and public liability insurance, each separately and shall be maintained in not less than that of at all times during the licensing period. Insurance shall be written in a form acceptable to the Committee and shall be evidenced by certificates delivered to the Committee. Each policy by appropriate endorsement or other provision shall provide for written notice to the Committee at least ten (10) days before any cancellation or material change thereof. The Tribal license of an applicator who permits the security to fall below the required sum shall be suspended by the Committee until the Security meets the minimum financial requirements. The Committee may increase the amount of require deposit, insurance, surety bond or other security at any time upon fifteen (15) day notice to the holder of the license.

H. Term – A Tribal license may be issued by the Committee for any period not to exceed one calendar year, or the remaining portion of the year for which issued. It may be renewed annually upon application to the Committee, and satisfaction of all qualifications and prerequisites therefore.

I. Fees – there shall be a fee charged for the issuance and each annual renewal of a Tribal license, and an additional fee for the reactivation of any such license which is suspended for any reason. The Committee shall establish an applicable fee schedule which it may be revised time to time. All such fees shall be submitted through the Committee and make payable to the Chippewa Cree Tribe.

J. Other Licenses – The Committee may require such other certificates, licenses and permits as it deems appropriate as a condition to the production, processing, transportation, distribution, sale or offer for sale, handling, storage, application or other use, disposal of restricted pesticides within the reservation.

K. Additional Requirements – The Committee may modify or increase the requirements, conditions, restrictions, and limitations imposed upon any person holding any Tribal certificate, license or permit issued by the Committee, as such reasonable appears desirable to the Committee to protect the public health, safety or welfare.

L. Remedies – In addition to all other remedies the Committee may suspend or cancel any Tribal certificate, license or permit upon determining that the holder thereof has violated or failed to comply with any applicable term, condition or provision of the certificate, license or permit, this ordinance, any rule, regulation, or order pursuant hereto, or FIFRA and Tribal regulation or upon a determination by the Committee that the holder is operating within the Reservation or elsewhere in a careless or negligent manner, or has made false, inaccurate or incomplete statements in the reports concerning pesticide operations or certifications required by this ordinance or in the application for a Tribal certificate, license or permit, or is operating with improper or unsafe equipment – or with adequate, competent and responsible personnel. Such suspension or cancellation shall be upon a written notice, and opportunity for hearing before the Committee not less than ten (10) days after notice; unless the Committee determines that an emergency situation exists, in which event there shall be immediate suspension upon notice, to be followed by such a hearing within ten (10) days.

SECTION FIVE RECORDS AND REPORTS

I. Records and Reports:

Each person who applies or otherwise uses restricted pesticides pursuant to a Tribal certificate, license or permit shall keep a record of each property treated and, upon request by the Committee, shall furnish copies of said records to the Committee. Such records shall be kept by such person for the period of two years, unless a longer period is specified by the committee, and shall contain the name and address of the owner of the property and exact location of the property treated; the crop treated; the pest or pests involved; the name, type and strength of pesticide used; a description of the method by which such pesticide is applied; the name and address of the person or firm where the pesticide was purchased; the name and address of the persons applying the pesticide, the date, month, year and time of day of application; the direction and estimated velocity of the wind at the time of application and a description of the principal equipment used therefore; name, address and certification number of the person or persons who disposed of the pesticide containers, the type of container and the manner and location in which the containers were disposed of.

SECTION SIX GENERAL PROVISIONS

I. Registration of Pesticides

No person shall produce, process, distribute, sell, purchase, offer for sale, hold for sale, deliver, ship, transport, receive or offer to deliver, store, apply or otherwise use any pesticide within the Reservation unless that pesticide is properly and currently registered pursuant to both the FIFRA and Tribal regulations provided, however, that if an unregistered pesticide is subject to an

experimental use permit issued pursuant to the FIFRA, the Committee may authorize its experimental use by the permittee within the reservation in strict compliance with the terms of the permit and such additional restrictions or requirements as may be imposed by the Committee. Any other exemptions from registration of pesticides pursuant to the FIFRA and Tribal regulations shall be inapplicable within the reservation.

SECTION SEVEN USE OF REGISTERED PESTICIDES

I. Use of Registered Pesticides:

Any person who produces, processes, distributes, sells or offers for sale, transports, handles, stores, applies and disposes or otherwise uses within the reservation any pesticide registered as required by Section 4 of this ordinance shall do so only in strict conformity with the terms and provisions of FIFRA and this Ordinance.

SECTION EIGHT PROHIBITIONS

I. Prohibitions:

No person shall produce, process, distribute, sell, purchase, offer for sale, hold for sale, deliver, shop transport, handle, store or apply or otherwise use, or dispose of any pesticide within the Reservation if such activity or the manner of its conduct under the circumstances would be prohibited by FIFRA and Tribal regulations or rules, regulations or order issued pursuant thereto.

SECTION NINE VIOLATIONS AND PENALTIES

I. Violations and Penalties:

Any person who violates or fails to comply with any requirement, provision or condition of this ordinance, any Committee rules; regulation, or order, or any Tribal certificate, license, or permit, or condition, qualification, restriction, or limitation thereon, issued by the Committee shall be guilty of a civil or criminal offense for each such offense and shall be subject to a fine not to exceed \$5000.00 or imprisonment for a period not to exceed 60 months, or both.

SECTION TEN
JUDICIAL PROCEEDINGS

I. Judicial Proceedings

If at any time it appears to the Committee that any person has violated or failed to comply with the provision of this ordinance, or any rule, regulation or order of the Committee, or the Trial certificate, license or permit issued by the Committee, then the Committee, or its representatives so authorized by it, may institute proceeds in the Chippewa Cree Tribal Court for any appropriate remedies, whether criminal or civil in nature, including injunctive relief, seizure and forfeiture and the posting of bonds or sureties to insure compliance.

II. Application of Law:

Any person who shall enter within the exterior boundaries of the reservation shall become subject to this ordinance and all rules, regulations and order of the Committee, and shall be deemed to have consented to the jurisdiction of the Chippewa Cree Tribal Court, and shall be subject to the Civil and/or Criminal prosecution in the Chippewa Cree Tribal Court for violations of this ordinance and all rules, regulations and orders of the Committee. Such person shall also be deemed to have consented to the jurisdiction of the Committee, its authorized representatives and the Tribal Police.

III. Judicial Review:

A. Decisions of the Committee shall be subject to the judicial review by the Chippewa Cree Tribal Court to the extent permitted or authorized by Tribal law; however, there shall be no cause of action against the Committee or any member or authorized representative thereof for insufficient or negligent regulation or other negligent acts under this Ordinance.

B. All property including funds acquired or held by the Committee or members thereof shall be wholly exempt from levy and sale by virtue of an execution, and no execution or other judicial or administrative process shall issue against the same, nor shall any Judgment against the committee by a charge, lien or other encumbrance upon such property.

SECTION ELEVEN
SOVEREIGN IMMUNITY

I. Sovereign Immunity:

Nothing contained in this ordinance and no action of the Committee is intended or shall be deemed to waive, limit or modify the sovereign immunity of the Chippewa Cree Tribe or shall be

construed as a consent by the Tribe to suit against the Tribe or any member thereof, or consent by the Tribe to the jurisdiction of any judicial or administrative body.

SECTION TWELVE
SEVERABILITY

I. Severability:

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remaining provisions or applications which can be given without the invalid provision or application shall continue in full force effect.

CHAPTER SEVEN
SEPTIC TANK TREATMENT AND DISPOSAL CODE

SECTION ONE
TITLE, FINDINGS, SCOPE AND APPLICABILITY

I. Title

The title of this Code is the Chippewa Cree Septic Tank Treatment and Disposal Code

II. Findings

- A. The Construction and utilization of septic tank systems affects water quality on the Rocky Boy's Indian Reservation.
- B. The economy, health, safety and welfare of the people residing and doing business within the reservation are affected by the construction and utilization of septic systems servicing homes and businesses within the reservation.
- C. Inadequate treatment and disposal of wastewater can contaminate and degrade water resources on which many people depend for domestic, agricultural, industrial, business, recreational and other uses.
- D. The existence of shallow groundwater, unacceptable soil percolation rates, steep slopes, shallow bedrock, silt and clay strata throughout much of the reservation together with anticipated population growth and business development on the reservation require uniform planning, standards and permitting procedures in order to protect the quality of reservation waters for current and future intended uses.
- E. The Chippewa Cree Tribe has jurisdiction to enforce uniform septic system planning, standards and permitting procedures throughout the reservation in order to protect the economy, health, safety, and welfare of the reservation population.

III. Scope

- A. No person shall occupy any building, dwelling, or other place of habitation unless adequate and sanitary facilities for the disposal of sewage shall have been provided therefore in conformance with the provisions of this Code.
- B. Every building in which plumbing fixtures are installed and all premises having drainage piping therein and being located where no public sewer is available, shall be connected to an approved sewage disposal system.
- C. No person shall construct, alter, repair, or extend, or cause to be constructed, altered, or extended, any on-site sewage disposal system contrary to the provisions of this Code.

IV. Applicability

- A. This Chapter shall apply to all on-site sewage systems within the Rocky Boy's Indian Reservation. Construction permits or other comparable approvals issued by the tribe or applicable tribal departments prior to the effective date of this Code are valid under this

Code, provided that this Code shall apply where its provisions are more stringent.

SECTION TWO DEFINITIONS

I. Definitions

For the purposes of this Code the following words and phrases shall have the meaning ascribed to them in this section.

- A. Alternative system – means any on-site sewage system consisting of treatment and/or disposal components other than a septic tank and subsurface soil absorption system (SSAS).
- B. Approved – means acceptable by the Engineer and/or Department as stated in writing.
- C. Bed – means a soil dispersal component consisting of an excavation with a width greater than three feet.
- D. Cover – means soil placed over a subsurface disposal area composed predominately of mineral material with no greater than ten percent organic content. Cover material may contain an organic surface layer for establishing a vegetative landscape to reduce soil erosion.
- E. Cuts and/or banks – means any naturally occurring or man formed slope which is greater than 100% (45°) and extends vertically at least five feet from the toe of the slope to the top of the slope as follows:

$45^\circ \setminus$
- F. Department – means the Chippewa Cree Tribal Environmental Protection Department.
- G. Design Manual or EPA Design Manual – means the document entitled “Onsite Wastewater Treatment System Manual,” published by the U.S. Environmental Protection Agency, Report No. EPA/625/R-00/008 (February 2002) as subsequently revised or modified.
- H. Design flow – means the maximum volume of sewage a residence, structure, or other facility is estimated to generate in a 24 hour period. It incorporates both an operating capacity and a surge capacity for the system during periodic heavy use events. The sizing and design of the on-site sewage system components are based on the design flow.
- I. Drainrock – means clean washed gravel or crushed rock used in a SSAS ranging in size from three-quarters inch to two and one-half inches and containing no more than two percent by weight passing a US No. 8 sieve and no more than one percent by weight passing a US No. 200 sieve.
- J. Experimental system – means alternative on-site system for which guidelines have not

yet been established by the CCT Environmental Protection Department.

- K. Expansion – means a change in a residence, facility, site, or use that:
1. Causes the sewage quantity or quality to exceed the existing design flow of the on-site system, for example, when a residence is increased from two to three bedrooms or a change in use from an office to a restaurant; or
 2. Reduces the treatment or dispersal capability of the existing on-site sewage system or the reserve area, for example, when a building is placed over a reserve area.
- L. Extremely gravelly – means soil with sixty percent or more, but less than ninety percent rock fragments by volume.
- M. “Failure” means a condition of an on-site sewage system or component that threatens the public health by inadequately treating sewage or by creating a potential for direct or indirect contact between sewage and the public. Examples of failure include:
1. Sewage on the surface of the ground;
 2. Sewage backing up into a structure caused by slow soil absorption of septic tank effluent;
 3. Sewage leaking from a sewage tank, pump chamber, holding tank, collection system, or any other integrated component;
 4. Cesspools or seepage pits where evidence of ground water or surface water quality degradation exists;
 5. Inadequately treated effluent contaminating ground water or surface water.
 6. Noncompliance with standards stipulated on the permit.
- N. Geotextile – means a fabric barrier material covering the gravel trench or bed. The fabric shall be spun-bound (non-woven), free of any chemical treatment or coating which reduces permeability, inert to chemicals commonly found in soil, free of petroleum products, and have a fabric weight of three to four ounces per square yard, or an apparent opening size (AOS) of 0.212 to 0.300 millimeters.
- O. Gravelly – means soils with fifteen percent or more, but less than thirty-five percent rock fragments by volume.
- P. Gravity system – means an on-site sewage system consisting of a septic tank and a subsurface soil absorption system with gravity distribution of the effluent.
- Q. Gray water – means sewage from bathtubs, showers, bathroom sinks, washing machines, dishwashers, and kitchen sinks. It includes sewage from any source in a residence or structure that has not come into contact with toilet wastes.
- R. Groundwater – means subsurface water occupying the zone of saturation, permanently or seasonally (the top surface of which is commonly referred to as the water table), the indication of which may be demonstrated by one or all of the following methods:
1. Water seeping into or standing in an open excavation from the soil surrounding the excavation.
 2. Spots or blotches of different shades of color interspersed with a dominant color in soil, commonly referred to as mottling. This is caused by an intermittent period of saturation and drying and may be indicative of poor aeration and impeded drainage.

- S. Industrial wastewater – means the water or liquid carried waste from an industrial process. These wastes may result from any process or activity of industry, manufacture, trade or business, from the development of any natural resource, or from animal operations such as feedlots, poultry houses, or dairies. The term includes contaminated storm water and leachate from solid waste facilities.
- T. Larger on-site sewage system (LOSS) – means any on-site sewage system with design flows, at any common point, greater than 3,500 gallons per day.
- U. Oils and grease – means oil and grease, a component of sewage typically originating from food stuffs (animal fats or vegetable oils) or consisting of compounds of alcohol or glycerol with fatty acids (soaps and lotions), typically expressed in mg/L.
- V. On-site sewage system – means any system of piping, treatment devices, or other facilities that convey, store, treat, or dispose of sewage on property where it originates or on adjacent or nearby property under the control of the user where the system is not connected to a public system.
- W. Ordinary high water mark – means the mark on all lakes, streams, and river waters which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on the effective date of this regulation or as it may naturally change thereafter; Provided, that in any area where the ordinary high water mark shall be the line to mean high water.
- X. Percolation test – means a soil test performed according to accepted engineering standards and otherwise in accordance with this Chapter at the depth of the bottom of a proposed soil absorption system to estimate the water absorption capability of the soil. The results are normally expressed at the rate in minutes in which one inch of water is absorbed.
- Y. Person – means any individual, association of individuals, partnership, private, public, Tribal or municipal corporation, Tribal enterprise, company, business enterprise, or any Tribal, federal, state, or local government or governmental entity or enterprise.
- Z. Proprietary device or method – means any device or method classified as an alternative system or component thereof that is held under a patent, trademark, or copyright.

- AA. Public sewer system – means a sewage system which is owned or operated by the Chippewa Cree Tribe, by the federal government or any subdivision thereof, or any other approved ownership consisting of a collection system and necessary trunks, pumping facilities and a means of final treatment and disposal.

- BB. Repair – means the replacement, addition, alteration or installation of one or more components of a system necessary to eliminate an existing or potential health hazard to the reservation population or pollution or other damage to the waters of the reservation or the reservation environment, which may be caused by either a failure or inadequate system.

- CC. Reserve area – means an area of land approved for the installation of a conforming system that is protected and maintained for replacement of the OSS upon its failure.

- DD. Resident Owner – means the property owner of record who is or will be the resident or occupant of the single-family residence for a minimum of six consecutive months or other individual approved by the tribal health officer.
- EE. Residential sewage – means sewage having the constituency and strength typical of wastewater from domestic households.
- FF. Restrictive layer – means a layer that impedes the movement of water, air, and growth of plant roots. Examples of such layers or conditions are groundwater tables, hardpans, claypans, fragipans, and compacted soil.
- GG. Septic tank – means watertight pretreatment receptacle which receives the discharge of sewage from a building sewer or sewers and is designed and constructed so as to permit separation of settleable and floating solids from the liquid, detention and digestion of the organic matter, prior to discharge of the liquid portion.
- HH. Sewage – means the water-carried human or domestic waste from residences, buildings, industrial establishments or other facilities, together with such groundwater infiltration that may be present.
- II. Sieve test – means a laboratory test for identifying soil texture and type by quantification of soil particles less than 2 mm. in diameter.
- JJ. Soil log – means an excavation in soil of sufficient size and depth made to allow adequate determinations of the soil’s texture, structure, color, bulk density or compaction, water absorption capabilities or permeability, and/or any other characteristics providing information as to the soil’s capacity to act as an acceptable treatment and disposal medium for sewage.
- KK. SSAS or Subsurface Soil Absorption System – means a system consisting of trenches (three feet or less in width) or beds (more than three feet in width), together with the piping and gravel, designed and installed in original undisturbed soil for the purpose of receiving effluent from a septic tank or other pretreatment device and transmitting it into the soil.
- LL. Surface water – means any body of water, which either flows or is contained in natural or artificial depressions for significant periods of the year, such as, but not limited to, natural and artificial lakes, ponds, unlined canals, rivers, streams, swamps, and marshes.
- MM. Type 1 Soil – means soil with a texture as noted in Table I-A or other soils where conditions are such that the treatment potential is ineffective in retaining and/or removing substances of public health significance to underground sources of drinking water.
- NN. Vertical separation – means a depth of unsaturated soil that exists between the

bottom of an SSAS and a restrictive layer or water table.

- OO. Very gravelly – means soil containing thirty-five percent or more, but less than sixty percent rock fragments by volume.
- PP. Waters of the Reservation – means all lakes, rivers, ponds, streams, inland waters, underground waters and all other surface water, groundwater and watercourses located within the reservation.
- QQ. All words not define herein shall be defined as commonly utilized in the EPA Design Manual or other source as designated by the Tribe.

SECTION THREE

MAINTENANCE, DISCHARGE AND CONNECTIONS

- I. Maintenance
 - A. On-site sewage disposal systems shall be maintained in a manner to ensure compliance with this Code and any other applicable Tribe laws, regulations and policies.
- II. No Discharge to Waters or Ground Surface
 - A. Untreated waste or effluent from any on-site sewage disposal system shall not be discharged to surface water or upon the surface of the ground or to groundwater by any means, including but not limited to underground injection, unless guidelines allowing such use have been developed and approved by the Department.
- III. Connection to Public Sewer System
 - A. Connection of any existing dwelling unit or other premises with a failing on-site sewage system shall be made to a public sewer system where there is an adequate public sewer system within two hundred (200) feet of the dwelling or other facility to be served as measured along the usual or most feasible route of access, and such connection is permitted by the Tribal Utility Department As a condition to such connection, pretreatment of such effluent may be required by the Department in compliance with Tribal or federal law.
 - B. This requirement may be waived if such waiver is consistent with applicable sewer regulations and the Department determines that adequate site conditions exist which allow the installation of a replacement on-site sewage system.
- IV. Larger On-Site Sewage Systems
 - A. In cases where the maximum design flow of any on-site disposal system is greater than 3,500 gallons per day, review and approval of plans shall be conducted in substantial compliance with this code and the following additional requirements:

1. Designed by a Professional Engineer.
2. Pressure distribution shall be used for effluent distribution.
3. 36-inch of vertical separation under the SSAS is required.
4. SSAS shall be constructed with 100 percent of the required SSAS sizing and 50 percent of the required reserve size. The SSAS shall be capable of alternate operation.
5. Effluent characteristics to the SSAS system shall be of residential characteristics.
6. Septic tanks shall be sized for two times the design daily flow.
7. LOSS or onsite systems shall not be utilized for the treatment of industrial wastewater
8. LOSS shall not allow the Tribal Water Quality Standards to be exceeded in accordance with applicable Tribal codes

V. Permits

A. It is unlawful to construct, install, repair, modify, or alter an on-site sewage disposal system without an on-site sewage disposal permit. The Department may require recertification of existing systems for use with new construction, remodeling or expansion.

B. On-site disposal permits may be issued to the owner of the property on which the on-site sewage disposal system is built and shall transfer automatically with transfers of ownership of the affected lands.

C. The Department shall establish a fee for issuance of an on-site sewage disposal permit or other matters. Such fee schedule shall be presented to the Business Committee for adoption.

D. Applications for an on-site sewage disposal permit shall be made to the Department, which may deny the application if it finds that the physical features of the property on which it is proposed to locate the system, or the design of the system, may not adequately protect the health and welfare of the reservation population or the environmental quality of reservation waters.

E. The fee for application review shall be stated in the Department's fee schedule.

F. Applications for an on-site sewage disposal system permit shall be on a form approved by the Department and shall require at least the following:

1. Name, address and telephone number of the applicant site owner and builder;
2. Legal description of site and lot size;
3. Type of facility to be served (including number of bedrooms if a dwelling);

4. Preconstruction diagram depicting the location of structures and distance of proposed system to water supplies, surface water, banks, cuts, property lines, structures, and other improvements within two hundred and fifty (250) feet of the proposed system;
5. General topography of site;
6. Source of potable water;
7. Soil information describing nature and depths of soils and site constraints such as shallow bedrock, shallow soil, depth of groundwater at its highest point;
8. Percolation test date during periods of highest soil saturation;
9. Maximum design flow in gallons per day and if commercial operations, then the expected effluent characteristics;
10. Size of septic tank (length, width, depth and number of compartments) and location;
11. Location, length, depth of disposal system and field;
12. Dates of commencement and completion of system construction;
13. Approximate date for inspection of system in place but before it is covered.

G. Permits for the construction of an on-site sewage disposal system shall expire one year after the date issued unless the Department has approved the system for operation.

VI. Inspections

A. All construction and materials used in on-site sewage disposal systems shall be subject to inspection by the Department at reasonable times in order to determine compliance with this Chapter. It shall be unlawful and declared to be a public nuisance endangering the health, safety, welfare and economy of the people of the Rocky Boy's Reservation to use any system until use of that system has been approved by the Department. The date of permit approval shall appear on the approved permit.

B. At the time of final inspection, septic tank construction shall be completed and its cover removable so that it inside sections may be inspected, and the absorption trenches or beds must be completed except for backfilling and if any part of the work is covered before it is inspected or approved, the Department may order the system uncovered.

C. It shall be the duty of the installer or owner to notify the Engineer on completion of the construction and to request an inspection. The Department shall, within five (5) working days or receiving notice, make a final inspection.

D. If the Department finds the work, material, design or location of the on-site sewage disposal system not to be in compliance with this Chapter and regulations, the Department shall set forth the deficiencies in writing. If the deficiencies are not corrected within the time requested by the Department, the permit shall be revoked and the system's use prohibited as a public

nuisance endangering the health, safety or welfare of the population of the Rocky Boy's Reservation.

E. The Department may delegate inspection responsibilities through a memorandum of understanding to qualified employees of the Rocky Boy Health Board Environmental Health Department or other appropriate Tribal representatives.

F. The Department shall use criteria set forth in the EPA Design Manual and other standard references which the Business Committee may adopt as rules to further implementation of this Code.

G. The Department may issue a notice to comply, a stop work order, or revoke a permit when it finds that any provision of this Code or any provision of a permit issued pursuant to this Code is being violated.

VII. Design

A. The detailed design and construction of all on-site sewage systems shall conform to the EPA Design Manual, except where modified by, or in conflict with, this Code. Other acceptable design guidelines include Recommended Standards and Guidance Documents created by the Rocky Boy Health Board Environmental Health Department.

B. The design for an on-site sewage system shall be performed by or under the supervision of a professional engineer, registered sanitarian or certified designer. A resident owner, at the discretion of the Department, may design his or her own system if a minimum vertical separation of four feet can be maintained and the waste is residential sewage.

C. The system shall be designed to receive all sanitary sewage and domestic waste from the building served unless otherwise approved by the Department. For establishments other than individual residences, the typical values noted in the Design Manual. Any deviations shall be supported by appropriate water usage information and/or the use of low water use fixtures. Drainage from footing or roof drains or any other type of drain shall neither enter the sewage system nor be directed over the area where the on-site sewage system is located.

D. All wastes with quality greater than residential sewage shall be pretreated to reduce the waste strength to a quality of residential sewage.

E. On-site sewage systems shall not be utilized for the treatment or disposal of industrial wastewater.

F. All food service establishments and or commercial business shall have grease traps and or oil water separators to reduce the oils and grease to the quality of residential sewage.

G. All onsite systems shall be sited in accordance with existing Tribal Codes including the following:

1. Land Use and Development Codes
2. Cultural Protection Codes

- 3. On-site Wastewater Treatment and Disposal Code
- 4. Water Use and Permitting Code

H. All septic tanks shall be designed in accordance with this Code. Moreover, where applicable the following additional requirements shall apply:

- 1. All tanks must have a minimum of two compartments with the first compartment consisting of one-half to two-thirds of the required total volume.
- 2. Intercompartmental apparatus shall be sanitary tees, slots, or baffles assuring that effluent only from the clarified zone passes into the next compartment.
- 3. Septic tanks to service single family residences shall have a minimum liquid capacity based on the number of bedrooms in the residence, as follows:

Number of Bedrooms	Required Minimum
up to be 4 Bedrooms	1000
for each additional bedroom add:	250

- 4. Tanks meeting standards acceptable to the Department shall be approved for use pursuant to this Code.
 - 5. All septic tanks and pump chambers to be located in high water table areas shall be adequately treated to preclude groundwater intrusion.
 - 6. All tanks shall be water tight.
 - 7. All access openings shall be extended to the ground surface with water tight extensions.
- I. Effluent shall be disposed of by means of a SSAS except when approval for another disposal system is granted by the Department. The size of the SSAS shall be determined from the results of the site review, and soil logs per the Design Manual.
- J. The installation and use of cesspools and seepage pits for the disposal of sewage is not permitted.
- K. The bottom of a SSAS shall not be deeper than three feet below the finished grade except under special conditions approved by the Department. Under no circumstances shall the depth of a system exceed ten feet from finished grade.
- L. Subsurface absorption beds (see definition of SSAS) may be considered for use only when authorized by the Department and when the soils are Type 1, 2 or 3.
- M. Piping material shall be approved by the Department.

N. Applicable Design and Construction Standards for Conventional On-site Sewage Disposal Systems as presently constituted and hereafter amended, are hereby adopted and incorporated by reference in this regulation.

O. When sewage holding tank systems are to be used, a management program assuring ongoing operation and maintenance, which shall be approved by the Department, shall be in effect. Sewage holding tanks shall only be used for the following situations:

1. Controlled, part-time, nonresidential usage situations including, but not limited to recreational vehicle parks and trailer dump stations; and
2. On an interim use basis to handle emergency situations or to correct existing problem systems.

P. Systems shall be installed in compliance with the permit specifications unless a change is authorized in writing by the Department. Record drawings drawn to scale with measurements (accurate to +/- 1/2 foot) and directions to all buried components shall be completed after installation of the system. Record drawings shall include initial setting of electrical or mechanical parts.

VIII. SSAS System Maintenance

A. On-site sewage disposal system being used within the Rocky Boy's Reservation on and after the effective date of this Code must be inspected and pumped as required at per the following schedule two years by the septic tank pumper certified to do such work in accordance with this Code. It shall be the owner's responsibility to have such system inspected and pumped as required in accordance with this Code. It shall be the owner's responsibility to notify the Department when pumping and inspection have been completed in accordance with this Code. Such notification shall be in writing on a form approved by the Department. It shall be unlawful and it is declared to be a public nuisance endangering the health, safety, welfare and economy of the population of the Rocky Boy's Reservation to use or operate an on-site septic sewage disposal system that has not been inspected and pumped as required contrary of this Code.

Gravity SSAS	Every Three Years
SSAS with pumps or mechanical devices	Every Year
Larger On-site Sewage Disposal System	Twice a Year

B. The Department may, upon prior application, grant writing waivers to subsection (1) above. Such waivers may extend the pumping and inspection period to five years when the Department finds that factors such as minimal use or other just cause do not require pumping every two years. If the factors upon which the waiver is granted change, the waiver may be revoked by the Department.

C. If the inspection called for in this section determines that the system is in need of repairs or is otherwise defective, the Department shall establish in writing the repairs or their changes that must be made together with a reasonable timetable. It shall be unlawful and it is declared to

be a public nuisance to operate a system other than in compliance with the Department's directives.

IX. Areas of Special Concern

A. The Tribal Environmental Protection Department shall declare a defined area to be an Area Of Special Concern when, in their opinion, there is significant reason to believe that on-site sewage disposal systems create pollution of ground or surface water, or there is significant potential for ground or surface water pollution, or there is significant potential that additional on-site sewage disposal systems will pollute the ground water or surface water.

B. The Department may adopt such requirements as it deems necessary prior to approval of an on-site sewage disposal system in an area of special concern. The Department may restrict, or take whatever other action is required, to protect the ground and surface water and public health in areas of special concern.

C. Each permit approval shall be conditioned upon connection to a central public sewage system when one becomes available and connection is required by the Department.

X. Construction, Installation or Repair

A. All systems except as noted shall be installed by a certified installer.

B. Nothing in this section shall prohibit owners from installing an individual gravity on-site sewage system or making repairs or alterations on his or her own premises as long as all other requirements of these regulations are satisfied. The owner may not contract or hire a person or concern to perform that work unless that person is a certified installer as set forth in this section.

C. All on-site sewage disposal systems requiring pumps shall be installed by a certified installer.

D. It shall be unlawful for any person to engage in the business of installing and /or repairing sewage waste disposal systems within the Rocky Boy's Indian Reservation who does not possess a valid commercial installer's license. Application for such license shall be made to the Department on forms provided by the Department. Such license may be denied by the Department, if it finds the applicant is not qualified to install and/or repair sewage disposal systems in accordance with this Code.

E. Any commercial installer's license issued pursuant to these rules and regulations may be revoked by the Department for incompetence, negligence, misrepresentation, giving fraudulent information in making application for a license or permit, failure to comply with the requirements of this Code or revocation of the bond required herein or upon cancellation of such bond.

F. Any person feeling aggrieved because of the revocation or denial of this license by the Department may, within thirty (30) days of the revocation or denial appeal to the Tribal Water Resources Subcommittee from said revocation, and a hearing will be granted.

G. The Department may require the applicant for a commercial installer's license to submit to a written and/or oral examination on installation regulations and standards.

H. Commercial Installer's Surety Bond: Prior to the issuance of a commercial installer's license the applicant must post a bond to the Department in a form approved by the Department in the sum of fifty thousand (\$50,000) dollars, executed by a surety company duly authorized to do business on the Rocky Boy's Indian Reservation, or by two (2) good and sufficient sureties not connected in business with the applicant and approved by the Department. The said bond is to guarantee the faithful performance of all work undertaken to be done under the provisions of this Code. Any person who may be damaged by the wrongful act of the licensee, by the licensee's failure to perform any contracted work, or by the licensee's failure to perform in a workmanlike manner, may sue upon said bond for damages in a sum not exceeding fifty thousand (\$50,000) dollars. This remedy shall be in addition to any other remedies available to such injured person and is not to be construed as an exclusive remedy.

XI. Septic Tank Pumpers and Disposal of Septic Tank Wastes

A. Permit Required: It shall be unlawful for any person, firm or corporation to clean any septic tank, cesspool, or seepage pit, or other means of disposal without first obtaining a registration permit from the Department.

B. Applicant: The person shall make application to the Department on a form provided by the Department.

C. Disposal Site Approval Required: All disposal sites shall be noted on the application form. Only those sites receiving approval by the Department shall be used for dumping of the contents of the pumping tanks. The Department shall note on the permit which sites have been approved.

D. Any septic tank pumper's license issued pursuant to this Code may be revoked by the Department for incompetence, negligence, misrepresentation, giving fraudulent information in making application of filing of reports or failure to comply with the requirements of this Code or applicable federal laws and regulations or revocation of the bond as required herein or upon cancellation of such bond.

E. Equipment Approval Required: The applicant must furnish his equipment for inspection by the Department at reasonable times. The equipment must meet the following minimum requirements.

1. All hoses and pumping equipment must be stored in a cleanable watertight enclosed area on the truck. (Hoses may be exempt if watertight fitting caps are used.)
2. Truck equipment must be designed to adequately control effluent disposal from the truck to manholes or other receiving stations.
3. All equipment must be in good repair and of easily cleanable construction.

4. The effluent capacity of the truck holding tank(s) must be a minimum of 1,000 gallons.
5. The name and address of the operating firm shall be conspicuously displayed on both sides of the truck in bold letters not less than three (3) inches high for firm name and not less than two (2) inches high for other information.
6. All equipment and premises must be maintained and left in a clean and sanitary manner.

F. Bond Required: Prior to the issuance of a septic tank pumper's permit, the applicant must show proof of a bond in the amount of \$100,000 for said purpose. Performance shall be per bond requirements of commercial installer's license.

G. Septic tank pumpers shall submit quarterly in writing on a form approved by the Department the following minimum information:

1. Gallons pumped according to area and site address;
2. Gallons disposed of at each authorized site;
3. Statistics on disposal site maintenance;
 - a. Dates of cover;
 - b. Maintenance problems;
4. Any additional information required by the Department;
5. Said report shall be submitted a minimum of fifteen (15) days after each calendar quarter.

XII. Enforcement Policy

It is the policy of this Code to encourage informal, practical, result-orientated resolution of alleged violations and actions needed to prevent damage to reservation resources or harm to the health, safety or welfare of the reservation population. It is also the policy of this Code, consistent with the principles of due process, to provide effective procedures for enforcement. This Code provides the following enforcement procedures: informal conferences; Notices to Comply; Stop Work Orders; corrective actions by the Department; civil penalties; injunctions and other civil administrative and judicial relief. The enforcement procedure used in any particular case shall be appropriate in view of the nature and extent of the violation or the damage or risk to reservation resources and the health, safety and welfare of the reservation population and the degree of bad faith or good faith of the persons involved.

XIII. Informal Conferences

A. Opportunity Mandatory: The Department shall afford the landowner or his representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the Department determines that there may be either

imminent environmental damages to a reservation resource or adverse impact upon the health, safety and welfare of the reservation population. Informal conferences may be used at any stage in enforcement proceedings, except that the Department may refuse to conduct informal conferences with respect to any matter then pending before the Tribal Water Resources Subcommittee or the Chippewa Cree Tribal Court.

B. Reports Required: Department personnel in attendance at informal conference 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.

C. Records Available: Copies of written notes shall be sent to each participant in the conference, be kept in the Department files until one (1) year after final action on the application involved and be open to public inspection.

XIV. Notice to Comply—Contents—Procedures—Hearing—Final Order—Limitations on Actions

A. Where a violation has occurred, and such violation may result in or may cause material damage to a reservation resource or harm to the reservation population, then the Department may issue and serve upon the landowner a notice which shall clearly set forth:

1. The specific nature, extent, and time of failure to comply with the approved permit; or identifying the damage or potential damage to a reservation resource or harm to the reservation population; and/or
2. The relevant provisions of this Code relating thereto;
3. The right of the landowner to a hearing before the Department; and
4. The specific course of action ordered by the Department to be followed by the landowner to correct such failure to comply and to prevent, correct and/or compensate for material damage to reservation resources or harm to the reservation population which resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a reservation resource; and/or those courses of action necessary to prevent continuing damage to reservation resources or harm to the reservation population where the damage is resulting from any violations, unauthorized deviation, or negligence.

B. The Department shall mail a copy thereof to the landowner at the addresses on the permit, showing the date of service upon the landowner. The landowner shall undertake the course of action so ordered by the Department unless, within fifteen days after the date of service of such Notice to Comply, the landowner shall request the Department in writing to schedule a hearing. If so requested by the landowner, the Department shall schedule a hearing on a date not more than twenty (20) days after receiving such request. Within ten (10) days after such hearing, the Department shall issue an interim order either withdrawing its Notice to Comply or clearly setting forth the specific course of action to be followed by the landowner. Such interim order shall undertake the course of action so ordered by the Department unless within this ten (10) day period the landowner elects to exhaust his administrative remedies by appealing such interim

order to the Tribal Water Resources Subcommittee. The order of the Tribal Water Resources Subcommittee shall be final agency action from which there is the right of judicial review.

XV. Stop Work Order—Grounds—Contents—Procedure—Appeals

A. The Department shall have the authority to serve a Stop Work Order upon a landowner if the Department determines that such landowner has violated either the provisions of this Code or the approved permit and that immediate action on the part of the Department is necessary to prevent or abate material damage to reservation resources or harm to the health and welfare of the reservation population.

B. The Stop Work Order shall set forth:

1. The specific nature, extent, and time of the violation, deviation, damage, or potential damage;
2. An order to stop all work connection with the violation, deviation, damage, or potential damage;
3. The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to reservation resources which has resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a reservation resource or potential harm to the reservation population; and/or those courses of action necessary to prevent continuing damage to reservation resources or harm to the reservation population where the damage is resulting from any violation, unauthorized deviation, or negligence; and
4. The right of the landowner to a hearing before the Tribal Water Resources Subcommittee.

C. The Department shall immediately file a copy of such order with the Tribal Water Resources Subcommittee and mail a copy thereof to the landowner at the addresses shown on the permit. The landowner may commence an appeal to the Tribal Water Resources Subcommittee within fifteen (15) days after service upon the landowner. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the Notice of Appeal were filed with the Tribal Water Resources Subcommittee. The landowner shall comply with the order of the Department immediately upon being served, but the Tribal Water Resources Subcommittee, if requested, shall have authority to continue or discontinue in whole or in part the order of the Department under such conditions as it may impose pending the outcome of the proceeding.

XVI. Failure to Take Required Course of Action—Notice of Cost—Department Authorized to Complete Course of Action—Liability for Costs

If a landowner fails to undertake and complete any course of action as required by a final order of the Department or a final decision of the Tribal Water Resources Subcommittee, the Department may determine the cost thereof and give written notice of such cost to the landowner. If such landowner fails within thirty (30) days after such notice is given to undertake such course of action, or having undertaken such course of action fails to complete it within a

reasonable time, the Department may expend any funds available to undertake and complete such course of action and such landowner shall be liable for the actual, direct cost thereof, but in no case more than the amount set forth in the notice from the Department, plus attorney fees, investigatory, court and other costs. If not paid within sixty (60) days after the Department completes such course of action and notifies such landowner in writing of the amount due, the Department may request that the Tribal Attorney take action to enforce this obligation to the extent provided by law.

XVII. Failure to Obey Stop Work Order—Departmental Action Authorized—Liability of Owner or Operator for Costs

When the landowner has failed to obey a Stop Work Order the Department may take immediate action to prevent continuation of or avoid material damage to reservation resources or adverse impact on the health, safety and welfare of the reservation population. If a final order or decision fixes liability, the landowner shall be liable for such emergency costs which may be collected in any manner provided for by Tribal law.

XVIII. Failure to Comply with Water Quality Protection—Department Authorized to Petition Tribal Water Resources Subcommittee—Action on Petition

If the Department determines that a person has failed to comply with this Code or any approved permit relating to water quality protection, and that the Department has not issued a Stop Work Order or Notice to Comply, the Department shall inform the Water Quality staff thereof. If the Water Quality staff fails to take authorized enforcement action within twenty-four (24) hours under this Code, the Department may petition to the Tribal Water Resources Subcommittee, who shall, within forty-eight (48) hours, initiate negotiations between the Department heads or directors and either deny the petition or direct the Water Quality staff to immediately issue a Stop Work Order or Notice to Comply or to impose a penalty. This action is in the nature of internal agency deliberations and shall not give rise to administrative or judicial review therefrom.

XIX. Civil Remedies

A. Every person who fails to comply with the provisions of this Code, as now or hereafter amended, shall be required to pay civil monetary damages to the full extent of detecting and repairing any damages done as a result of the violation, plus the cost of enforcement and collection of such damages, including testing, investigatory, expert witness, remedial action costs and reasonable attorney's fees.

B. In the event a specific monetary value cannot readily be placed on such damages, every such violating person shall be required to pay civil, monetary damages in the minimum liquidated amount of one hundred dollars (\$100.00) per day for each such violation. Each day of such operation shall constitute a separate violation.

C. The remedial action provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the Department describing the violation with reasonable particularity.

Within fifteen (15) days after the notice is received, the person incurring the remedial action may apply in writing to the Department for the remission or mitigation of such remedial action. Upon the receipt of the application, the Department may remit or mitigate the remedial action upon whatever terms the Department in its discretion deems proper: Provided, that the Department deems such mitigation or remission to be in the best interest of carrying out the purposes of this Code. The Department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such regulations as they deem proper.

D. Any person incurring any civil remedial action hereunder may appeal the same to the Tribal Water Resources Subcommittee. Unless such an appeal is taken, the civil remedial action hereunder shall be final and binding upon the person(s) affected by that civil remedial action. Appeals to the Tribal Water Resources Subcommittee shall be filed within thirty (30) days of receipt of notice imposing any civil remedy unless an application for remission or mitigation made to the Department is pending under subsection (c) proceeding. When an application for remission or mitigation is made, such an appeal shall be filed within thirty (30) days after receipt of notice from the Department setting forth the disposition of the application. The decision of the Tribal Water Resources Subcommittee shall be final agency action for the purposes of judicial review.

E. Any damages or other compensation imposed hereunder shall become due and payable thirty (30) days after receipt of this notice imposing the same unless application for remission or mitigation is made or an appeal is made. When such an application for remission or mitigation is made, any damages or compensation incurred hereunder shall become due and payable thirty (30) days after receipt of the notice setting forth the disposition of such application.

F. If the amount of any damages or compensation is not paid to the Department within thirty (30) days after it becomes due and payable, the Tribal Attorney, upon request of the Department, shall bring a civil action in the Chippewa Cree Tribal Court to recover such damages or compensation.

XX. Enforcement

The Department, through the Chippewa Cree Tribal Court, may take any action necessary to enforce any final order or final decision, or to enjoin any person who fails to comply with a final order or final decision.

XXI. Administrative and Judicial Review

A. Any person aggrieved by any order, decision, or other action of the Department may obtain administrative appellate review thereof by the submission of a timely petition to the Tribal Water Resources Subcommittee pursuant to the standards and procedures of the applicable Tribal administrative procedures. Such petition for administrative appellate review shall be filed with the Tribal Water Resources Subcommittee within thirty (30) days of the date of the order, decision, or other action which is the subject of such appeal. Exhaustion of such administrative appellate review is a jurisdictional requirement to the judicial review.

B. Any person directly affected by any final order, final decision or other final action of the Tribal Water Resource Subcommittee may obtain judicial review of such order, decision or action by filing a timely petition with the Chippewa Cree Tribal Court pursuant to the applicable Tribal administrative procedures. Such petition for judicial review shall be filed with the Court, as a civil matter under the Tribal Code, within twenty (20) days of the decision of the Tribal Water Resources Subcommittee. Unless declared invalid upon judicial review, a final order, final decision, or other final action of the Tribal Water Resources Subcommittee shall be binding upon all parties.

XXII. Waiver of Regulations

Whenever a strict interpretation of this Code, or other regulatory program established pursuant to this Code, would result in extreme hardship, the Department may waive or modify such regulatory requirements or portion thereof; Provided, that such waiver or modification shall be consistent with the intent of this Chapter and; Provided further, that no such waiver shall be granted where material damage to the reservation resources, or adverse impact upon the health and welfare of the reservation population, shall result therefrom.

XXIII. Cooperation with Public Agencies—Grants and Gifts

Subject to approval of the Chippewa Cree Business Committee, the Department is authorized to accept, receive, disburse and administer grants or other funds or gifts from any source, for the purposes of carrying out the provisions of this Code and to consult and cooperate with federal and other applicable agencies in matters pertaining to this Code. Subject to approval by the Business Committee, the Department is further authorized to negotiate inter-governmental agreements which may create, modify, or change duties established by this Code; Provided that no regulatory changes shall be valid unless made in accordance with the applicable Tribal administrative procedures.

XXIV. Statutes and Trust Responsibility Not Modified

Nothing in this Code as now or hereafter modified shall modify or waive any requirement to comply with applicable federal laws and regulations. Nothing in this Code as now or hereafter amended shall be construed to modify, waive or impair the trust responsibility of the United States.

XXV. Severability

If any provision of this Code or the application thereof, to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Code which can be given effect without the invalid provision or application, and to this end, the provisions of this Code are declared to be severable.