

Chapter by Chapter Summary of the Solid Waste Code

Chapter 1. General Provisions

Describes the reasons and authority of the Tribes for the establishment of the solid Waste Code. Outlines the constitutional authority from which the Tribes derive their authority for passing and enforcing the Code. The Code will apply to all people and entities on the Reservation including other governments and non Indians who are actively engaged in the storage, collection, disposal, and treatment of solid waste within the Reservation.

Chapter 2. Responsibilities of Owners

Owners/occupants of all dwellings, residences, premises, or business establishments shall be responsible for disposing of the their solid waste in compliance with this code.

Chapter 3. Office of Environmental Protection

The OEP is responsible for the implementation of this code through a compliance officer staffed in the OEP. To adequately enforce this code, OEP is given authority to complete inspections, establish permits, adopt and enforce regulations, impose fines, coordinate with other agencies, and establish a public information program provisions necessary to implement the Solid Waste Code.

Chapter 4. Public Works Board

The section delineates the duties of the Public Works Board including implementing the policy of this Title, acting as an appeals board for decisions made by the O&M department, set permitting requirements and fees for the systems operated by the O&M department and providing an annual report to the TEB.

Chapter 5. Operation and Maintenance

This section discusses the implementation of solid waste activities as performed by the O&M department including disposal, treatment, and handling. In addition, O&M must comply with the Solid Waste Plan as drafted by OEP. O&M is authorized to enter into contracts for solid waste disposal, to perform studies and investigations, and to coordinate with other agencies in the delivery of solid waste services.

Chapter 6. Solid Waste Plan

OEP is required to develop and update this plan every 5 years. The plan is drafted according to provision outlines in 40 CFR Ch. 1 Part 258. The plan characterizes the waste generated on the reservation, identifies parties responsible for disposal in compliance with federal regulation and tribal law, establishes recycling opportunities for the reservation, adopts 40 CFR Part 241, 257, and 258 as construction and operation

requirements for any landfill located on the reservation. OEP is responsible for ensuring that solid waste disposal facilities are in compliance with these requirements.

Chapter 7. Storage

Containers: This chapter establishes that all solid waste must be properly contained and that containers will be provided by those dwellings/businesses/premises who are served by the Public Works System. For those dwellings/businesses/premises not served by the system, containers must be provided by the dwellings/businesses/premises. All owners/agents/occupants are responsible for the safe and sanitary storage of all solid waste accumulated at the premise until it is removed. Containers must be kept in good repair and be accessible.

Storage: Storage of solid waste will be in an approved containers, hazardous waste must also be properly labeled; medical waste will be containerized in disposable plastic and properly labeled; ag waste will be stored to minimize nuisance and exposure to the surrounding environment including plants, animals, soil and ground water; bulky waste cannot accumulate on any premise.

Chapter 8. Collection, Transport and Disposal

This chapter outlines requirements for the collection service, collection vehicles, clean up requirements during collection, restraint of pets who may threaten a collector, access to by the collector to the container, permitting of collection vehicles, private collection vehicle standards which include requiring clean up of spillage from private vehicles and prevention of spillage through covering, collection of service fees, load rejection at solid waste disposal sites, banning of open burning of solid waste except through permits, disposal of hazardous waste in permitted hazardous waste facilities, septic tank disposal standards, liquid waste disposal standards, scavenging prohibition, construction and demolition wastes, carcasses, and the banning of open dumps.

Chapter 9. Permitting.

OEP is responsible for permitting of solid waste facilities. All facilities must be permitted or cease operation. All facilities must comply with 40 CFR Part 258 requirements or be closed. Permits are required by all facilities within the jurisdiction of the Reservation. All commercial transportation of solid waste originating or terminating on the Reservation must be authorized by permit. Section 905 allows OEP to permit a facility or transportation system if it results in protecting or enhancing the environmental quality of the Reservation or to mitigate adverse environmental impacts. All permits must have an opportunity for public review and comment.

Sections 906- 908 allow OEP to deny or impose conditions to protect against the unreasonable degradation of the environment. Additional conditions for a solid waste facility include a tribal lease or special use permits authorized by the Executive Board and the BIA. Transportation permits must require that vehicles be placarded for contents

in addition to markings which include the full name or trade name of the transporter and the Solid Waste Transfer Permit number. Permits must be kept in the vehicle and a log of materials transported for disposal must be kept in order to provide an annual report to the OEP.

Section 909- 910 authorizes OEP to deny a renewal if the current permit conditions are not met. Facility permits will be reviewed annually for compliance with permit conditions and transportation permits may be permitted for a period less than 12 months but not more.

Section 911 requires operators to be in compliance with all federal and tribal laws and regulations in addition to the permit conditions and does not relieve that person of the responsibility to know and comply with those applicable rules and regulations.

Sections 912-916 lay out the permitting application information and process. Permit applications must be applied for 120 days in advance of the initial construction for facilities or initial start date desired for transportation permits. OEP will have 120 days to make a permitting decision once the permit application is submitted. OEP may use additional time if more information, environmental studies or analysis is needed for the application.

Permit contents temporary storage equipment and location, site evaluation reports for storage or disposal of solid waste, description of the practices, technology and procedures used to protect air, groundwater and surface water from contamination, financial assurance mechanisms for facility owners/operators according to 40 CFR Part 258, training programs for employees of the facility or transportation entity, closure and post closure maintenance plan for the solid waste facility, and any other information OEP deems necessary to process the permit.

Permits may be revised and a revision needs to be requested 120 days in advance unless there is an imminent danger to public health and the environment in that case, OEP may waive the 120 day requirement. Significant changes in the design or operation of any solid waste facility or transportation service are not authorized unless by permit. Filing fees are determined by OEP and should reflect the cost of processing these permits. These costs can include technical and legal consultants, office staff time and overhead. Application fees will go to the Tribal General Fund and may be waived for local governments.

OEP will prepare a written Statement of Basis for approving or denying the permit. The statement shall be issued to the applicant. The Statement of Basis shall include the laws, rules, and regulations with which the applicant shall show compliance.

Section 917 and 918 address appeals by the applicant when denied a permit. Applicants may be reconsidered by OEP. If OEP again denies the permit, the applicant may apply to a Hearings Examiners as appointed by the Tribal Executive Board. All decisions by the Examiner will be final and not appealable to the Fort Peck Tribal Court.

Sections 919 and 920 authorize the OEP Compliance Officer to make periodic inspections, require the permittee to provide additional information as requested by the Compliance Officer, and inspect any facility, equipment or records relating to the operations of the facility or transport service. The OEP shall keep confidential all information provided by the permittee however, other Tribal agencies or governmental agencies as warranted by the investigation may have access to this information.

Sections 921- 925 deal with O&M permits for solid waste disposal on the Reservation. O&M issues permits to individuals for disposal of solid waste at the roll off sites and these sections authorize the issuance of the permits, the addition of conditions to protect the environment, the denial of permits, and the process of appealing a permit denial.

Chapter 10. Fees

This chapter authorizes O&M to set fees for the solid waste facility and transportation of the solid waste. The fees will be determined by the Public Works Board. Before any new fees are imposed, a public hearing must be held.

Chapter 11. Enforcement

OEP is designated as the lead agency for compliance with this code. The Compliance Officer responsible for the position has listed duties including enforcement of the code, enforcement of mitigation measures, request enforcement from federal agencies for other solid waste regulations, provide information to the general public, issue fines, operate a inspection, enforcement and training program, keep accurate records and consult with other health agencies as needed to ensure compliance with this code.

OEP shall periodically review the activities of the Compliance Officer to ensure that they are in compliance with the duties outlined in the code and may take necessary action to correct problems specified by OEP.

Section 1104 details the types of enforcement actions and their associated timelines for issuance. The Compliance Officer is required to notice all enforcement orders in writing to OEP that will include an explanation, justification and a description of the violation.

Complaints received by the Compliance Officer will be investigated fully. The Compliance Officer may initiate enforcement action or may refer the complaint to another federal or tribal agency with applicable regulations and/or jurisdiction. If no action is taken from a referral, the Compliance Officer must provide a written statement explaining the reasons for taking no action within 30 days of the received complaint.

Section 1105 authorizes the Compliance Officer to issue cease and desist orders if the Officer feels that there is substantial violation. In addition, remedial action may be required if there is an imminent and substantial threat to the public health. This section also authorizes OEP to perform the remedial action and the Person or Person(s) can be

held liable for the costs of the clean up as documented. OEP may pursue these costs in Tribal Court.

Section 1106 instructs OEP to deliver a compliance schedule to the violator of the solid waste code. The compliance schedule will have timelines which if not met, may result in the revocation, suspension or modification of the solid waste permit.

Section 1107, Revocation, Suspension or Modification of a Permit, is initiated when any term or condition of a permit is violated, by giving false information to obtain the permit, and/or a change in any condition that the permit was granted under. The revocation or suspension does not relieve the owner/operator of any legal liability.

Permit actions can only be initiated by the Compliance Officer through the hearing process. The CO must prepare a written Statement of Charges which specifies the violations requiring a permit revocation, suspension or modification which will be delivered to the permittee. In addition to the Statement of Charges, the permittee will also be notified of the hearing date, access to documents for inspection or copying. The hearing must be 20-45 days after the submittal of the Statement of Charges.

After the Statement of Charges has been delivered, the permittee has 15 days in which to deliver to OEP a notice of defense to the charges because they are not definite, have omissions, or does not identify the acts which would allow the permittee to prepare a defense. Failure to file a notice of defense shall constitute a waiver of the right to a hearing. The statement of charges shall stand and legal action for a remedy shall begin. The notice shall be in writing and signed by the permittee.

The hearing shall be conducted by a hearings examiner who is appointed by the Tribal Executive Board. The Compliance Officer and the permittee shall be allowed to present evidence, question witness, and provide argument. After conclusion of the hearing, the hearing examiner will have 20 days to issue a decision. Both parties shall be provided with a copy of that decision. All decisions made by the hearing officer are final and cannot be appealed.

The rules of discovery apply to these hearings and are outlined in parts (f) 1-3 of this section.

Section 1108 authorizes citation authority under this Title to Fort Peck Law & Justice and the Fish and Game Departments.

Chapter 12 Violation, Criminal and Civil Penalties

Any person who violates any provision of this Title is subject to penalties. OEP and O&M may impose fines in the event of permit violations and non payment of solid waste collection fees. Violations include illegal dumping or littering, the collection of waste on private property which is dangerous or hazardous to the public, the disposal of any waste which is subject to decay into a surface waterbody, the storage of wrecked

autobodies and appliances within the community, and to make false representations or statements on documents required to be in compliance with this title.

Section 1202 authorizes civil penalties of up to \$15,000 per day per violation. Criminal penalties are authorized only if the Tribal Court has jurisdiction over that person. Civil penalties cannot exceed \$5000 per day per violation and may be subject to imprisonment of not more than one year.

Chapter 13 Repeal, Severability, and Limitations

General legal language regarding changes to the code and a 3 year statue of limitations for enforcement under this Title.