

Sisseton-Wahpeton Oyate
of the
Lake Traverse Reservation

CHAPTER 61
ENVIRONMENTAL PROTECTION CODE

CHAPTER 61 SWO Environmental Code

Table of Contents

Title I	General and Administrative Provisions
61-01-01	Legal Authority
61-01-02	Purpose
61-01-03	Sovereign Immunity
61-01-04	Definitions for Chapter 61
61-01-05	Administration
61-01-06	Authority, Duties and Responsibilities of OEP
61-01-07	Authority, Duties and Responsibilities of EPAC
61-01-08	Environmental Hearing Panel
61-01-09	Enforcement
61-01-10	Regulations
61-01-11	Special Provisions for Tribal Departments and Agencies
61-01-12	Appeals
61-01-13	Administrative Hearing
61-01-14	Severability
Title II	Tribal Environmental Policy Act (“TEPA”)
61-02-01	Purposes
61-02-02	Definitions for Title II
61-02-03	General Roles
61-02-04	Types of Land-Use Activities this TEPA applies to
61-02-05	Direct and Indirect Costs of Permit Application Process
61-02-06	Environmental Review Procedure
61-02-07	Permit Limitations, Conditions and Mitigation
61-02-08	Record of Decision
61-02-09	Enforcement
61-02-10	Severability
Title III	Water Quality
61-03-01	Scope
61-03-02	Findings, Policy and Purpose
61-03-03	Role of the Office and Environmental Protection
61-03-04	Responsibilities, Authority and Duties of the OEP
61-03-05	Definitions
61-03-06	Unlawful Acts
61-03-07	Effect of Regulations by OEP
61-03-08	Reservation Waters Protected
61-03-09	Permit to Degrade Reservation Waters

61-03-10	Emergencies
61-03-11	Permit for Point Source Discharge
61-03-12	Terms of Permits Issued Under This Title; Relationship of Tribal Permits to EPA Permits
61-03-13	Compliance with standards and requirements of Irrigation Systems for Chemigation
61-03-14	Other Requirements Not Superseded; Reserved Provisions
61-03-15	Relationship to National Pollutant Discharge Elimination System
61-03-16	Certification of Compliance with Federal Pollution Control Requirements
61-03-17	Issuance, Revocation or Denial
61-03-18	Action by Other Parties
61-03-19	Severability

Title IV Air Quality

61-04-01	Findings and Purpose
61-04-02	Definitions
61-04-03	Responsibilities, Authority and Duties of the OEP
61-04-04	Rules and Regulations of the Office of Environmental Protection
61-04-05	OEP to Promulgate Ambient Air Quality Standards
61-04-06	OEP to Promulgate Air Emission Control Regulations
61-04-07	Inspection and Entry
61-04-08	Designations of Air Quality Control Regions
61-04-09	Tribal Implementation Plans for National Primary and Secondary Ambient Air Quality Standards
61-04-10	Preconstruction Requirements
61-04-11	Air Pollution Emergencies Endangering Public Health
61-04-12	Implementation and Enforcement of Standards of Performance
61-04-13	List of Hazardous Air Pollutants
61-04-14	Permit Applications
61-04-15	Permit Requirements and Conditions
61-04-16	Notification to the Administrator of the EPA
61-04-17	Permit Exemptions
61-04-18	Asbestos Policy
61-04-19	Definitions
61-04-20	OEP Promulgation of Rules to Establish an Asbestos Abatement-Training Program
61-04-21	Violations as Misdemeanor-Civil Penalties
61-04-22	Asbestos abatement certificate
61-04-23	Suspension or Revocation of Contractor's Certificate-Grounds
61-04-24	Certification Fee Schedule
61-04-25	Severability

Title V Solid Waste

61-05-01	Findings
----------	----------

61-05-02	Purpose
61-05-03	Definitions
61-05-04	OEP is the Lead Tribal Agency
61-05-05	OEP to Investigate the Activities of any Permittee under this code
61-05-06	Prohibition of Dumping Solid Waste
61-05-07	Prohibition of Burning of Solid or Hazardous Waste
61-05-08	Criminal Penalties
61-05-09	Civil Penalties
61-05-10	Civil Damages
61-05-11	Other Remedies
61-05-12	Required Permits for the Construction and Operation of a Solid Waste Facility and the Collection and Transportation of Solid Waste
61-05-13	Permits for the Construction and Operation of Solid Waste Facilities
61-05-14	Public Participation and Hearings
61-05-15	Right to Intervene
61-05-16	Oath and Application Filing Fees
61-05-17	Fees and Taxes
61-05-18	Temporary Restraining Orders and Preliminary or Permanent Injunction
61-05-19	Compliance, Abatement and Remedial Action Orders
61-05-20	Compliance with Permits
61-05-21	Civil Penalties and Revocation, Suspension, or Modification of Permit
61-05-22	Severability

Title VI Pesticide Code

61-06-01	Purpose
61-06-02	Definitions
61-06-03	Classifications of Pesticides
61-06-04	Certification of Applicators
61-06-05	Classification of Pesticide Applicators
61-06-06	Registration of Restricted Use Pesticides
61-06-07	Licensing of Restricted Use Pesticide Dealer
61-06-08	Storage and Transport of Pesticides and Containers
61-06-09	Unlawful Acts
61-06-10	Notice of Violation, Cease and Desist Order, Permit Suspension, Permit Revocation or Modification of Certification
61-06-11	Hearings
61-06-12	Fines
61-06-13	Delegation of Authority
61-06-14	Entry and Inspection
61-06-15	Severability

Title VII Hazardous Waste, Underground Storage Tanks, Lead Based Paint Codes

61-07-01	Purpose and Scope
61-07-02	Short Title

61-07-03	Definitions
61-07-04	Powers and Duties of the Office of Environmental Protection
61-07-05	Promulgate Rules and Regulations
61-07-06	Jurisdiction and Applicability
61-07-07	Enforcement
61-07-08	OEP Authorities, Responsibilities and Duties
61-07-09	Rules and Regulations Governing Hazardous Waste
61-07-10	Enforcement Penalties and Citizen Participation
61-07-11	Lead Based Paint
61-07-12	Lead Surveillance and Occurrence
61-07-13	Paint, Soil, Dust and Drinking Water Lead Analysis
61-07-14	Reporting without Liability
61-07-15	Classification of Data
61-07-16	Property Owner Responsibility
61-07-17	Clearance Inspection
61-07-18	Severability

Sisseton-Wahpeton Oyate
of the
Lake Traverse Reservation

CHAPTER 61
ENVIRONMENTAL PROTECTION CODE

Title I General and Administrative Provisions

61-01-01 Legal Authority

This Code is enacted pursuant to the sovereign tribal powers expressly delegated to the Tribal Council in Article VII of the Tribe's Constitution, which authorizes the Tribal Council to manage and otherwise deal with Tribal lands, natural resources and property; to promulgate and enforce Codes providing for the health, safety, economic well-being and general welfare of the Tribe and its members and residents; to maintain law and order on the Reservation; to administer justice on the Reservation; to regulate Tribal committees, boards, agencies, and employees; and to delegate to Tribal committees, boards, agencies, and employees, the foregoing powers, subject to review by the Tribal Council. The jurisdiction of the Sisseton-Wahpeton Oyate shall extend to lands lying in the territory within the original confines of the Lake Traverse Reservation as described in Article III of the Treaty of February 19, 1867 15 Stat. 505, and those lands subsequently acquired by the Sisseton-Wahpeton Oyate. The Sisseton-Wahpeton Oyate reserves the right to exceed requirements set in certain federal laws for the greatest protection of tribal members.

61-01-02 Purpose

The purpose of this Code is to preserve and protect the Sisseton Wahpeton Oyate's natural resource and property by establishing the Office of Environmental Protection ("OEP") and Environmental Protection Advisory Committee ("EPAC"), to insure that proper and meaningful consideration of environmental and ecological factors, including the cultural, spiritual and historical aspects of those factors, is taken by any person, government, district, agency, school, program or corporate entity prior to approval of Activities within the original boundaries of the Lake Traverse Reservation which may significantly affect Sisseton Wahpeton Oyate homelands or the political integrity, economic security and specifically the health and welfare of the Sisseton Wahpeton Oyate and its members.

61-01-03 Sovereign Immunity

The Sisseton-Wahpeton Oyate and all its constituent parts, including OEP, EPAC, and the Environmental Hearing Panel, are immune from suit in any jurisdiction, except to the extent that such immunity has been expressly and unequivocally waived by the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation ("the Tribe"). Nothing in this Code shall be construed as waiving the sovereign immunity of the Tribe or any of its constituent parts as stated above. Nothing in this Code, nor any appeal, action, appeal to Tribal Court, nor any enforcement action taken pursuant to this Code, shall constitute a waiver of sovereign immunity as to any claim for damages, attorneys fees or costs, regardless of whether any such claim arises out of the same

transaction or occurrence, or in any other respect. Nothing in this Code shall be construed as a legislative declaration of tribal liability under tribal, federal or state environmental laws or as a waiver of tribal sovereign immunity with respect thereto.

61-01-04 Definitions for Chapter 61

(a) “**Administrator**” means the Administrator of the OEP.

(b) “**American Indian Tribe**” is defined as any Indian tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers within Indian country and listed in the Federal Register as a federally recognized Indian Tribe. The term also includes a non-federally recognized and state recognized Tribe.

(c) “**Code**” means this entire Chapter 61 and its relating and implementing regulations.

(d) “**District Members**” or “**District Council**” means all or one of seven (7) Districts of the Lake Traverse Reservation. The seven districts are: (1) Heipa/Veblen, (2) Long Hollow, (3) Buffalo Lake, (4) Enemy Swim, (5) Big Coulee, (6) Old Agency, and (7) Lake Traverse. Each District Council consists of the adult members of the Tribe registered on a District voting roster. Each District has an elected Chairman, Vice Chairman, a Secretary, a Treasurer, and other committees.

(e) “**Environmental Protection Advisory Committee (“EPAC”)**” means the Environmental Protection Advisory Committee of the Tribe.

(f) “**EPA**” or “Environmental Protection Agency: means the United States Environmental Protection Agency.

(g) “**Indian Country**” is defined as and shall be construed as defined land as set forth in the Treaty of February 19, 1867, 15 Stat. 505 between the Sisseton Wahpeton Oyate and the United States, including such lands as defined in 18 U.S.C. §1151.

(h) “**Indian**” is defined as any person who: (1) is an enrolled or is enrollable as a member of a federally recognized American Indian Tribe; or, a member of another non-federally recognized American Indian Tribe; (2) is a member of a American Indian Tribe that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (3) holds or is recognized by the Secretary of the Interior as eligible to hold trust or restricted property on the Reservation.

(i) “**Office of Environmental Protection (“OEP”)**” is defined as the Office of Environmental Protection of the Tribe.

(j) “**Sisseton Wahpeton Oyate Legal Department**” (“Legal Department”) means the Attorney or Attorneys retained or employed by the Tribe as the Tribe’s legal counsel.

(k) **“Person”** includes any individual over eighteen (18) years of age, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or its legal agents or assignees, including a Department Administrator or Tribal Officer within the Tribe and its agencies, programs, schools, departments, committees, districts and tribal businesses.

(l) **“Reservation”** or **“Lake Traverse Reservation”** is the area of land as set forth in the Treaty of February 19, 1867, 15 Stat. 505 between the Sisseton Wahpeton Sioux Oyate and the United States, including all lands, islands, waters, roads, and bridges, or any interests therein, whether in trust or non-trust status and notwithstanding the issuance of any patent or right-of-way, and such other lands, islands, water or any interest therein thereafter added to the reservation.

(m) **“Reservation environment”** – means the physical and biological resources of the Tribe within the original boundaries of the Reservation, including but not limited to land, water, air, minerals, cultural, spiritual or historical sites, objects, humans, animal and plant life and aesthetic values.

(n) **“Tribe”** or **“tribal”** is defined as the Sisseton Wahpeton Oyate and its agencies, departments, committees and districts.

(o) **“Tribal Council”** is defined as the elected governing body of the Sisseton Wahpeton Oyate.

(p) **“Tribal Court”** is defined as the Tribe’s Judiciary Branch.

61-01-05 Administration

OEP shall administer this Code.

61-01-06 Authority, Duties and Responsibilities of OEP

OEP shall have and may exercise the following authorities, duties and responsibilities:

- (a) To take all administrative action necessary as provided for in this Code related to the issuance, modification, renewal or enforcement of permits and/or provisions of this Code;
- (b) To investigate alleged violations of any provisions of this Code, regulations, or permits and take enforcement actions described in 61-01-07;
- (c) To encourage, participate in studies, research, and demonstrations with respect to environmental pollution and cause, prevention, control and abatement thereof as it deems necessary;

- (d) To provide a work and learning site for interns whose educational goals include working in the environmental professional area as part of their career training;
- (e) To furnish, upon written request of the Tribal Council, and in compliance with Sisseton Wahpeton Oyate administrative requirements, technical advice and services relating to environmental pollution problems and control techniques;
- (f) The OEP shall consult, provide technical advice and services with the Tribal Council, Natural Resources Commission, and the Reservation Planning Commission, when requested to do so, in all matters pertaining to environmental management, issues and policies;
- (g) OEP shall, in consultation with EPAC if warranted, draft and revise, as needed, this Code, develop an Environmental Management Plan and regularly provide monthly reports to EPAC on OEP's activities, issues, and enforcement actions relative to this Chapter 61. Both, the Code and Environmental Management Plan shall be submitted to the Tribal Council for their review and approval. Tribal Council may require OEP to submit the draft to the Tribal Judicial Committee;
- (h) To conduct activities with the Reservation community population to provide fair treatment and meaningful involvement in OEP decisions about proposed activities or other issues or programs that will affect the Reservation environment and/or health;
- (i) The OEP, in consultation with EPAC, shall conduct community education and information sessions on environmental and natural resource issues. The OEP and EPAC shall also solicit district and individual concerns, opinions and priorities on these issues;
- (j) If OEP finds that any violation of program requirements by a non-Indian was willful, or that a non-Indian person knowingly made any false statement, representation or certification, or knowingly falsified, tampered with or rendered inaccurate any required monitoring device, the OEP may refer the matter to the EPA for enforcement; and
- (k) Have all other authorities, duties and responsibilities as stated hereinafter in the following Titles of Chapter 61.

61-01-07 Authority, Duties and Responsibilities of EPAC

- (a) The EPAC has the duty to report to their respective districts on environmental issues. EPAC will serve as a liaison between their respective districts and OEP.
- (b) EPAC shall consult with and advise OEP on a regular monthly schedule in order to assist OEP in fulfilling OEP's duties and responsibilities based on input provided from their respective districts.

61-01-08 Environmental Hearing Panel

(a) Establishment and Selection of an Environmental Hearing Panel (“EHP”).

1. There is hereby established an Environmental Hearing Panel, to be composed of three (3) members selected by Tribal Council. Panel members will consist of qualified staff of the Sisseton-Wahpeton Oyate. Panel members will be chosen, but not limited to, the Tribal Legal Department, OEP, THPO, or RPC.
2. Term. The EHP will serve for one (1) year.
3. Compensation. Panel members may receive a stipend, as the budget permits, and may be reimbursed for any reasonable and documented expenses actually incurred in connection with his/her performance of duties and responsibilities. The Panel may establish a proposed budget for Tribal Council approval.
4. Duties.
 - i. Permit appeals, the issuance of order, the levying of penalties, holding hearings and the making of any and all related decisions.
 - ii. Exercise all other authority delegated or conferred by law, or reasonably necessary in the administration or enforcement of any Tribal Environmental Law.
 - iii. Conduct administrative hearings contemplated herein.

61-01-09 Enforcement

- (a) In the case of an apparent violation of this Code, with the exception of specifically stated enforcement processes set forth in the respective Titles and applicable to that respective Title only, the OEP is authorized to issue a Notice of Violation to the person(s) apparently responsible for the violation. Both a Notice of Violation and a Cease and Desist Order may be issued for a single incident. A Notice of Violation and/or a Desist Order should also contain how the violation can be remedied.
- (b) Should no action be taken from the Notice of Violation and/or Desist order within ten working days, OEP will issue a Summons to appear at an administrative hearing conducted by the Environmental Hearing Panel at a specified time and date.
 1. If the action constitutes an emergency OEP may need to take immediate action in Tribal Court and/or other actions to remedy the situation. In some instances OEP may also need to contact the EPA. Such instances would include disaster or other emergency situations.

61-01-10 Regulations

In addition to the requirements of this Code, persons, actions, and activities subject to this Code

are required to be in full compliance with regulations enacted in support of and as part of this Code.

61-01-11 Special Provisions for Tribal Departments and Agencies

In any case in which an entity of the Sisseton Wahpeton Oyate or any Tribal agency or department is alleged to have violated the terms and conditions of a permit, or to have conducted activities without a permit, the OEP shall bring the matter to the attention of the Tribal Chairman who shall take action to resolve the matter informally; or provide OEP with a written procedure to follow to resolve the matter. In the event a conflict arises with a Tribal Chairman, the full Tribal Council may need to resolve the matter informally upon request of OEP.

61-01-12 Appeals

Any person claiming to be aggrieved or adversely affected by final administrative action taken by the OEP may appeal to the Environmental Hearing Panel. The panel will schedule a hearing within thirty (30) days. Persons requesting an appeal may indicate within their request whether thirty (30) days would create an unreasonable hardship. All appeals must be provided in writing to the SWO Legal Department.

61-01-13 Administrative Hearing

- (a) Appeal from an Administrative Hearing must be made to Tribal Council within thirty (30) business days from the date of the Administrative Hearing. All Tribal Council decisions are final. Appeals made after three (3) business days will result in an untimely appeal and will be barred.
- (b) If the violator does not attend the Administrative Hearing, the violator will be assumed to waive their opportunity to be heard and appeal to Tribal Council. In this instance the Administrative Hearing decision will be final.

61-01-14 Severability

Invalidated sections of this code by Tribal Court or any federal court shall not affect other provisions or applications of this Code, which can be given effect without regard to the invalid provision, or application, and to this end the provisions of this Code are severable.

Title II – Tribal Environmental Policy Act (“TEPA”)

61-02-01 Purposes

There are two primary purposes for this Title II: a) To insure that proper and meaningful consideration of environmental factors, is made by any person, government, or corporate entity prior to approval of activities within the Reservation which may significantly affect Sisseton Wahpeton Oyate homelands, the political integrity, economic security, specifically the health and welfare of the Sisseton Wahpeton Oyate; and b) to assure that the groups, individuals, or institutions potentially affected by the activities are adequately informed about the activity.

61-02-02 Definitions for Title II

For the purposes of this Title II, the following terms shall have the meanings set forth below:

- (a) “Action” – means a new and/or continuing set of activities, including projects, programs, and revised codes or regulations entirely or partly financed, assisted, conducted or approved by a Tribal department. Example: construction of a school, or housing project.
- (b) “Activity” or “activities” – means a portion of an action that includes: (1) any significant disturbance of land surface or subsurface within the Reservation; and (2) any other significant disturbance within the Reservation, including research projects, that impact water, domestic and wild animals, air, plants or humans, their facilities and/or cultural, spiritual or historical sites and objects.
- (c) “Affect” – means for the purposes of this Title II the same as impact.
- (d) “Applicant” – means the person, entity, or agency requesting a permit to conduct an Activity or Action, as defined in this Act, within the Reservation.
- (e) “Environmental documents” – means for the purpose of this Title II – Tribal Environment Policy Act, the following definitions:
 - (1) Environmental assessment (EA) – a document designed to assist in determining whether impacts of a proposed activity are significant or not.
 - (2) Environmental impact statement (EIS) – an in depth analysis of the proposed activity which have or may have a significant impact on the Reservation environment.
 - (3) Finding of no significant impact (FONSI) – a determination that no EA or EIS is required for the proposed activity or activities and a permit may be issued; or, that minor special conditions or mitigations may be required and a permit may be issued with the special conditions or mitigations set forth in the permit.

- (4) List of categorical exclusions (CE) – a list of activities maintained and published by OEP that have been determined to not have possible significant environmental impacts and will be excluded from in depth environmental analysis.
- (5) Environmental permit (permit) – the document issued by OEP to applicants after environmental review that will contain the permission to proceed with the action and any required special conditions or mitigations; or issued as a categorical exclusion.
- (6) Record of decision – The final decision document issued so that the reader can understand these major issues without referring to the EA or EIS. The record of decision is signed by OEP with enough information on reasons for: 1) disapproving the permit; or 2) the alternatives and their impacts, the rationale in selecting the chosen alternative, and the extent of mitigation and monitoring the public can expect.
- (f) “Permit applicant” – means any person or Department Administrator, Program Director or Tribal Officer filing an application with OEP for an Environmental Permit.
- (g) “Person” – means any individual over eighteen (18) years of age, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or its legal agents or assignees, including a Department Administrator, Program Director or Tribal Officer within the Tribal Government, its agencies, departments, committees, and sub-entities.
- (h) “Pollutant” – means any substance or energy entering the environment as a direct or indirect result of human activity that alters or has the potential to alter the physical, chemical, biological, cultural, spiritual or aesthetic properties of the environment.
- (i) “Primary Family Residence”- A home where a family lives continuously for a minimum of six months. This home is recognized as a being the permanent residence for a family. Primary Family residence status is evidenced by the family calling the home in question its permanent residence, the family’s ability to receive its mail there, the family being seen by neighbors and community members as living there on at least a weekly basis, and by the home being recognized as the primary residence of the family by tribal programs and/or one of the resident’s employers.
- (j) “Tribal Environmental Policy Act” (TEPA) – means this entire Title II.

61-02-03 General Roles

- (a) OEP shall draft regulations for the administration and enforcement of this TEPA, and present to Tribal Council for approval. OEP shall then inform the public.

- (b) OEP shall post in public places, and on the OEP Website a listing of proposed activities that are: 1) categorically excluded, 2) possibly harmful and in need of an EA; or 3) to have "low impact" on the environment and not subject to in-depth study.
- (c) OEP shall have the administrative responsibility as the initial contact for permit applicants. Within 30 days of receipt of the permit application, OEP shall provide a report to EPAC that a permit application has been filed and include a brief description of the proposed activity. In some instances OEP may find no need for an applicant to need a permit. OEP will then post such an instance as stated in (b) above.
- (d) OEP shall have responsibility for maintaining a reference system of permit applications filed with OEP and determinations made on permit applications.
- (e) Within thirty (30) days of receipt of the permit application, and any draft environmental documents, the OEP shall make a preliminary determinations whether a proposed activity based on the nature of the activity: 1) could have "significant" adverse impacts; 2) is on the list of categorical exclusions; 3) possibly harmful and in need of an environmental assessment; or 4) probably, more likely than not, has no significant adverse environmental impact or "low impact" on the environment and is not subject to in-depth study.
- (f) All permits are one (1) year or less in duration. Should a project's duration exceed one (1) year, a permit must be renewed prior to the end date of the original permit.
- (g) If the OEP's preliminary determination is that there is no significant impact or need for in-depth environmental study, OEP shall issue the environmental permit and, if needed, state any required special conditions or mitigations to be set forth in the environmental permit.
- (h) If the permit applicant is a Department Administrators, Program Director or Tribal Officer, he/she shall prepare his/her own respective environmental documents based on their span of authority over their program responsibilities.
- (i) If a proposed activity requires an EA or EIS, a public hearing shall be scheduled by the permit applicant to take place within thirty (30) days of receipt of notification by the permit applicant that an EA or EIS is required. The permit applicant shall hold the hearing and the applicant shall be given an opportunity to give a presentation on the proposed activity for a reasonable amount of time. The notice shall state the time and place of the hearing and state the subject matter. The notice shall be published in the tribal newsletter at least fifteen (15) days before the hearing is held.
- (j) The permit applicant shall, according to the provisions of this TEPA, write the draft environmental documents, (that is, the draft EA or EIS, draft Permit, mitigated FONSI, and draft record of decision) and make the draft environmental documents available for public review for at least thirty (30) days.

- (k) Within ten (10) days of receipt of the draft environmental documents from the permit applicant, the OEP shall make a final decision on whether the environmental documents are adequate and sufficient to make a final decision on the permit application. The OEP shall approve, approve with conditions, or disapprove the permit application. OEP shall issue the environmental permit. The OEP shall advise the permit applicant of the appeal procedures.
- (l) If a non-tribal permit applicant or person contests the OEP's final decision, the applicant or person may request a public hearing before the EHP. A request for hearing must be filed within fifteen (15) days of the date of the OEP's signature on environmental documents. The EHP shall conduct the public hearing and issue an administrative order deciding the matter.

61-02-04 Types of Land-Use Activities this TEPA applies to:

- (a) Every person seeking to conduct an activity defined by §61-02-02(b) shall submit a permit application to OEP.
- (b) Structures in existence prior to the adoption of this Title and homes that serve as Primary Family Residences for SWO tribal members are exempt from the permit requirements of this Title. Modification to such structures or any new or additional activities constructed on the structure must have a permit or an exemption letter as required by this Title.
- (c) All persons, entities, or agencies conducting any of the following activities within the exterior boundaries of the Reservation shall be required to obtain an environmental permit prior to taking any physical action upon the environment:
 - (1) Preparation of a site for the construction of a building or area for purposes of human habitation, business use, or public area;
 - (2) Construction, placement, or expansion of any structure to be used for industrial, commercial, or residential purposes;
 - (3) Construction, placement, or expansion of any public or private road or bridge, right of way, transportation facility, or public facilities of any nature; or
 - (4) Other activities such as constructing dams and timber harvest; and other potential ground or air disturbing activities.
- (d) Each issued permit shall contain the following statement to which the permittee must agree and subscribe for the permit to be complete and as a condition precedent to the final issuance of any permit:

"Permittee consents to the jurisdiction of the Sisseton Wahpeton Oyate/Oyate with respect to those activities conducted pursuant to this

permit issued by the Office of Environmental Protection pursuant to the provisions of the Sisseton- Wahpeton Oyate Tribal Environmental Protection Code. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents including contractors and subcontractors of permittee whose activities fall within the scope of the issued permit.”

61-02-05 Direct and Indirect Costs of Permit Application Process

- (a) An application fee shall be paid by the permit applicant prior to processing the application in an amount determined by OEP and set forth in regulations approved by Tribal Council.
- (b) The permit applicant may be required to pay for the direct and indirect costs of environmental review, including costs of necessary studies, consultants, and preparation of any required environmental documents including the EA or EIS and record of decision.
- (c) If the action is a tribal activity or project and the Department Administrator, Program Director or Tribal Officer has submitted the permit application, the Tribe shall fund the cost of the direct and indirect costs of environmental review, including costs of necessary studies, consultants, and preparation of any required environmental documents including the EA or EIS and record of decision.

61-02-06 Environmental Review Procedure

- (a) In addition to requirements set forth in regulations implementing this Title, the general content to be included in the EIS includes:
 - (1) The environmental impacts of the proposed activity or activities;
 - (2) Any adverse environmental effects which cannot be avoided should the project be implemented;
 - (3) Alternatives to the proposed action; and
 - (4) Environmental impacts of the proposed alternatives.
- (b) Tribal regulations implementing this Title provides specific EIS format requirements which include:
 - (1) Cover sheet; Summary page; Purpose and Need Statement; Description of the proposed activity and alternatives; Description of the affected environmental areas; Environmental consequences; List of preparers; and an Appendix.

(c) EIS analysis requirements are specifically set forth in regulations which generally include:

- (1) Use of a systematic, interdisciplinary approach that insures the use of natural and social sciences;
- (2) Application of best available science to the proposed activity and alternatives;
- (3) Examination of the relationship between local, short-term uses of the environment and the maintenance and enhancement of long-term productivity;
- (4) Any irreversible and irretrievable commitments of resources which would be involved if the proposed action were to occur;
- (5) The analysis of cumulative impacts;
- (6) The analysis of social, cultural, and economic impacts; and
- (7) Any beneficial impacts the project may produce.

(d) An activity may be deemed to have a significant environmental impact if any of the following conditions (but not limited to the following conditions) stated below, exist:

- (1) The proposed activity has been determined by a federal, local, or state agency, to have a significant environmental impact;
- (2) The proposed activity may significantly affect the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and/or distribution of the significant percentage of the population of the Reservation;
- (3) The effects resulting from any structure or facility constructed or operated under the proposed activity may conflict with Tribal, local, regional, Federal or State land use plans or policies;
- (4) The proposed activity may significantly affect wetlands, including indirect and cumulative effects, or any major part of a structure or facility constructed or operated under the proposed action may be located in wetlands;
- (5) The proposed activity or any structure or facility constructed or operated under the proposed activity may significantly affect threatened and endangered species or their habitats identified by the Department of Interior's list or the Tribe's list;
- (6) Implementation of the proposed activity may directly cause or induce changes that significantly displace population; adversely affect the character of

existing residential areas; adversely affect a floodplain; or adversely affect significant amounts of important farmlands;

- (7) The proposed activity may, directly, indirectly or cumulatively have significant adverse effects on parklands, preserves, or other public lands or areas of recognized scenic, recreational, archaeological, cultural, spiritual or historic value; and/or
- (8) The proposed activity may, directly or through induced development, have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface water or groundwater quality or quantity, water supply, fish, shellfish, wildlife, and their natural habitats.

61-02-07 Permit Limitations, Conditions and Mitigation

- (a) After a final determination by OEP, upon finding no significant environmental impact, determining whether a categorical exclusion applies, or upon the completion of an EA or EIS, OEP will issue the permit.
- (b) In issuing a permit, OEP may include conditions and mitigation requirements to reduce, prevent, or mitigate significant adverse impacts and to protect the Reservation environment from degradation. Mitigation may include monetary compensation to the Tribe or others for adverse impacts to the Reservation environmental and natural resources, and may also include requirements of replacement or restoration of impacted resources.

61-02-08 Record of Decision

- (a) In addition to requirements set forth in regulations implementing this Title, within fifteen (15) days of the OEP's decision to sign the final EA or EIS, to issue a permit, to deny a permit, or to issue a permit subject to conditions, the OEP shall write a record of decision which shall briefly state:
 - (1) The reason(s) in support of the decision;
 - (2) Advise the applicant of the procedure to be followed if the applicant chooses to appeal the decision;
 - (3) Inform the applicant of what the conditions are, if the permit is issued subject to conditions;
 - (4) If the permit is denied, advise the applicant whether the OEP would reconsider the applicant if certain changes were made; and
 - (5) Advise the applicant that failure to comply with the order may be grounds for enforcement and penalties under this Title.

(6) Advise the applicant of the appeals process under this Title.

(7) Post the permit information on the OEP website.

61-02-09 Enforcement

- (a) OEP shall enforce this Title, with the assistance of the Tribe's law enforcement officials in emergency situations. OEP shall have the authority to bring emergency actions in Tribal Court when necessary. Such actions against the Sisseton-Wahpeton Oyate, its agencies, departments, committees, or other sub-entities shall be limited to the issuance of declaratory and/or injunctive relief and shall be brought to the Tribal Chairman for resolution.
- (b) Any person who fails to comply with any provision of this Title shall be subject to penalties as well as any other remedies set forth herein or in implementing regulations. In the event of non-compliance, the OEP shall serve the alleged violator, in person or by certified mail, with a notice of non-compliance. The notice of non-compliance shall further state which provisions of this Title are allegedly not being complied with. The notice of non-compliance shall further specify the remedial action(s) that must be taken to correct such non-compliance, as well as the Title provisions or regulations mandating that such action(s) shall be taken.
- (c) Any permit issued by the OEP may, after an opportunity for a hearing, be modified, suspended, or revoked, in whole or in part, for cause, including but not limited to:
 - (1) Violation of any terms or conditions of the permit or this Title;
 - (2) Misrepresentation or failure to disclose fully all relevant information; or
 - (3) A change in any condition that requires either a temporary or permanent modification or cancellation of the permit.
- (d) Whenever, on the basis of any information available to it, the OEP finds that there is cause for modifying, suspending, or revoking a permit, in whole or in part, the OEP shall notify the permittee by certified mail or personal service of its intention to modify, suspend, or revoke the permit, in whole or in part. Such notice shall specify the information upon which the OEP relies, and, if OEP intends to modify the permit, shall explain the modifications that OEP intends to make in the permit. Such notice shall be both published and posted in one or more public places in a timely manner. OEP shall hold a public hearing and give public notice of the date, time, and place of the public hearing on a proposed permit modification, suspension, or revocation within thirty (30) days of the public hearing.
- (e) In the event of non-compliance with any notice of non-compliance, the OEP may order the cessation of such activity without additional notice to the alleged violator if

the non-compliance is not remedied within five (5) days of the public hearing. The alleged violator shall be served with a statement of the reason(s) for the cessation order, and the actions the alleged violator must take before the order will be lifted. A copy of this cessation order and a statement of reasons(s) for the order shall be promptly delivered to the Chairman of the Sisseton Wahpeton Oyate.

- (f) In the event an alleged violator fails to take action in accordance with a cessation order served pursuant to this Title, the OEP may pursue one or more of the following remedies:
 - (1) Continue its cessation order;
 - (2) Impound vehicles and equipment after written notice to the alleged violator;
 - (3) Request the Secretary of the Interior to serve notices of intent to cancel any relevant lease pursuant to federal law for using the leased premises for unlawful conduct or for an unlawful purpose, specifying the basis for the notice; and/or
 - (4) Assess penalties as set forth in this Title and take any other action deemed appropriate so long as the rights of due process guaranteed by the Indian Civil Rights Act, 25 U.S.C. §§ 1301 *et seq.*, and the Constitution of the Sisseton Wahpeton Oyate are not infringed upon.
- (g) Civil Penalties – Any person found violating this Title shall be subject to civil penalties of up to five thousand dollars (\$5,000.00) per day for each day of such violation or continued violation of an order to cease Activity. The OEP shall personally, or via certified United States mail, first class, serve the alleged violator with notice of the penalty. The penalty shall be due and payable to the OEP within twenty (20) days of such notice. Failure to pay any penalties imposed shall be considered an additional violation of this Title.
- (h) Any person aggrieved by any enforcement action taken by the OEP may appeal to the Environmental Hearing Panel and request a hearing for consideration and determination of whether OEP's enforcement action is fair, just and supportable by the circumstances. The filing of an appeal shall not stay any order to cease an activity, impound vehicles or equipment or both and/or restrict access to the site of any operation, or pay penalties.

61-02-10 Severability

The provisions of this Code are severable. If any provision or part is held invalid, unconstitutional, or inapplicable to any person or under any circumstances, such invalidity, unconstitutionality, or inapplicability shall not affect or impair the remaining provisions of the Code.

Title III – Water Quality

61-03-01 Scope

This Code applies to all Reservation waters and all persons, Indian or non-Indian, and entities that are subject to the Tribe's jurisdiction under Sisseton-Wahpeton Oyate Law and Order Code Chapter 20 Jurisdiction - Civil and Criminal Jurisdiction.

61-03-02 Findings, Policy and Purpose

The Tribe finds that the pollution of Reservation waters is detrimental to the political integrity, economic stability and specifically the health and welfare of tribal members and the best interests of the Tribe are served by vigorous efforts to protect and improve the water quality of the Lake Traverse Reservation. The Sisseton Wahpeton Oyate assumes primary responsibility for the regulation of water quality on Reservation waters. Water Rights are inherent rights which the Sisseton-Wahpeton Oyate holds. Therefore, the declared as public policy of the Sisseton Wahpeton Oyate to preserve, enhance and maintain reasonable standards of purity of the waters on the Lake Traverse Reservation as the permanent homeland of the Sisseton Wahpeton Oyate by providing a comprehensive program for the prevention, abatement, and control of water pollution within the original 1867 Lake Traverse Reservation boundaries. Additionally, the Tribe finds that all waters reserved by Treaty are held by them in Trust for the benefit of the Reservation public and for certain inalienable public uses and that as an essential attribute of sovereignty, the power to determine the proper uses of said waters and the management is the Sisseton Wahpeton Oyate's alone. It is therefore declared as public policy of this Title to:

- (a) Preserve, enhance and maintain reasonable standards of purity of the waters of the Reservation as the permanent homeland of the Sisseton Wahpeton Oyate and provide for public water supplies, and propagation of wildlife, preserve wetlands, and fish and other aquatic life, and for domestic, recreational, agricultural, industrial, cultural and other beneficial uses;
- (b) Eliminate the discharge of all unpermitted and untreated pollutants into Reservation waters, and prohibit the discharge of toxic pollutants;
- (c) Provide for public participation in the development, revisions, and enforcement of any regulation, standard, effluent limitation, or plan established under this Title;
- (d) Cooperate with, and, where appropriate, enter into agreements with federal, state, regional, local and other tribal agencies, private organizations, and individuals to improve or restore the quality of Reservation waters; and,
- (e) Assume primary responsibility for the regulation of water quality on Reservation waters, pursuant to the federal Clean Water Act.

61-03-03 Role of the Office of Environmental Protection

The Office of Environmental Protection shall administer and enforce this Code and any applicable regulations, rules, standards, permits or order issued pursuant to this Code. The OEP shall be designated as the Sisseton Wahpeton Oyate water pollution control agency for all primary functions of management and protection of water resources for Reservation waters as set forth in the CWA and related federal laws.

61-03-04 Responsibilities, Authority and Duties of the OEP

The OEP shall have the following responsibilities, authorities and duties:

(a) Recommend to Tribal Council and notify the EPAC for adoption:

- (1) Code revisions, regulations, water quality standards, effluent standards and limitations, new source performance standards and related criteria for the Lake Traverse Reservation waters;
- (2) The classification of Reservation waters, the types of classes and the particular class into which any discrete segment of Reservation waters is placed;
- (3) Regulations controlling discharges by point sources, providing for the testing and measuring of sewage, industrial wastes, or other wastes, at their outlet into classified Reservation waters;
- (4) A point source and non-point source management plan to be incorporated into the comprehensive water quality management plan;
- (5) A comprehensive water quality management plan for public hearing; and
- (6) Rules or regulations providing for the certification of facilities or activities subject to federal licensing requirements.

(b) To manage and protect the water resources of the Reservation by:

- (1) Setting requirements for the owner or operator of a point source to keep records, provide information and conduct monitoring and sampling;
- (2) Entering and inspecting at any reasonable time any Reservation property, premise, or place to investigate any activity causing, threatening or allowing water pollution or to ascertain compliance with any permit, rule or order promulgated under this Code;
- (3) Investigating through on-site inspection, at any reasonable time any Reservation property, to ensure compliance with the water quality standards, permit, rule or order;

- (4) Systematically monitoring the quality and quantity of Reservation waters by sampling and testing for the presence of pollutants and for compliance with water quality standards and related permit(s), rule(s), or order(s);
- (5) Encouraging voluntary cooperation by all persons in preventing and abating pollution of Reservation waters through public information campaigns or other information distribution programs;
- (6) Issuing, suspending, revoking, modifying or denying National Pollution Discharge Elimination System (NPDES) permits;
- (7) Issue a Notice of Violation and/or a Cease and Desist Order for violations of this Code, permit(s), regulations(s), rule(s) or order(s); and,
- (8) Bring an enforcement action against the alleged violator in Tribal court in emergency situations. In situations that do not require emergency action OEP will notify the alleged violator of appearance before the Environmental Hearing Panel.
- (9) Within 90 days of passage of this Chapter 61 Environmental Code by SWO Tribal Council, issue an emergency contingency plan to implement authority in agreement with Title III until regulations submitted by OEP to the EPAC and the Tribal Council in accordance with this Title have been passed into law.

61-03-05 Definitions

Where no specifically defined terms are set forth in this Code, the definitions contained in the Clean Water Act and its implementing regulations shall be applied. When used in this Code, the following words shall have the meanings ascribed to them.

- (a) “**Agency**” is defined as any governmental executive department, division, bureau, or other unit of the tribal, federal, local, or state government or a regional water quality entity, which has been granted lawful authority to enter into contacts or agreements and which has been assigned or is subject to legal obligations to restore, maintain, or protect water quality or water quantity within the boundaries of the Reservation.
- (b) “**Best management practices**” (“BMP”) is defined as schedules of activities, operational practices, maintenance procedures, or other management practices adopted by regulation, rule or incorporated by an agency as a condition of a permit, contract or order to prevent or reduce the pollution of waters. BMP’s may also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

- (c) **“Chemigation”** means any process whereby fertilizers or pesticides are added to irrigation water applied to land or crops or both through an irrigation system.
- (d) **“Clean Water Act”** (or “CWA”) (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. No. 92-500, as amended by Pub. L. No. 95-576, Pub. L. No. 96-483, and Pub. L. No.97-117, 33 U.S.C. § 1251 *et seq.* as in effect on January 1, 1992.
- (e) **“Degradation”**- refers to the polluting of a water body where condition, quality or level of the water is lowered.
- (f) **“Discharge”** or **“discharge of pollutant”** is defined as any addition of an identifiable substance or a pollutant or combination of pollutants to waters from any point source.
- (g) **“Effluent limitation”** is defined as any restriction or prohibition established under this Code, by the OEP or EPA on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into Reservation waters, including but not limited to: standards of performance for new sources, and schedules of compliance.
- (h) **“NPDES”** is defined as National Pollution Discharge Elimination System.
- (i) **“Owner”** or **“Operator”** is defined as any person who owns, leases, rents, operates, controls, or supervises a source, or real property, which is subject to the application of best management practices.
- (j) **“Person”** or **“Persons”** is defined as any individual, public or private corporation, political subdivision, government agency, district, program, school, tribal business, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity.
- (k) **“Point Source”** is defined as any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, conduit, dam gate or spillway, well, discrete fissure, container, rolling stock, concentrator animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged.
- (l) **“Pollutant”** or **“Pollutants”** is defined as dredged soil, slurry, solid waste, incinerator residue, garbage, sewage sludge, munition, chemical wastes, biological material, radioactive material, heat, wrecked or discarded equipment, rock, cellar dirt and industrial, municipal, or agricultural waste discharged into water.
- (m) **“Pollution”** is defined as any contamination, or other alteration of the physical, chemical or biologic properties, of any Reservation waters, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any Reservation waters as will or is likely to create a nuisance or render such waters harmful, detrimental or

injurious to public health or safety, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

- (n) **“Reservation Waters”** or **“Waters”** is defined as all waters, surface or subsurface, arising upon, occurring within or flowing through the Lake Traverse Reservation lands including, without limitation, all waters within the jurisdiction of the Sisseton Wahpeton Oyate under the 1867 Treaty, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the Lake Traverse Reservation, but not waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA other than cooling ponds as defined in 40 CFR § 423.11(m) (July 1,1991).
- (o) **“Water Quality Standard”** means any standard adopted pursuant to this Code or contained within any regulation(s), rule(s), which defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water, or by setting criteria necessary to protect the uses, or by protecting water quality through anti-degradation provisions.

61-03-06 Unlawful Acts

Except as may be permitted under this Title, no person shall cause or allow the discharge of any pollutant from a point source or nonpoint source that reduces the quality of the waters of the Lake Traverse Reservation to below the standards established pursuant to established OEP regulations and this Title. No person shall violate the terms and conditions of any pollution discharge or activity permit or regulation issued pursuant to Title III.

61-03-07 Effect of Regulations by OEP

Upon promulgation of regulations, pursuant to Title III, no person who complies with those regulations may be found liable for illegal pollution as the result of an activity conducted consistent with such regulations.

If conduct of an operation consistent with the regulations results in a violation of the water quality standards established here, including its antidegradation policy, the OEP shall order the person responsible for the violation to alter his operation in a manner to prevent the violation and shall give him a reasonable time to bring his operations into compliance. At the end of that reasonable time, the person responsible shall be fully liable for illegal pollution under the terms of this title.

61-03-08 Reservation Waters Protected

Under no circumstances may the degradation of the water quality of unique Lake Traverse Reservation waters be allowed. These Reservation waters are found within the original 1867 treaty boundaries of the Sisseton Wahpeton Oyate Lake Traverse Reservation. Such unique reservation waters shall be identified as, but not limited to, the following reservation waters:

Common Name	Dakota Name
(a) Anderson Lake	-
(b) Big Coulee Creek	Iyapkaptapi Wakpadan
(c) Big Sioux River	Cankasdeca; Wakpa Ipaksan
(d) Big Spring Creek	-
(e) Bitter Lake	Canzi Mde
(f) Bluedog Lake	Sunka Totawa
(g) Bois de Sioux River	Can intpa wakpa
(h) Buffalo Lake	Canowan Nasapi
(i) Campbell's Slough	-
(j) Clear Lake	-
(k) Cottonwood Lake	Waga Hde Hde
(l) Crystal Lake	Mde Izuza
(m) Dobberstein's Lake	-
(n) Dry Wood Lake	Can Sica Ozu
(o) Dumarce Lake	-
(p) Enemy Swim Lake	Toka Nuwan Yapi
(q) Flat Lake	-
(r) Goodwill Creek	
(s) Gray's Lake	-

(t) Headman Slough	Mde Itancan
(u) Hill Lake	-
(v) Hillebrand Slough	-
(w) Hurricane Lake	-
(x) Island Lake	-
(y) Jim Creek	-
(z) Jorgenson River	-
(aa) Knebel Slough	-
(bb) LaBelle Creek	-
(cc) Lake Bde-Saka	Bde-Saka
(dd) Lake Emma	-
(ee) Lake Traverse	Mde Hdakinyan
(ff) Lake Whipple	-
(gg) Little Minnesota River	Wakpa Minisota
(hh) Lonesome Lake	-
(ii) Martha Lake	-
(jj) Mud Lake	Mde Inkpa
(kk) Munson Creek	-
(ll) Nollie Lake	-
(mm) One Road Lake	Mde Canku Wanca
(nn) Owl Lake	Hinhankaga Ota
(oo) Pearson Slough	-
(pp) Pickerel Lake	Tamahe Hansha Ocapa

(qq) Piyas Lake	-
(rr) Red Iron Lake	Mazaska Mde
(ss) Road Lake	Mde Canku
(tt) Shortfoot Creek	-
(uu) Spring Lake	-
(vv) Summit Lake	Kandi Kasta Ktepi
(ww) Tahana Lake	Mde Tahan
(xx) White Lake	-
(yy) Whiterock Reservoir	-
(zz) Wild Rice River	Psin Hu Wakpa
(aaa) Whitestone Lake	-

61-03-09 Permit to Degrade Reservation Waters

Upon petition in accordance with this title, the OEP shall, in agreement with the public hearing procedures, decide whether to issue a permit to conduct an activity that will cause or allow the discharge of a pollutant into any body of reservation water for which water quality standards are established. If an applicant seeks a point source discharge permit, he shall include the request for water quality degradation in the permit application.

61-03-10 Emergencies

Whenever the OEP determines, after investigation, that a person is engaged in an activity causing, threatening, or allowing the discharge of a pollutant into Reservation waters, which the OEP reasonably believes to constitute a clear, present, and immediate danger to human health, safety or Reservation waters, the OEP shall issue a written order to the person to immediately cease or prevent the discharge of the pollutant into the waters.

Upon application to and upon a determination by OEP that an emergency exists, the OEP may authorize short term degradation of water quality (not to exceed 30 days) in any body of water for which water quality standards are established, in particular, Lake Traverse Reservation waters. If the applicant seeks a point source discharge permit, he shall include the request for short term water quality degradation in the petition.

- (a) An emergency is defined as circumstances that threaten the public health or welfare or prevents essential activities from proceeding.

- (b) The OEP may permit such short term degradation only if it determines that clear and convincing evidence demonstrates that the degradation will not cause long term injury or interference with water quality and the designated beneficial use is for the affected water body.
- (c) In cases involving emergencies, the OEP shall, at a minimum, provide notice of his action to the tribal council and post notice in local tribal newspaper, the *Sota Iya Ye Yapi*. In addition, the OEP shall provide the closest approximation to the informal hearing procedures set forth, taking into account the nature of the emergency.
- (d) In circumstances the OEP determines to be emergencies, the OEP may shorten the time within which the permit becomes effective unless the OEP or the permittee acts to stay the decision upon appeal.

61-03-11 Permit for Point Source Discharge

(a) Federal and Tribal permits required.

- (1) Any point source discharge of pollutants into the waters of the reservation requires a permit from the federal Environmental Protection Agency. No person may discharge any pollutant from a point source into waters of the reservation without having first obtained a permit from the EPA.
- (2) Further, no person may discharge any pollutant from a point source into waters of the reservation without first having obtained a permit from the Tribal OEP.

(b) Tribal permit for point source discharge.

- (1) In lieu of petition for permit as required in §61-03-09, the applicant shall provide to the OEP a complete and full copy of his petition to the federal EPA at the same time as it is supplied to the EPA.
- (2) Upon receipt of a complete permit application, the OEP shall immediately contact the appropriate federal EPA office and advise it of the OEP's intent to review and provide public participation concerning the permit. The OEP shall request that the EPA not act prior to the conclusion of the tribal process.
- (3) Within 10 days of having first received petition for the permit, the OEP may request the applicant to supply within a reasonable time such additional information as he deems necessary to permit a thorough review of the petition. If the applicant fails to submit the requested information within the reasonable time established in the OEP's request, the director may reject the petition for such failure.

- (4) Upon receipt of a complete permit petition/application, the OEP shall, in accordance with hearing procedures, determine whether to issue the requested permit. The OEP shall grant the permit only if it finds, by clear and convincing evidence, that, the discharge will not result to a violation of the water quality standards set forth by the OEP (under established water quality standards), the discharge will not interfere with or injure existing beneficial uses, and that the discharge does not have a direct, detrimental effect on wildlife, vegetation (such as native plants), sacred sites and other environmental features that the Sisseton Wahpeton Oyate continue to hold in reverence under their tribal belief system and as an integral part of their cultural heritage.
- (5) If the federal EPA has not yet issued a permit, the OEP shall urge the EPA to act consistently with the decision on the tribal permit. If the EPA has issued the permit, the OEP shall insure that the OEP's permit conditions are at least as stringent as those in the EPA permit.
- (6) Each issued permit shall contain the following statement to which the permittee must agree and subscribe for the permit to be complete and as a condition precedent to the final issuance of any permit:

“Permittee consents to the jurisdiction of the Sisseton Wahpeton Oyate/Oyate with respect to those activities conducted pursuant to this permit issued by the Office of Environmental Protection pursuant to the provisions of the Sisseton- Wahpeton Oyate Tribal Environmental Protection Code, in particular Title III. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents including contractors and subcontractors of permittee whose activities fall within the scope of the issued permit.”

61-03-12 Terms of Permits Issued Under This Title; Relationship of Tribal Permits to EPA Permits

A permit granted under this title shall have the same term as and shall expire at the same time as any EPA permit granted for the same discharge. In the absence of an EPA permit, the term of the tribal permit shall govern. In no event shall a tribal permit issued under this title be deemed to reduce conditions contained in an EPA permit for the same discharge; however, where conditions contained in the tribal permit are more protection on the reservation environment than those contained in the EPA permit, the conditions contained in the tribal permit shall govern.

61-03-13 Compliance with standards and requirements of Irrigation Systems for Chemigation

Any person who utilizes an irrigation system for chemigation shall comply with any standards and requirements that are established by the OEP. The OEP will promulgate rules and standards

regarding chemigation, including equipment standards, performance standards and installation requirements; and requirements regarding the use and location of anti-pollution devices. The requirements and standards established pursuant to this section shall provide for additional protection if chemigation involves the application of a pesticide, rather than a fertilizer.

61-03-14 Other Requirements Not Superseded; Reserved Provisions

This Code in no manner supersedes the necessity for any person to obtain permits as may be required by Tribal or federal authorities for any activity affecting Reservation waters. To the extent that the Sisseton Wahpeton Oyate water quality management program and provisions of this code require approval by the EPA in conformity with § 402 of the Clean Water Act, or the National Pollutant Discharge Elimination System (NPDES), those provisions are presently reserved until such recognition or approval by the EPA is obtained.

61-03-15 Relationship to National Pollutant Discharge Elimination System

EPA will directly implement NPDES program activities and permitting not otherwise provided for in this Code. The Sisseton Wahpeton Oyate may proceed to obtain EPA approval and authorization to administer the NPDES programs, Permitting of Federal Facilities, the National Pretreatment Program, and the Municipal Sewage Sludge Program.

61-03-16 Certification of Compliance with Federal Pollution Control Requirements

The OEP may certify, in accordance with any regulation(s) or rule(s) adopted, that an applicant for a federal license or permit necessary to conduct any activity which may result in a discharge into Reservation waters has satisfactorily shown that he or she will comply with §§ 301, 302, 306 and 307 of the Clean Water Act. This Section shall be interpreted to implement § 401 of the Clean Water Act.

61-03-17 Issuance, Revocation or Denial of Permits to Discharge Wastes

The OEP shall issue, suspend, revoke, modify or deny permits to discharge sewage, industrial wastes, or other wastes to Reservation waters, consistent with provisions of this Code and rules adopted pursuant to this Code and guidelines and requirements of the CWA.

61-03-18 Action by Other Parties

Any person may apply to or request the OEP to investigate and take action upon any suspected or alleged violation of any provision of this Code or of any order, permit, or rule issued or promulgated under authority of this Code.

61-03-19 Severability

The provisions of this Code are severable. If any provision or part is held invalid, unconstitutional, or inapplicable to any person or under any circumstances, such invalidity,

unconstitutionality, or inapplicability shall not affect or impair the remaining provisions of the Code.

Title IV – Air Quality

61-04-01 Findings and Purpose

- (a) The Sisseton Wahpeton Oyate hereby finds that the increasing volume and variety of air contaminants being emitted on the Reservation and the often inadequate existing methods of managing air contaminants are creating conditions that threaten the political integrity, economic security and specifically the public health, safety and welfare of tribal members and residents of the Tribe by contributing to air pollution and to the general deterioration of the Reservation.
- (b) The general purposes of this Title IV are to implement, regulate, monitor, and enforce environmental air quality standards and criteria, orders and permit conditions, and exercise comprehensive Tribal regulatory authority over all air quality affecting the Reservation.

61-04-02 Definitions

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

- (a) “**Air contamination source**” means any source whatsoever, at or from which there is emitted or discharged into the atmosphere any air contaminant.
- (b) “**Air pollutant**” or “**air contaminant**” means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance of matter which is emitted into or otherwise enters the ambient air; or any fumes, smoke, particulate matter, vapor, gas or any combination thereof, but it does not include water vapor or steam condensate. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator of the EPA or the OEP has identified such precursor or precursors for the particular purpose for which the term “air pollutant” is used.
- (c) “**CAA**” means the Clean Air Act, 42 U.S.C. § 7401 et. seq.
- (d) “**Construction**” means the process of design, permitting, actual on-site construction, or entering into binding agreements or contractual obligations to undertake construction of the source, which cannot be canceled or modified without substantial loss to the owner or operator.
- (e) “**Emission**” means a direct or indirect release of any dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof into the ambient air.

- (f) "**Facility**" means the sum total of all of the pollutant emitting activities that belong to the same industrial grouping or are located on one or more contiguous or adjacent properties, and are owned or operated by the same person or persons under common control.
- (g) "**NAAQS**" means National Ambient Air Quality Standards.
- (h) "**Source**" or "**Air contamination source**" any place or object from which an air pollutant or air pollutants are released. A source can be a power plant, factory, or cleaning or other commercial business, gas station, grain elevator or farm. Cars, trucks and other motor vehicles are sources, and consumer products and machines used in industry can be sources too.
- (i) "**Variance**" means an authorized written permission for a delay or exception in the application of a given law, Code or regulation.

61-04-03 Responsibilities, Authority and Duties of the OEP

The OEP shall be the lead agency for implementing this Title IV Air Quality. OEP shall communicate with the EPA regarding the Tribe's air quality program; prepare the application for EPA approval of the Tribe's air quality program; and make reports to the EPA, excluding any confidential or privileged information. The OEP shall be the regulating body and shall have the following responsibilities, authorities and duties:

- (a) The OEP shall develop and maintain a comprehensive program for prevention, control and abatement of air pollution throughout the entire Lake Traverse Reservation, including a program for control of emissions from all significant sources of air pollution, and shall promulgate ambient air quality goals for every portion of the Lake Traverse Reservation.
- (b) The OEP shall adopt and modify such plans as may be necessary for the implementation of such programs. Ambient air quality standards and emission control regulations shall be adopted and promulgated in accordance with this Code.
- (c) The OEP shall be available to hear comments from the public on air pollution problems within the Lake Traverse Reservation and the availability of practical remedies for such pollution.
- (d) The OEP shall report to the Sisseton Wahpeton Oyate Tribal Council quarterly each year on the effectiveness on the provisions of this Title in carrying out the legislative intent, as declared above, and shall include in such report any recommendations it may have with respect to legislative changes that may be needed or desirable.
- (e) The OEP shall receive all applications for hearings concerning violations and all applications for the granting of variances made pursuant to this Code and may, in its

discretion, set such applications for hearing and determination by the OEP in accordance with the provisions of this Code.

- (f) OEP may hold public hearings, issue notice of hearings, issue subpoenas requiring the attendance of witnesses and the production of evidence, administer oaths and take such testimony, as it deems necessary;
- (g) OEP may adopt such rules and regulations governing procedures as may be necessary to assure that hearings before OEP will be fair and impartial;
- (h) The OEP will exercise all incidental powers necessary to carry out the purposes of this Code;
- (i) The OEP may require the owner or operator of any air contamination source to:
 - (1) Establish and maintain reports as prescribed by OEP;
 - (2) Install, use and maintain monitoring equipment or methods as prescribed by OEP;
 - (3) Record sample emissions in accordance with such methods, at such locations at such intervals and in such manner as OEP shall prescribe; and/or,
 - (4) Provide such other information as OEP may require.

61-04-04 Rules and Regulations of the Office of Environmental Protection.

The OEP shall have maximum flexibility in developing an effective air pollution control program and may promulgate such combination of rules or regulations as may be necessary or desirable to carry out the legislative purpose set forth in this Code.

61-04-05 OEP to Promulgate Ambient Air Quality Standards

In addition to the other powers and duties enumerated in this Code, the OEP shall have the power to adopt, promulgate, amend and modify such standards for the quality of ambient air as may be appropriate or necessary to carry out the purposes of this Code.

61-04-06 OEP to Promulgate Air Emission Control Regulations

Upon passage of this Chapter, the OEP shall adopt and promulgate emission control rules or regulations, which require the use of effective practical air pollution controls for each significant source, potential source and type of source of air contamination throughout the Reservation and thereafter may modify such rules or regulations from time to time.

61-04-07 Inspection and Entry

In addition to the authority specified elsewhere in this Code, the Tribe, through its Office of Environmental Protection may, upon reasonable suspicion, enter and inspect property, premises or place for the purposes of investigating any actual, suspected or potential source of air pollution or air contamination, of ascertaining compliance or noncompliance with any emission standard or any order promulgated under this Code. If such entry is denied the Office of Environmental Protection or its agent will obtain from the Sisseton Wahpeton Oyate Tribal Court a warrant to enter and inspect any such property, premise or place prior to entry and inspection.

61-04-08 Designations of Air Quality Control Regions

(a) Designations: The Office of Environmental Protection may submit to the Administrator of the EPA a list of all areas on the Reservation designating, with regard to each pollutant for which a national ambient air quality standard exists, each such area as:

- (1) Non-attainment, if it does not meet (or contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant;
- (2) Attainment, if it meets the national primary or secondary ambient air quality standard for the pollutant; or
- (3) Unclassifiable, if it cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant.

(b) Re-designations:

- (1) If the OEP has submitted designations to the Administrator of the EPA pursuant to subsection (a) of this section, and the Administrator of the EPA promulgates a new or revised NAAQS pursuant to section 109 of the Clean Air Act, the OEP may, and in the case of a revised NAAQS for which the OEP has submitted designations pursuant to subsection (a), shall submit to the Administrator of the EPA a new list of designations not later than one (1) year after promulgation of the new or revised NAAQS.
- (2) The OEP also shall submit to the Administrator of the EPA a redesignation of a particular area no later than one hundred twenty (120) days after receiving notification from the Administrator of the EPA, pursuant to section 107(d)(3) of the Clean Air Act, of the need to re-designate.
- (3) The OEP may submit to the Administrator of the EPA for approval, pursuant to section 107 of the Clean Air Act, a redesignation of any area within the

1867 Lake Traverse Reservation if air quality changes within such area. In the case of an area on the Lake Traverse Reservation, which the Administrator of the EPA finds may significantly affect air pollution concentrations in a state or another tribe, the OEP may redesignate that area only with the consent of the states or tribe, which the Administrator of the EPA determines, may be significantly affected. The submission of a redesignation shall not affect the effectiveness or enforceability of the applicable tribal implementation plan.

61-04-09 Tribal Implementation Plans for National Primary and Secondary Ambient Air Quality Standards.

- (a) Ambient Air Quality Standards The Tribe shall establish ambient air quality standards that are at least as stringent as the NAAQS. The Tribe reserves the right to set standards higher than that of the NAAQS.
- (b) Submission of and Contents of Plans: The OEP may submit to the Administrator of the EPA a Tribal Implementation Plan for any pollutant for which a national ambient air quality standard exists. The plan shall provide for implementation, maintenance and enforcement of such standard and protection of visibility in each air quality control region within the 1867 Lake Traverse Reservation.
- (c) Revisions to Plans: The OEP shall adopt regulations that describe procedures for revising tribal implementation plans as needed from time to time and as required by the Administrator of the EPA, pursuant to the Clean Air Act and the regulations hereunder, after promulgation of new or revised NAAQS.
- (d) Public Notification: Each plan shall contain measures that will be effective to notify the public on a regular basis of instances or areas in which any national primary ambient air quality standard is or was exceeded, to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures that can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality.

61-04-10 Preconstruction Requirements

No major emitting facility on which construction is commenced after the date of enactment of this Code may be constructed prior to compliance with the air permit provisions and regulations and OEP review and analysis of air quality impacts of such facility.

61-04-11 Air Pollution Emergencies Endangering Public Health

Whenever the OEP shall determine, after investigation, that any person is either engaging in any activity involving significant risk of air contamination or is discharging or causing to be discharged into the atmosphere, directly or indirectly any air contaminant and such activity or discharge constitutes a clear, present and immediate danger to the health of the public, or that

any such activity or discharge of air contaminants, if permitted to continue unabated, will result in a condition of clear, present and immediate danger to the health of the public, the OEP shall:

- (a) Issue a written Notice of Violation and Cease and desist order to said person requiring immediate discontinuance of such activity or discharge of such contaminant into the atmosphere, and upon receipt of such order, such person shall immediately discontinue such activity or discharge;
- (b) Apply to the Tribal Court, in emergency situations, for a temporary restraining order, preliminary injunction or permanent injunction as provided for in this Code or the Tribe's laws of civil procedure; or
- (c) Issue a Notice of Violation and a Cease and Desist order as set forth in (a) above and apply to the Tribal Court as set forth in (b) above.

61-04-12 Implementation and Enforcement of Standards of Performance

The OEP may develop and submit to the Administrator of the EPA a procedure for implementing and enforcing standards of performance for new sources located on the Reservation. The OEP is authorized under the Clean Air Act to implement and enforce such standards upon delegation of such authority from the Administrator of the EPA.

61-04-13 List of Hazardous Air Pollutants

- (a) Contents of List: The hazardous air pollutants that are subject to regulation under this part shall consist of the federally listed hazardous air pollutants, are but are not limited to, as listed in section 112 of the Clean Air Act; and
- (b) Hazardous air pollutants that are designated by the OEP pursuant to this Title and any regulations promulgated hereunder.

61-04-14 Permit Applications

- (a) Applicable Date: Any source specified in this Code shall become subject to a permit program under this part on the later of the following dates:
 - (1) The effective date of a permit program or partial or interim permit program applicable to the source; or
 - (2) The date such source becomes subject to this Code.
- (b) Application Under Oath: Each applicant shall sign the permit application under oath, certifying the truth and accuracy of the information contained in the permit application in a form approved by the OEP.

- (c) Compliance Plan: The applicant shall submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this Air Quality Title. The compliance plan shall include a schedule of compliance and a schedule under which the permittee will submit progress reports to the OEP no less frequently than every six (6) months. In addition, the permittee shall periodically certify that the facility is in compliance with any applicable requirements of the permit, and promptly report any deviations from permit requirements to the OEP as provided in the regulations promulgated under this Title.
- (d) Availability to Public: A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this Title shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure, the applicant or permittee may submit information separately. Permits will be posted on the OEP website.
- (e) Fees: A processing and monitoring fee, as established by the OEP and upon approval by Tribal Council, shall be paid to the Tribe at the time of filing. These fees shall be used for costs associated with administering the Air Quality Control Plan.

61-04-15 Permit Requirements and Conditions

- (a) In General: Permits shall be issued under this Title for fixed terms, not to exceed five (5) years, except that affected sources under this Code must have five (5)-year fixed terms and solid waste incineration units under this Code may have up to twelve (12)-year fixed terms. Each permit shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the OEP, no less often than every six (6) months, the results of any required monitoring, provisions under which the permit can be revised, terminated, modified or reissued for cause, an identification of all alternative operating scenarios, and such other conditions as are necessary to assure compliance with applicable requirements of this Code and the regulations promulgated hereunder this Title, including the requirements of the applicable implementation plan.
- (b) Inspection, entry, monitoring, certification and reporting: Each permit issued under this part shall set forth inspection, entry, monitoring, compliance certification and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation promulgated under section 504(b) of the Clean Air Act. Any report required to be submitted by a permit issued to a corporation under this Title shall be signed by a responsible corporate official, who shall certify its accuracy.
- (c) Temporary Sources: The OEP may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of

this Code at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under this Code. Any such permit shall in addition require the owner or operator to notify the OEP in advance of each change in location. The OEP may require a separate permit fee for operations at each location.

- (d) Each issued permit shall contain the following statement to which the permittee must agree and subscribe for the permit to be complete and as a condition precedent to the final issuance of any permit:

“Permittee consents to the jurisdiction of the Sisseton Wahpeton Oyate/Oyate with respect to those activities conducted pursuant to this permit issued by the Office of Environmental Protection pursuant to the provisions of the Sisseton- Wahpeton Oyate Tribal Environmental Protection Code, and in particularity the Air Quality Title. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents including contractors and subcontractors of permittee whose activities fall within the scope of the issued permit.”

- (e) Permittee shall include the foregoing statement, in paragraph (d) above, as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the 1867 Lake Traverse Reservation in connection with any permit issued by the Office of Environmental Protection and each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for “Permittee” as appropriate.

61-04-16 Notification to the Administrator of the EPA

Notice: Unless the following notification requirements are waived by the Administrator of the EPA for a particular category of sources (other than major sources), pursuant to section 505(d) of the Clean Air Act, the Office of Environmental Protection shall:

- (a) Transmit to the Administrator of the EPA a copy of each permit application (including any application for a permit modification or renewal) or such portion thereof, including any compliance plan, as the Administrator of the EPA may require to effectively review the application and otherwise carry out the EPA Administrator’s responsibilities under the Clean Air Act, and
- (b) Provide to the Administrator of the EPA a copy of each permit proposed to be issued and issued as a final permit.

61-04-17 Permit Exemptions

The following activity is exempt from obtaining a minor air quality-operating permit: all traditional and cultural activities including but not limited to open fire pit burning of wood is permissible for Tribal Ceremonial purposes such as Sweat Lodge and Sun Dance.

61-04-18 Asbestos Policy

It is the policy of the Sisseton-Wahpeton Oyate to make all reasonable efforts and take all reasonable action to protect the air quality in the best interest of the health, welfare and safety of the population of the Reservation. No rule adopted pursuant to this chapter may be less stringent than those promulgated by the U.S. EPA under authority of federal laws governing the control of asbestos. The Sisseton-Wahpeton Oyate reserves the right to impose higher standards than those found in federal and state laws. The Office of Environmental Protection shall be the agency responsible for coordinating asbestos hazard abatement and management activities for the Reservation in order to assure compliance with tribal and federal laws. However, the Office of Environmental Protection shall promulgate rules to ensure and require that workers, asbestos contractors, supervisors, designers, management planners, and inspectors dealing with demolition or renovation projects under the National Emissions Standards for Hazardous Air Pollutants be certified and penalties for violations of this Code.

61-04-19 Definitions

The terms used in this Title IV shall have the following meanings ascribed to them.

- (a) “**Asbestos Contractor**” means any person that undertakes an asbestos project, including inspections for asbestos-containing materials, prepares an asbestos management plan or design or carries out an asbestos abatement project.
- (b) “**Trained Worker**” means any person who has successfully completed specified training in and can demonstrate knowledge of the health and safety aspects of working with asbestos.
- (c) “**Worker**” means an employee or agent of an asbestos contractor or facility owner or operator who has minimal awareness training.

61-04-20 OEP Promulgation of Rules to Establish an Asbestos Abatement-Training Program.

The OEP shall develop rules to establish an asbestos abatement-training program that assures the proper and safe abatement of asbestos hazards through asbestos contractor certification and worker certification.

61-04-21 Violations as Misdemeanor-Civil Penalties

- (a) Certificate required of asbestos contractor: No asbestos contractor may work on an asbestos project unless the asbestos contractor holds a certificate issued by the OEP. A violation of this subsection is a misdemeanor. In addition, any person who violates this section is subject to a civil penalty not to exceed one thousand dollars (\$1,000) per day of violation.
- (b) Responsibility of asbestos contractor for handling and delivery of friable asbestos material: The asbestos contractor carrying out an asbestos project is responsible for the safe and proper handling and delivery of waste that includes friable asbestos material to a landfill authorized to receive such waste. A violation of this subsection is a misdemeanor.
- (c) Duty of owner or operator to employ only certified asbestos contractors: An owner or operator of a facility containing asbestos shall allow only certified asbestos contractors to perform asbestos projects. In addition, any person who violates this section is subject to a civil penalty not to exceed one thousand dollars (\$1,000.00) per day of violation.

61-04-22 Asbestos Abatement Certificate

The OEP shall issue an asbestos abatement certificate to any asbestos contractor who:

- (a) Successfully completes an approved training course;
- (b) Demonstrates that each of his workers who works on or is directly responsible for an asbestos abatement project is certified under this subsection as appropriate; and
- (c) Certifies that he has read, understands and shall comply with the applicable state and federal rules on asbestos abatement.

61-04-23 Suspension or Revocation of Contractor's Certificate-Grounds.

The OEP may suspend or revoke an asbestos abatement certificate issued to an asbestos contractor, if the asbestos contractor:

- (a) Fraudulently obtains or attempts to obtain a certificate;
- (b) Fails at any time to satisfy the qualifications for a certificate or to comply with rules and regulations adopted by OEP under this chapter;
- (c) Fails to meet any applicable tribal, federal, or state standard relating to asbestos abatement;
- (d) Permits an untrained worker to work on an asbestos abatement project; or

- (e) Employs a worker who fails to comply with applicable tribal, federal or state rules relating to asbestos abatement.

61-04-24 Certification Fee Schedule

The OEP may adopt a fee schedule for those applying for certification and for application for a new certification and for a renewal of a certificate. The fees shall be made payable to the OEP upon application for a certificate and shall be deposited in the OEP environment fee fund to be used for furthering the purpose of protection of the health, safety and welfare of the population of the Sisseton Wahpeton Oyate. The fees are nonrefundable.

61-04-25 Severability

The provisions of this Code are severable. If any provision or part is held invalid, unconstitutional, or inapplicable to any person or under any circumstances, such invalidity, unconstitutionality, or inapplicability shall not affect or impair the remaining provisions of the Code.

Title V – Solid Waste

61-05-01 Findings

The power to steward and regulate the storage, collection, transportation, handling, treatment and disposal of solid waste on the Reservation which is anywhere within the exterior 1867 boundaries of the Reservation, inherently resides within the retained sovereign power of the Sisseton-Wahpeton Oyate, including subsequently purchased lands. The Tribe hereby finds that:

- (a) The health and welfare of tribal members and other persons who reside on the Reservation and the opportunities for economic development on the Reservation may be at risk from indiscriminate, improper and uncontrolled disposal of solid waste on the Reservation;
- (b) Cultural sites, natural resources, and landscapes may be at risk from indiscriminate and uncontrolled disposal of solid waste on the Reservation. Therefore, the fundamental right of tribal members and others to freely and safely engage in cultural and spiritual practices is endangered;
- (c) The improper disposal of solid waste on the Reservation is contrary to the “future” environment foreseen in the Tribe’s Environmental Management Plan that emphasizes an environment in which tribal members seven generations in the future enjoy clean air, water, and food;
- (d) There is a need for a concentrated effort to manage properly the disposal of solid waste on the Lake Traverse Reservation; and,
- (e) The Tribe, as the properly constituted sovereign government of the Lake Traverse Reservation, has undertaken, in conjunction with the Office of Environmental Protection and the Reservation community, the regulation, stewardship, and disposal of solid waste in such a manner as to further tribal self-determination in the interconnected fields of environmental protection, cultural self-determination, land use and economic policy.

61-05-02 Purpose

The purposes of this Title V are to:

- (a) Protect the health and safety of Tribal members and all other persons within the exterior 1867 boundaries of the Reservation by providing environmental and health standards for the collection, reduction, recycling, and disposal of solid waste, including all lands subsequently purchased;
- (b) Protect the historical and cultural values and traditions, social and economic vitality of residential, ceremonial, recreational, agricultural, commercial, industrial, forest,

riparian, wetlands, grasslands and any environmentally sensitive lands within the Reservation;

- (c) Protect air, water, and land from solid and hazardous waste pollution, including contamination of the Tribe's ground waters, surface waters, drinking water supplies, and all other natural resources;
- (d) Prohibit future open dumping and littering of waste and incineration, except as allowed under this Title V of this Code, on the Reservation and eliminate unhealthy, unsightly, and indiscriminate disposal or placement of solid waste;
- (e) Finance, implement, regulate, and enforce environmental standards and criteria, orders and permit conditions, and laws and regulations under this Code, for source reduction and recycling and the sanitary storage, collection, transportation and disposal of all solid waste within the exterior boundaries of the Reservation; and
- (f) Provide for education of persons living on and near the Reservation of the need to participate fully in efforts to reduce and manage solid waste generation, transportation, and disposal on and off the Reservation.

61-05-03 Definitions

Specific definitions relevant to this Title are as follows:

- (a) "**Closure**" is defined as the termination of the receiving, handling, recycling, treatment, composting, or disposal of solid waste at a solid waste facility, and includes all operations necessary to prepare the facility for post-closure maintenance.
- (b) "**Disposal**" is defined as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including surface waters or groundwaters.
- (c) "**Hazardous waste**" is defined as any waste substance, material, smoke, gas, particulate matter, or combination thereof that:
 - (1) Because of its quantity, concentration, or physical, chemical, or infectious characteristics, may either cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating illness, or pose a substantial present or potential hazard to human health, living organisms, or the environment when improperly handled, treated, stored, transported, or disposed of;
 - (2) Is specifically defined to be hazardous or toxic by the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or the

Resource Conservation and Recovery Act of 1976, as either act may be amended from time to time, and by any regulations promulgated, including but not limited to any substance, material, smoke, gas, particulate matter, or combination thereof containing asbestos, petroleum or its byproducts, or polychlorinated biphenyls (PCBS"); or

- (3) Is hazardous, toxic, ignitable, reactive, or corrosive, and that is defined and regulated as such by OEP or the E.P.A.
- (d) “**Industrial solid waste**” is defined as solid waste generated by manufacturing or industrial processes that is not a regulated hazardous waste under Subtitle C of the RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mineral wastes, or oil and gas wastes.
- (e) “**Infectious waste**” is defined as:
 - (1) Laboratory wastes, including but not limited to cultures of etiologic agents, which pose a substantial threat to health due to their volume and virulence.
 - (2) Pathologic specimens, including but not limited to human or animal tissues, blood elements, excreta, and secretions that contain etiologic agents, and attendant disposable fomites.
 - (3) Surgical specimens, including but not limited to human or animal parts and tissues removed surgically, or at autopsy, which in the opinion of the attending physician or veterinarian, contain etiologic agents and attendant disposable fomites.
 - (4) Human dialysis waste materials, including but not limited to arterial lines and dialysate membranes.
 - (5) Carcasses of animals infected with etiologic agents that may present a substantial hazard to public health if improperly managed.
 - (6) Equipment, instruments, utensils, or any other material that is likely to transmit etiologic agents.
 - (7) Any other material that is likely to transmit etiologic agents, or presents a significant danger of infection, because it is contaminated with, or may reasonably be expected to be contaminated with, etiologic agents.

- (f) **“Municipal solid waste landfill unit”** or **“MSWLF”** is defined as a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR Sec. 257. A MSWLF unit also may receive, as authorized under the SWDA, other types of RCRA Subtitle D wastes, such as, commercial solid waste, nonhazardous sludge, and industrial solid waste. The Code, however, prohibits the disposal of certain solid wastes in a MSWLF that would otherwise be permitted under the SWDA, such as, the conditionally exempt small quantity hazardous generator waste. A MSWLF may be publicly or privately owned. A MSWLF unit may be a new unit, an existing unit or a lateral expansion. A lateral expansion is the horizontal expansion of the waste boundary of an existing unit. A MSWLF must comply with all of the criteria under this Code.
- (g) **“Nuisance”** is defined as a condition that occurs as a result of the handling, treatment, composting, or disposal of solid waste, which condition:
- (1) Is injurious to human health or is indecent or offensive to the senses and interferes with the comfortable enjoyment of life or property, and
 - (2) Affects an entire community or neighborhood or any considerable number of persons.
- (h) **“Part 258 Criteria”** are the environmental criteria contained in 40 CFR Part 258 for the location, operation, design, groundwater monitoring, corrective action, closure, post-closure care, and financial assurance requirements for MSWLFs. These are environmental standards mandated by the Federal Government.
- (i) **“Regulated hazardous waste”** under the SWDA is defined as a solid waste that is a hazardous waste, as defined in 40 CFR Part 261, that is not excluded from regulation as a hazardous waste under 40 CFR Sec. 261.4(b), or was not generated by a conditionally exempt small quantity generator as defined in 40 CFR § 261.5. Regulated hazardous waste is not allowed to be disposed of at MSWLFs under the SWDA. This Code provides that conditionally exempt small quantity generator hazardous waste is not allowed to be disposed of at MSWLFs on the Reservation, even though such waste is not regulated hazardous waste. This is a more stringent environmental standard than is required under the 258 Criteria.
- (j) **“Solid waste”** is defined as any garbage, or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded materials, 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).

- (j) “**SWDA**” is defined as the Federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (“RCRA”) and the 1984 Hazardous and Solid Waste Amendments (“HSWA”) to RCRA, and more particularly, subchapter IV - State or Regional Solid Waste Plans, SWDA §§ 4001-4010, 42 U.S.C.A. §§ 6941-6949(a), which requires that the EPA promulgate criteria for MSWLFs, and which prohibits disposal of solid waste at landfills which do not satisfy such criteria. The 40 CFR Part 258 regulations contain the criteria for MSWLFs, and became effective on October 9, 1993, although there are other effective dates under 40 CFR Part 258.
- (k) “**Treatment**” when used in connection with hazardous waste, is defined as any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste non-hazardous, safer for transport, amendable for recovery, amendable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it non-hazardous.

61-05-04 OEP is the Lead Tribal Agency

OEP is hereby designated as the lead Tribal Agency for all purposes under 40 CFR Part 239 and 40 CFR Part 258. OEP shall communicate with the Tribal Council, EPAC, the District Councils, and EPA regarding program activities; prepare the application for EPA approval of the Tribe's Solid Waste Program under the Part 258 Criteria; make reports to the Tribal Council, EPAC; the District Councils; and make reports to EPA in a manner and containing such information as the Board approves, excluding any confidential or privileged information.

61-05-05 OEP to Investigate the Activities of any Permittee Under this Code

Upon complaint by any person, which establishes reasonable grounds, or upon its own motion, the OEP shall investigate the activities of any permittee under this Code. In conducting an investigation, the OEP shall have the authority, without reasonable notice, if necessary, to enter into the permittee's place of business, operation, or facility, to inspect any books or records of the permittee, to inspect any of the permittee's property, or sites of possible pollution, and to take samples. In addition, the OEP may require, or monitor such tests as it deems necessary, to ensure that the provisions of this Code, or any permit conditions, are being complied with by any owner/operator of a solid waste facility or transporter of solid waste. Such authority may be exercised by any authorized OEP employee, agent or representative, and including any agents of the U.S. EPA who are specifically authorized by OEP. The OEP shall, in addition, have those powers and duties set forth in this Subsection of this Code regarding compliance monitoring of permittees.

61-05-06 Prohibition of Dumping of Solid Waste

On and after the date that this Code is approved by the Sisseton Wahpeton Oyate Tribal Council, 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 defined under this Code, including any hazardous waste as defined under this Code, at or near an open dump site within the exterior 1867 boundaries of the Reservation, on any other land within the exterior boundaries of the Reservation, and any subsequently purchased land, except as disposal may be permitted under this Code at a duly authorized and designated MSWLF or Part 257 landfill. Further, 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:

- (a) Such site is specifically determined by OEP to be in compliance with 40 CFR Part 258;
- (b) Such site is specifically determined by OEP to be a MSWLF where solid waste may be disposed of under 40 CFR Part 258; or
- (c) Such site is specifically determined by OEP to be a landfill where solid waste may be disposed of under 40 CFR Part 257.

61-05-07 Prohibition of Burning of Solid or Hazardous Waste

On and after the date that this Code is approved by Tribal Council, it is expressly prohibited, and shall be unlawful, for any person to burn any solid or hazardous waste anywhere within the exterior boundaries of the Reservation, including all subsequently purchased land, except as OEP may specifically authorize or permit by rule or regulation which is not prohibited by federal law. The OEP may authorize by rule and regulation, the infrequent open burning of agricultural wastes, silvicultural wastes, land cleaning debris, diseased trees, or debris from emergency cleanup operations, including at any future MSWLF that may be cited on the Reservation. The OEP may amend the date of prohibition based on the availability of alternative waste stewardship options on the Reservation.

61-05-08 Criminal Penalties

Any person over whom the Tribal court exercises criminal jurisdiction, and who violates any of the provisions of this Subsection of this Code shall, upon conviction in Tribal Court, be guilty of a criminal offense, and shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00), for each day each violation occurs, and in the discretion of the Tribal Court, may also be subject to imprisonment in the Tribal jail of not less than one day, nor more than ninety days, for each day each violation occurs, not to exceed a period of up to one year for each violation. As an alternative sentence, any person found guilty of violating any of the provisions of this Subsection of this Code may be placed on probation and required by the Tribal Court to provide not less than forty (40) hours, but not more than two hundred (200) hours, of community service assisting the Solid Waste Program, or performing other kinds of community service.

61-05-09 Civil Penalties

Any person over whom the Tribal court exercises civil jurisdiction and who violates any of the provisions of this Subsection of this Code is subject to the imposition of civil penalties for such

unlawful activities. The OEP through the Tribe's Legal Department 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's fees and costs. 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 found by the Tribal Court to have committed the alleged violation(s), shall be subject to a civil penalty of not more than Fifteen-Thousand Dollars (\$15,000.00), for each day each violation occurs, including reasonable attorney's fees and costs.

61-05-10 Civil Damages

The OEP through the Tribe's Legal Department is authorized to bring 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 Subsection of this Code, for all civil damages caused, including damages to the land or natural resources of the Tribe or its members, and for the reasonable costs actually incurred or to be incurred by the Tribe for cleaning up any solid or hazardous waste or abating the effects thereof, together with the costs of suit, including reasonable attorney's fees. The Tribe's Legal Counsel must approve the filing of any civil action for damages before such action is filed.

61-05-11 Other Remedies

- (a) Any Tribal law enforcement officer is authorized to seize the property of any person who commits and is charged with the criminal violation of any of the provisions of this Title V of this Code, if such property while used in the commission of such offense(s) is located on the Reservation. If such person is convicted of any offense under any provisions of this Title V of this Code, such seized property shall be forfeited to the Tribe.
- (b) Likewise, any Tribal law enforcement officer is authorized to seize the property of any person who commits any civil violation of any of the provisions of this Subsection of this Code, if such property while used in the commission of such offense(s) is located on the Reservation. Such property shall be seized as security for the payment of any civil penalties or damages which may be assessed or imposed, and such property is subject to forfeiture to the Tribe for payment of any civil penalties or damages actually assessed or imposed.
- (c) All civil penalties assessed by the Tribal Court shall be paid to the OEP and shall be retained in a trust fund designated for paying costs of remedial responses to environmental emergencies occurring on the Reservation and shall only be expended for such purposes. This includes any property, which is forfeited to the Tribe for payment of civil penalties.
- (d) All civil damages shall be paid to the Tribe. This includes any property, which is forfeited to the Tribe for payment of civil damages.
- (e) Reasonable attorney's fees awarded in any civil action shall be paid to the Tribe, if the attorney(s) is/are an employee(s) of the Tribe, or shall otherwise be paid according to

the provisions of any retainer agreement. All costs of suit awarded in any civil action shall be paid to the Tribe.

61-05-12 Required Permits for the Construction and Operation of a Solid Waste Facility and the Collection and Transportation of Solid Waste

Tribally chartered corporations or agencies, private enterprises, or any other persons are required to obtain: (1) a solid waste facility construction and/or operation permit; or (2) a solid waste collection and transportation permit, from the OEP to either to construct or operate solid waste facility or to collect and transport solid waste within the exterior boundaries of the Reservation. Any permittee shall be required to comply with the Code, any rule or regulation promulgated there under, all Tribal environmental standards and criteria, all relevant guidance documents, all permit conditions, all orders issued by OEP under authority of the Code, and all applicable Tribal or Federal laws, environmental in nature or otherwise.

Each issued permit shall contain the following statement to which the permittee must agree and subscribe for the permit to be complete and as a condition precedent to the final issuance of any permit:

“Permittee consents to the jurisdiction of the Sisseton Wahpeton Oyate/Oyate with respect to those activities conducted pursuant to this permit issued by the Office of Environmental Protection pursuant to the provisions of the Sisseton- Wahpeton Oyate Tribal Environmental Protection Code, in particular Title V. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents including contractors and subcontractors of permittee whose activities fall within the scope of the issued permit.”

61-05-13 Permits for the Construction and Operation of Solid Waste Facilities

- (a) The OEP shall develop and promulgate regulation to this Title V for review and approval by the Tribal Council including Tribal standards and criteria regarding the location; design; performance; operating standards; groundwater monitoring; and other environmental, community, and economic concerns; and financial assurance requirements for the construction and operation of solid waste facilities within the exterior boundaries of the Lake Traverse Reservation. The OEP may refer to existing state codes governing construction and operation of such solid waste facilities and existing tribal codes governing general facilities siting, design, and construction as models for the development of the Title V regulations.
- (b) On and after such a date as this Title V is enacted and regulations are promulgated, OEP shall issue permits in conformance with the processes stated in this Title V and promulgated regulations.
- (c) Solid waste permits for the collection and transportation of solid waste must be renewed annually by OEP on a calendar basis. The OEP shall adopt rules and

regulations for solid waste collection and transportation on the Reservation, including the operation of transfer stations, and may impose whatever conditions it deems reasonably necessary to protect the environment, and the health, safety, cultural and general welfare of the Tribe and its members before issuing any permit under this section.

61-05-14 Public Participation and Hearings

- (a) No solid waste construction and/or operation facility permit shall be issued unless there has been a public hearing conducted by OEP, at which the applicant and all interested persons shall have an opportunity to present relevant evidence and be heard on whether the application should be granted, or whether there are any special conditions which should be included in such permit. All applications for a solid waste construction and/or operation facility permit, including all documentation required for such permit, shall be available for public review and inspection at least sixty (60) days in advance of the hearing.
- (b) OEP shall allow public participation and shall hold one or more informal public hearings, including but not limited to the following matters prior to taking any formal action:
 - (1) The issuance of any rules or regulations under this Title V, including any guidance documents; and
 - (2) Any other matters which the Coordinator deems appropriate for public participation and review.
- (c) OEP shall schedule such hearings at a convenient location, and give reasonable advance notice of the date, time and subject matter(s) of such hearings, by publication in the newspaper most widely circulated on the Reservation. Sixty (60) days advance notice is required for the issuance of any solid waste facility permits. There shall be a reasonable opportunity for anyone to comment at such hearings, and to present any relevant information.

61-05-15 Right to Intervene

In any administrative hearing before the OEP, or civil action filed in the Tribal Court as authorized under the Code, any person shall be allowed to intervene if intervention as a matter of right only when the applicant claims an interest relating to the subject of the action and he/she is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest. The Tribe may not defeat such right of intervention on the basis that existing parties adequately represent the applicant's interest. A person may also file with the Environmental Hearing Panel.

61-05-16 Oath and Application Filing Fees

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

61-05-17 Fees and Taxes

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

61-05-18 Temporary Restraining Orders and Preliminary or Permanent Injunction

- (a) If OEP has reason to believe that any person is in violation of any provision of this Code, any rule or regulation promulgated under this Code, any condition of any permit issued under this Code, or that any person is creating an imminent and substantial endangerment to the public health or the environment, OEP through the Legal Department may on behalf of the Tribe, file an action in Tribal Court requesting a temporary restraining order, a preliminary injunction or any other relief necessary to protect the public health or the environment. OEP will consult with Tribal Legal Department prior to filing any action in Tribal Court and will follow Sisseton-Wahpeton Oyate Tribal Code Chapter 21: Rules of Civil Procedure in filing pleadings.

61-05-19 Compliance, Abatement and Remedial Action Orders

- (a) Any permittee who constructs and/or operates a solid waste facility on the Reservation, or who collects and transports solid waste on the Reservation, who violates any of the conditions in his permit; or who violates any part of this Code; or any rule or regulation or guidance document adopted under this Code; or any relevant Tribal environmental criteria or standards for solid waste permittees; or any other Tribal or Federal environmental law, shall upon order of OEP, cease and desist from any improper action or violation(s), clean up any solid waste, abate any hazard, pollution, or nuisance, and otherwise comply with any directive, or corrective or remedial action order issued by OEP. The OEP may issue an order requiring compliance immediately or within a specified period of time. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance, if applicable, outline specific remediation actions, if appropriate, and the right to a hearing before OEP. A compliance order shall be hand delivered to the alleged violator. An order issued by OEP shall become final unless an appeal is filed

with OEP for a hearing within thirty days of receipt of the order. A permittee shall have all procedural rights at any administrative hearing held before OEP under this Subsection of this Code, including the right to judicial review granted under this Chapter. The OEP through the Tribe's Legal Counsel may file an action in Tribal Court to enforce final orders issued under this section.

- (b) Imminent Harm and Remedial Actions By OEP. If any of the circumstances set forth hereinabove pose an imminent harm to life or health, the OEP may expend any available monies to perform any cleanup, abatement, or remedial work required.
- (c) Remedial Actions by OEP. If any of the circumstances set forth hereinabove do not pose an imminent threat to life or health, and OEP has ordered any clean up, abatement, corrective or remedial work, and the permittee fails to perform such work as ordered, OEP is authorized, to perform such work and expend monies for such purpose, as it deems reasonably necessary for the public health and safety.
- (d) Liability of Solid Waste Permittees for Remedial Costs. If solid waste or hazardous waste is cleaned up, the effects thereof abated, or any other necessary remedial action is taken by OEP under this Section, the permittee who committed such violation(s), shall be liable to the Tribe for the reasonable costs actually incurred in cleaning up any solid waste or hazardous waste, abating the effects thereof, or taking other corrective or remedial action, including all damages to the natural resources of the Tribe or its members. The amount of such costs shall be recoverable by the Tribe in a civil action brought by OEP through the Tribe's Legal Counsel filed in the Tribal Court, together with the costs of suit, including reasonable attorney's fees. Any judgment ordering the payment of these costs to the Tribe will bear interest at the rate of ten percent (10%) per annum.

61-05-20 Compliance with Permits

The OEP Program may develop a compliance schedule for any solid waste facility owner/operator or solid waste transporter who is not in compliance with any permit condition, or any solid waste criteria under this Code, or its rules or regulations, or Guidance Document. The compliance schedule shall assure that diligent progress shall be made by such permittee to bring him or her into compliance within a specified period of time. If any solid waste facility owner/operator or solid waste transporter is not in compliance within the period of time specified, the OEP may file a written Statement of Charges with the permittee as provided in Section 61-05-27 herein, and OEP, after a hearing, may subject such permittee to a civil penalty of a up to Fifteen Thousand Dollars (\$15,000.00), for each day each violation(s) continues uncorrected, or may, if such violation(s) continues, revoke, suspend, or modify the permit until such time as the violation(s) are remedied.

61-05-21 Civil Penalties and Revocation, Suspension, or Modification of Permit

- (a) Statement of Charges. A hearing before the Environmental Hearing Panel to determine a permittee's liability for civil penalties under this Subsection of this Code, and/or whether a permit should be revoked, suspended, or modified may be initiated

by OEP by filing a written Statement of Charges with the permittee that specifically sets forth the acts, violations, or omissions that the permittee is charged with, and specifying those parts of this Code, orders, permit conditions, rules or regulations, or guidance documents that the permittee is alleged to have violated. The Statement of Charges and all accompanying documents shall forthwith thereafter be hand-delivered to the permittee.

- (b) Grounds for suspension, revocation, or modification. After a hearing, any solid waste permit issued by OEP may be suspended, modified, or revoked by OEP, but only for cause, including the following:
- (1) Any violation of any condition or requirement contained in the permit or this Code, any rules and regulations promulgated there under, orders, or guidance document;
 - (2) Obtaining any permit by misrepresentation or failing to disclose fully all relevant facts; or
 - (3) Any violation of any Tribal or Federal environmental law.
- (c) Notice of Hearing. The Statement of Charges shall be accompanied by a notice advising the permittee of a date for a hearing before the Environmental Hearing Panel, which shall not be earlier than ninety (90) days after personal delivery of the Statement of Charges.
- (d) Answer. The permittee shall file an Answer of Defense with the Environmental Hearing Panel within thirty (30) days after service of the Statement of Charges, in which he or she shall admit or deny such charges, including the allegation of any defenses, mitigating circumstances, or any other objections or responses.
- (e) The Hearing. Any hearing before the Environmental Hearing Panel under this Section shall be conducted in accordance with all of the procedural rights granted in this Subsection of this Code.
- (f) The Decision. Within thirty (30) days after the case is submitted for decision, the OEP shall issue its final decision. The final decision shall be in writing, and shall contain findings of fact, a determination of the issues presented, an assessment of civil penalties, if any, a determination of whether such permit shall be revoked, suspended or modified, if applicable, and an assessment of costs and reasonable attorney's fees. A copy of the decision shall be forthwith delivered by OEP to the permittee. The OEP Administrator shall mail copies of the decision to all other parties.
- (g) Judicial Review. In some instances Tribal Council may defer to Judicial Review. An adverse party aggrieved by a final decision of the Environmental Hearing Panel and appeals procedures through Tribal Council, may be entitled to judicial review thereof

by the Tribal Court within thirty (30) days from the date of receipt of the final decision should Tribal Council defer to Judicial Review. Adverse parties must request Judicial Review to Tribal Council during appeal process. Judicial Review must be obtained through a majority vote of council through motion. In such instance, the adverse party must file a petition for review in the Tribal Court within thirty (30) days. Failure to timely file a petition for review within the thirty (30) days shall be deemed a waiver of the right to appeal to the Tribal Court. The Tribal Court shall, upon the petition of an affected party, conduct a review of the record of the proceedings of the OEP, Environmental Hearing Panel, but shall not take new evidence; it may modify or reverse a decision or action of the Environmental Hearing Panel, only where such action or decision is contrary to the law, is not supported by the evidence, or is clearly arbitrary and capricious. The OEP and Environmental Hearing Panel, upon request of the Tribal Court, shall provide to the Tribal Court a certified copy of all pleadings, documents, records, transcripts, and all other evidence that formed the basis for any action or decision as to which an affected party seeks review. The filing of a petition for review shall not operate as a stay of the OEP or Environmental Hearing Panel final decision, but the Tribal Court has the authority to issue a stay upon such terms, as it deems appropriate. Tribal Council decisions are deemed final.

- (h) Remedies Not Exclusive. The rights of the Tribe with respect to a permittee under this Section, including the right to issue compliance orders, recover civil penalties, or civil damages for clean up, abatement, corrective or remedial costs against a permittee, or revoke, suspend, or modify a permit, are not intended to be exclusive, and the Tribe reserves all other legal rights which it otherwise has against any permittee, including the right to seek injunctive relief as provided in this Code, or seek relief in any court of competent jurisdiction.

61-05-22 Severability

The provisions of this Code are severable. If any provision or part is held invalid, unconstitutional, or inapplicable to any person or under any circumstances, such invalidity, unconstitutionality, or inapplicability shall not affect or impair the remaining provisions of the Code.

Title VI – Pesticide Code

61-06-01 Purpose

The Sisseton-Wahpeton Oyate hereby finds that unregulated pesticide uses within the exterior boundaries of the Lake Traverse Reservation poses a serious and substantial threat to human health, welfare and safety of both Tribal members and non-members. The Tribe further finds that pesticides are a valuable tool for agricultural production and for the protection of man and the environment from insects, rodents, weeds and other forms of life, which may be pests. It is essential to the public that pesticides are regulated to prevent adverse effects on life and the environment. The purpose of the Pesticide Code is to regulate, in the public interest, the distribution, storage, transportation, disposal, use, and application of pesticides to control pests as hereinafter defined.

61-06-02 Definitions

For purposes of this code:

- (a) “**Agricultural Commodity**” means any plant, or part thereof, or animal, or animal product produced by a person (including farmers, ranchers, viniculturist, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable person) primarily for sale, consumption, propagation or humans or animals use.
- (b) “**Beneficial insects**” means those insects, which during their life cycle, are effective pollinators of plants, or are parasites or predators of pests.
- (c) “**Certified applicators**” means any individual who is certified under this Code and regulations to use any restricted use pesticide.
- (d) “**Commercial applicator**” means a certified applicator that uses any restricted use pesticides on any property other than as a private applicator or for the purposes of persons applying restricted use pesticides within the exterior boundaries of the Lake Traverse Reservation.
- (e) “**Distribute**” means to offer for sale, hold for sale, sell barter, or supply pesticides within the exterior boundaries of the Lake Traverse Reservation.
- (f) “**FIFRA**” means the federal law, Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 135 *et. seq.* (1972).
- (g) “**General use pesticides**” means those pesticides not designated as restricted use pesticides by the Sisseton-Wahpeton Oyate or the EPA.
- (h) “**Native Plants**”- Plant species that occurred within the boundaries of the Sisseton Wahpeton Oyate Lake Traverse Reservation prior to the arrival of Europeans, that

hold a special significance to Sisseton Wahpeton Oyate historically, and have been used ceremonially and/or medicinally, and have been a part of their diet for as long as the Sisseton Wahpeton Oyate have resided in this region.

- (j) **“Pesticide”** means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant.
- (k) **“Pesticide applicator”** means a private applicator, a commercial applicator, or both.
- (l) **“Pest”** means any insect, rodent, worms, fungus, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, which are annoying or otherwise injurious or harmful to agriculture, health and the environment.
- (m) **“Private applicator”** means a certified person who uses any restricted use pesticide for purposes private of producing any agricultural commodity on their property within the exterior boundaries of the Lake Traverse Reservation, whether such property is owned or leased, if such application is not for compensation.
- (n) **“Tribal Pesticide Enforcement Officer or TPEO”** means any Tribal enforcement personnel employed by the Sisseton Wahpeton Oyate duly authorized to implement and enforce Title VI, Chapter 61.
- (o) **“Restricted use pesticides”** means those pesticides designated as restricted use by the Sisseton-Wahpeton Oyate or EPA.
- (r) **“Wildlife”** means all undomesticated animals, birds, reptiles, amphibians and other aquatic life and that are neither human, domesticated, nor as defined in this Code as pests.

61-06-03 Classification of Pesticides

Pesticides introduced onto or on the Lake Traverse Reservation are either “restricted use” or “general use” pesticides according to standards consistent with FIFRA. As a minimum the Tribal Pesticide Officer shall consider all pesticide products classified for restricted use by the Tribe, Administrator of EPA or the Secretaries of South Dakota and North Dakota’s Department of Agriculture as for restricted use on the Lake Traverse Reservation. In addition, the Tribal Pesticide Enforcement Officer may impose further restrictions on the use of additional pesticide products if it is found that characteristics of such pesticides requires that their uses be further restricted to prevent damage to property other than the property to which they are directly applied or to persons, animals, crops or vegetation and native plants, other than the pests which they intend to destroy.

61-06-04 Certification of Applicators

Except as provided otherwise, all pesticide applicators applying restricted use pesticides within the exterior boundaries of the Lake Traverse Reservation must be certified by the TPEO as provided by this Title VI and by OEP regulations. No person shall apply restricted use pesticides on the Lake Traverse Reservation without first obtaining a certification document from OEP.

61-06-05 Classification of Pesticide Applicators

Pesticide applicators shall be classified as commercial applicators or private applicators as defined by OEP regulations.

61-06-06 Registration of Restricted Use Pesticides

Before distributing restricted use pesticides within the exterior boundaries of the Lake Traverse Reservation, all persons must register restricted use pesticides with OEP and with the Tribal Pesticide Officer.

61-06-07 Licensing of Restricted Use Pesticide Dealer

Before distributing restricted use pesticides within the exterior boundaries of the Lake Traverse Reservation all persons must obtain a Tribal restricted use pesticide dealers license.

Each issued license or permit shall contain the following statement to which the licensee/permittee must agree and subscribe for the permit to be complete and as a condition precedent to the final issuance of any permit:

“Licensee/Permittee consents to the jurisdiction of the Sisseton Wahpeton Oyate/Oyate with respect to those activities conducted pursuant to this permit issued by the Office of Environmental Protection pursuant to the provisions of the Sisseton- Wahpeton Oyate Tribal Environmental Protection Code, in particular Title VI. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents including contractors and subcontractors of licensee/ permittee whose activities fall within the scope of the issued license/permit.”

61-06-08 Storage and Transport of Pesticides and Containers

All pesticides shall be stored in their original containers and in accordance with label recommendations. All labels of stored pesticides shall be plainly visible in their original containers. Pesticides shall not be transported with foods, or any material to create a hazard to humans, animals, or the environment. Persons storing pesticides in bulk or otherwise within the

Lake Traverse Reservation must, as a matter of Tribal law, comply with the requirements of Title VI and regulations governing the storage of pesticides.

61-06-09 Unlawful Acts

(a) It shall be unlawful to:

- (1) Fail to report a known pesticide accident or to comply with any provision of this Code, regulation(s), any order of the OEP or Tribal Court;
- (2) Use or recommend the use of any pesticide in a manner inconsistent with its labeling;
- (3) Aid or abet a certified or uncertified person in evading the provisions of this Code, conspire with a certified or an uncertified person in evading the provisions of this Code, or allow one's certification to be use by another person;
- (4) Make false or misleading statements with respect to the implementation of this Code;
- (5) Detach, alter, deface, or destroy, in whole or in part, any labeling required under this Code;
- (6) Prevent any entry, inspection, copying of records, or sampling authorized by this Code;
- (7) Advertise a pesticide without indicating whether it is a general use pesticide or a restricted use pesticide; or
- (8) Transport or dispose of any pesticide or pesticide container in such a manner as to cause injury to humans, crops, livestock, wildlife, beneficial insects, and amphibians, or to pollute any waterway in a manner harmful to any wildlife therein. Under this Title, native plants are specifically recognized as protected from the illegal transport and disposal of pesticides, pesticide containers and the volatile chemicals associated with such. Protected SWO native plants are identified as, but not limited to, the following:

Scientific Name	Common Name	Dakota Name
(a) <i>Achillea millefolium</i>	Yarrow	Taopi Pezuta
(b) <i>Acorus calamus</i>	Sweet Flag	Sinkpe-ta-wote
(c) <i>Allium stellatum</i>	Pink Wild Onion	Psin

(d) <i>Anemone patens</i>	Pasque Flower	Hokshi-chepa wahcha
(e) <i>Amelanchier ainifolia</i>	Juneberry	Wipazuka
(f) <i>Artemisia frigida</i>	Fringed Sage	Wia-ta-pezhihuta
(g) <i>Artemisia tridentata</i>	Prairie Sage	Pezhi-hota tanka
(h) <i>Astragalus crassicaarpus</i>	Ground Plum	Pt eta wote
(i) <i>Dalea aurea</i>	Prairie Clover	Pezhuta pa
(j) <i>Dalea purpurea</i>	Purple Prairie Clover	Wanahcha
(k) <i>Echinacea angustifolia</i>	Purple Coneflower	Ichahpe-hu
(l) <i>Fragaria virginiana</i>	Wild Strawberry	Wazhushtech
(m) <i>Gentiana puberulenta</i>	Downy gentian	Pezhuta-zi
(n) <i>Glycyrrhiza lepidota</i>	American Licorice	Wi-nawizi
(o) <i>Heracleum lanatum</i>	Cow Parsnip	Tado
(p) <i>Juniperus virginiana</i>	Red Cedar	Hante Sha
(q) <i>Liatris aspera</i>	Blazing Star	Wahuwapa-kichi wahcha
(r) <i>Lygodesmia juncea</i>	Skeleton Weed	Maka Cha ⁿ shi ⁿ shi ⁿ
(s) <i>Malvastrum coccinea</i>	Red False Mallow	Heyoka ta pezuta
(t) <i>Mentha arvensis</i>	Wild Mint	Chiaka
(u) <i>Populus deltoides</i>	Cottonwood	Waga cha ⁿ
(v) <i>Psoralea esculenta</i>	Prairie Turnip	Tipsina
(w) <i>Prunus americana</i>	Wild Plum	Ka te
(x) <i>Prunus virginiana</i>	Chokecherry	Cha pa
(y) <i>Ratibida columnifera</i>	Prairie Coneflower	Wahcha-zi chikala
(z) <i>Ribes americanum</i>	Beaver Berries	Chap-ta-haza

(aa)	<i>Rosa arkansana Porter</i>	Prairie Rose	O ⁿ zhi ⁿ zhi ⁿ tka
(bb)	<i>Rubus idaeus subsp. sachalinensis</i>	Red Raspberry	Takanheca
(cc)	<i>Sanguinaria Canadensis</i>	Bloodroot	We pezuta
(dd)	<i>Sheperdia argentea</i>	Buffaloberry	Mashti cha-pute
(ee)	<i>Typha latifolia</i>	Broad-leaved cattail	Wihuta-hu
(ff)	<i>Vitis riparia</i>	Wild Grape	Hasta ha ka
(gg)	<i>Zizania aquatica</i>	Wild Rice	Psi

61-06-10 Notice of Violation, Cease and Desist Order, Permit Suspension, Permit Revocation or Modification of Certification

- (a) If an emergency situation exists as determined by OEP, OEP may issue a Notice of Violation and/or Cease and Desist Order, Permit Suspension, Permit Revocation, or Modification of Certification if the OEP has good cause to believe, based upon an investigation by the OEP or its agent, that person, an applicator certified to use restricted use pesticides, a restricted use pesticide dealer licensed by the Tribe, or a prospective applicator or dealer applying for certification or licensure, is violating any provision of the Code.
- (b) If no emergency circumstances are present, the OEP shall provide any person suspected of violating any provisions of this Code with notice of such alleged violation. Such notice shall inform the alleged violator of the action that constitutes the violation the relevant tribal law. The alleged violator shall remedy the violation within 2 days; and, if the violation is not remedied with 5 days, OEP may issue an enforcement order as stated in (a) above.

61-06-11 Hearings

If the party determined by OEP to have violated this Title VI contests OEP’s administrative action: 1) determining a violation has occurred; 2) denied an application for such certification or license; or 3) imposed a monetary fines under this Code, the party may request a hearing before the Environmental Hearing Panel.

61-06-12 Fines

The OEP may assess any person violating any provision of this Code a civil fine for each violation. A person against whom the OEP assesses a fine may appeal to the Tribal Court.

61-06-13 Delegation of authority

Any authority vested in the OEP by this Code may be delegated to such officers, agents, or other individuals as the OEP may designate.

61-06-14 Entry and inspection

For the purpose of implementing and enforcing this Code and upon presentation of proper credentials and notice, the OEP or its designated agent may enter public or private property at reasonable times by permission or order obtained from the Sisseton-Wahpeton Tribal Court for sampling, inspection, and observation of pesticide application.

61-06-15 Severability

The provisions of this Code are severable. If any provision or part is held invalid, unconstitutional, or inapplicable to any person or under any circumstances, such invalidity, unconstitutionality, or inapplicability shall not affect or impair the remaining provisions of the Code.

TITLE VII HAZARDOUS WASTE, UNDERGROUND STORAGE TANKS, LEAD BASED PAINT CODES

61-07-01 Purpose and Scope

The purpose of this Title VII is to provide code provisions and regulations governing management of hazardous wastes, generation, transportation, treatment, storage, and disposal of hazardous wastes which may include, but are not limited to ownership, location, design, construction, operation, and maintenance of hazardous waste management facilities, financial responsibility, personnel training, record keeping, reporting, labeling, monitoring, container use, inspections, closure, post-closure procedures and requirements, contingency planning, enforcement, and use of a manifest system to assure all hazardous wastes are designated for treatment, storage, or disposal at a permitted hazardous waste management facility. The OEP may adopt code provisions and regulations, which are consistent with the Hazardous Materials Transportation Act (88 Stat. 2156; 49 U.S.C. §§801, *et seq.*) to protect the public safety, health and welfare of the people of the Sisseton Wahpeton Oyate of the Lake Traverse Reservation.

61-07-02 Short Title

This Code shall be known and may be cited as "The Hazardous Waste Underground Storage Tanks, Lead Based Paint, Radon and Asbestos Code of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation" and may be referred to as the "Hazardous Wastes Code" or "HWC".

61-07-03 Definitions

The following definitions are limited to application and use of terms as used in this Title VII.

- (bbb) "**Code**" or "**Title VII**" means the entire Title VII and the promulgated related regulations.
- (ccc) "**Collection**" means the act of removing hazardous wastes from the central storage point at the source of generation.
- (ddd) "**Disposal**" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land, air, or water so that such hazardous waste or any constituent thereof may enter the environment, or be emitted into air, or discharged into any waters, including ground waters the orderly process of discarding useless or unwanted material.
- (eee) "**Dump**," means a land site where waste is disposed of in a manner that does not protect the environment or is a danger to health, welfare and safety.
- (fff) "**Hazardous Waste**" means a solid waste and combination of solid wastes, as defined in the Resource Conservation and Recovery Act (RCRA) § 1004(50) means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

1. Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or
 2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
 3. Hazardous Waste excludes radioactive materials regulated pursuant to; all waste materials considered being excessively toxic or poisonous, corrosive, irritating or sensitizing, radioactive, biologically infectious, explosive or flammable, or other materials as determined by OEP.
- (ggg) "**Hazardous waste management**," means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.
- (hhh) "**Hazardous waste management facility**," means any facility for the collection, source separation, storage, transportation, transfer, processing, treatment, recovery, or disposal of hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.
- (iii) "**Manifest**," means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.
- (jjj) "**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.
- (kkk) "**Solid waste**," means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded materials, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include mining waste in connection with a mine permitted under Title 45, hazardous waste as defined under chapter 34A-11, solid or dissolved materials in domestic sewage or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended to January 1, 1989, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended to January 1, 1989.
- (lll) "**Solid waste facility**" or "**solid waste disposal facility**," means all facilities and appurtenances connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the disposal or storage of solid waste.

- (mmm) "**Solid waste management system,**" means the entire process of storage, collection, transportation, processing, and disposal of solid wastes by any person.
- (nnn) "**Storage**" means the interim temporary containment of hazardous waste in an approved manner after generation and prior to ultimate disposal.
- (ooo) "**Transport**" means the movement of hazardous waste subsequent to collection.
- (ppp) "**Treatment,**" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to render such waste less hazardous or nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it less hazardous or non-hazardous.
- (qqq) "**User fee**" means a fee collected for the development, operation and management of a hazardous waste management system.

61-07-04 Powers and Duties of the Office of Environmental Protection

The Office of Environmental Protection shall be responsible for the administration and management, compliance with the rules and regulations HWC. The OEP has the authority to contract with outside firms/agencies when necessary to complete any of its duties hereunder with advisement through the Legal Department. The OEP shall have jurisdiction and authority over all persons and property, tribal, institutional and private, necessary to lawfully enforce the provisions of this Code.

61-07-05 Promulgate Rules and Regulations

Pursuant to the purposes of the HWC, the OEP shall promulgate such rules and regulations as are necessary and feasible for the protection of the environment through the implementation and operation of a Hazardous Waste management system on the Lake Traverse Reservation. The rules and regulation shall be a part of the HWC and shall have the full force and effect of the law.

61-07-06 Jurisdiction and Applicability

The applicability of the HWC shall extend to all persons who produce, distribute, transport, handle, store, apply or dispose of Hazardous Waste within the exterior boundaries of the Lake Traverse Reservation.

61-07-07 Enforcement

The OEP reserves the authority to enforce the rules and regulations of the HWC, and reserves the right to delegate enforcement authority as follows:

- (a) All designated Office of Environmental Protection (OEP) personnel, SWO Conservation Officers, Land Operations, Tribal Police, and Fish and Wildlife Department personnel shall be empowered to enforce the rules and regulations of the HWC;
- (b) Action for violation of this ordinance shall be charged by summons and complaint and commenced to the Environmental Hearing Panel; and
- (c) Nothing herein shall prevent the Sisseton-Wahpeton Oyate from bringing suit against any violators of the HWC for injunctive relief or damage for harm to any Reservation resources.

61-07-08 OEP Authorities, Responsibilities and Duties

OEP shall have the following authorities, responsibilities and duties:

- (a) The OEP shall plan for and regulate the storage, collection, transportation and disposal of hazardous waste in order to protect the public health, safety and welfare and to enhance the environment of the residents within the external boundaries of the Lake Traverse Reservation;
- (b) Survey hazardous waste generation and management practices in the surrounding states and reservations;
- (c) Prepare, adopt, promulgate, modify, repeal, and enforce rules and regulations governing the management of hazardous waste and underground storage tanks;
- (d) Enter into agreements or letters of understanding with other tribal, local, federal, or state agencies regarding responsibilities for regulating hazardous wastes and underground storage tanks in order to promote consistency in enforcement and to avoid duplication in regulation;
- (e) The OEP shall establish and maintain a hazardous waste management system through tribal ownership, contract service, or approved operation or any combination of these methods that is self-supporting through the collection of user fees.
- (f) The OEP is authorized to approve or disapprove the development and/or operation of any hazardous waste storage, collection, transportation and disposal system and/or site.
- (g) The OEP is authorized to establish and shall collect user fees from all persons within the exterior boundaries of the Lake Traverse Reservation.

61-07-09 Rules and Regulations Governing Hazardous Waste

No person shall dispose of any hazardous waste or permit any hazardous waste to be disposed of, on the Lake Traverse Reservation.

61-07-10 Enforcement Penalties and Citizen Participation

- (a) Whenever the OEP finds that any person is in violation of any permit, rule, regulation, standard, or requirement of this chapter, the OEP may issue an order requiring such person to comply with such rule, regulation, standard, or requirement, and/or OEP may bring an action for a civil or criminal penalty, including an action for injunctive relief in the Sisseton-Wahpeton Oyate Tribal Court.
- (b) Any person, who violates any provision of this chapter or any regulation, standard, or permit condition adopted pursuant to this chapter, is subject to a civil penalty not to exceed twenty-five thousand dollars (\$5,000.00) per day of violation. Each day of noncompliance constitutes a separate violation for purposes of penalty assessments.
- (c) Any person who knowingly violates any provision of this chapter or any regulation, standard, or permit condition adopted pursuant to this chapter, or required by this chapter, is subject to a fine not to exceed twenty-five thousand dollars (\$5000.00) per day of violation, to imprisonment for a period not to exceed one year, or both.
- (d) Any person who knowingly violates any provision of this chapter in such a manner so as to manifest extreme indifference to human life, and whose conduct thereby places another person in imminent danger of death or serious bodily injury is subject to a fine not to exceed fifty thousand dollars (\$15,000.00) per day of violation, to imprisonment for a period not to exceed one year, or both.
- (e) Any person with an interest, which is or may be adversely affected by a violation of this chapter, may intervene as a matter of right in any civil action brought by the OEP to require compliance with the provisions of this chapter.

61-07-11 Lead Based Paint

Purposes of this section is abatement of lead based paint by any set of measures designed to permanently eliminate lead based paint hazards, as defined in United States Code, title 42, § 4851, of the federal Housing and Community Development Act of 1992, and that exceed the standards adopted by OEP Rules and Regulations.

61-07-12 Lead Surveillance and Occurrence

The OEP lead based paint program shall survey blood lead levels and exposure information, analyze the information and conduct studies designed to determine the potential for high risk for elevated blood lead levels among children and adults. The follow-up epidemiological information must specify:

- (a) The name, address, and phone number of the agency or individual contacted to investigate the environment of the person with the elevated blood lead level to determine the sources of lead exposure; and,
- (b) The name, address, and phone number of all agencies or individuals to whom the person or the person's guardian was referred for education about the sources, effects, and prevention of lead exposure.

61-07-13 Paint, Soil Dust and Drinking Water Lead Analysis

Every laboratory or other institution performing lead analysis on paint, soil, dust, or drinking water shall report the results to the OEP of each specimen analysis and epidemiological information required in this section, the paint, soil, and drinking water analysis report must specify:

- (a) The date the sample was collected;
- (b) The type of sample tested;
- (c) The results of the lead sample analysis;
- (d) The method of analysis used;
- (e) The date the sample was analyzed;
- (f) The full name, address, and phone number of the laboratory performing the analysis;
- (g) The full name, address, and phone number of the individual or agency requesting the analysis; and
- (h) The address of the property and the owner of the property where the sample was collected.

61-07-14 Reporting without Liability

The furnishing of the information required under this section shall not subject the person, laboratory, or other facility furnishing the information to any action for damages or relief.

61-07-15 Classification of Data

Notwithstanding any law to the contrary, data collected by the Office of Environmental Protection about persons with blood lead levels, including analytic results from samples of paint, soil, dust, and drinking water taken from the individual's home and immediate property, shall be private and may only be used by the authorized agents of the Sisseton Wahpeton Oyate and authorized employees of local boards of health for the purposes set forth in this section.

61-07-16 Property Owner Responsibility

Property owners shall comply with lead orders issued under this section within sixty (60) days or be subject to enforcement actions as stated above. For order or portions of orders concerning external lead hazards, property owners shall comply within sixty (60) days, or as soon thereafter as weather permits. The property owner shall submit a work plan to the assessing agency within thirty (30) days after receiving the orders. The work plan must include the details required as to how the property owner intends to comply with the lead orders and notice as to when lead hazard reduction activities will begin.

61-07-17 Clearance Inspection

After completion of clean-up services and compliance the lead orders by the property owner, including any repairs ordered by a local housing or building inspector, the assessing agency shall conduct a clearance inspection by visual identification of deteriorated paint and bare soil and retest the dust lead concentration in the residence to assure that violations of the lead standards no longer exist.

61-07-18 Severability

The provisions of this Code are severable. If any provision or part is held invalid, unconstitutional, or inapplicable to any person or under any circumstances, such invalidity, unconstitutionality, or inapplicability shall not affect or impair the remaining provisions of the Code.

WEIGHTED VOTE ON MOTION NO. 48: 17 For: Kevin Roberts (3); Floyd Kirk, Jr., (2); Norma Perko (2); Winfield Rondell, Jr. (3); David Redthunder (2); Joyce Country (2); Terri Larsen (1); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.
MOTION PASSED.

MOTION NO. 49: made by Kevin Roberts, second by Winfield Rondell, Jr., question by Joyce Country, in resolution form, to approve the final draft of SWO Chapter 61 – Environmental Protection Code, as presented by Tribal Attorney Ruth Hopkins.

WEIGHTED VOTE ON MOTION NO. 49: 17 For: Kevin Roberts (3); Floyd Kirk, Jr., (2); Norma Perko (2); Winfield Rondell, Jr. (3); David Redthunder (2); Joyce Country (2); Terri Larsen (1); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.
MOTION PASSED.

Resolution No. SWO-09-125

MOTION NO. 50: made by Kevin Roberts, second by David Redthunder, question by Joyce Country, in resolution form, to rescind Tribal Council Resolution No. SWO-07-106, Amend Chapter 21 Judicial Code, based on the ineffectiveness of the current structure of a seven (7) member board and on the comments and concerns expressed by DCA representatives at the September 1, 2009 Regular Tribal Council Meeting.

WEIGHTED VOTE ON MOTION NO. 50: 13 For: Kevin Roberts (3); Norma Perko (2); Winfield Rondell, Jr. (3); David Redthunder (2); Joyce Country (2); Tribal Secretary (1). 4 Opposed: Floyd Kirk, Jr. (2); Terri Larsen (1); Tribal Vice-Chairman (1). 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.

MOTION PASSED.

Resolution No. SWO-09-126

MOTION NO. 51: made by Kevin Roberts, second by Norma Perko, question by Terri Larsen, to approve the Legal Counsel Report as presented by Tribal Attorneys Debra Flute, Shaun Eastman, and Ruth Hopkins.

WEIGHTED VOTE ON MOTION NO. 51: 15 for: Kevin Roberts (3); Joyce Country (2); Floyd Kirk, Jr. (2); Terri Larsen (1); Norma Perko (2); Winfield Rondell, Jr. (3); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 2 Absent From Vote: David Redthunder (2). 1 Not Voting: Tribal Chairman.

MOTION PASSED.

MOTION NO. 52: made by Kevin Roberts, second by Joyce Country, question by Winfield Rondell, Jr., to advertise for three (3) Judicial Committee members.



Sisseton-Wahpeton Oyate

LAKE TRAVERSE RESERVATION
P.O. Box 509
100 Veterans Memorial Drive
Agency Village, South Dakota 57262-0509
Phone: (605) 698-3911

TRIBAL COUNCIL RESOLUTION NO. SWO-09-125

Adopt Chapter 61 – Environmental Protection Code

- WHEREAS,** The Sisseton-Wahpeton Oyate is organized under a Constitution and By-laws adopted by the members of the Tribe on August 1-2, 1966, and approved by the Commissioner of Indian Affairs on August 25, 1966; and last amended effective November 15, 2006; and,
- WHEREAS,** The Constitution ARTICLE III, Section 1, states that, the Sisseton-Wahpeton Oyate shall be governed by a Council, and ARTICLE VII, Section 1, states that, the Council shall have the following powers: (a) to represent the Tribe in all negotiations with Federal, State and local governments; (d) to make rules governing the relationship of the members of the Tribe, to Tribal property, and to one another as members of the Tribe; (g) to take any action by ordinance, resolution, or otherwise which are reasonably necessary through committees, boards, agents or otherwise, to carry into effect the for-going purposes; (h) to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate; (i) adopt resolutions regulating the procedures of the Tribal Council, its officials and committees in the conduct of Tribal Affairs; (k) to promulgate and enforce ordinances governing the conduct of persons under the jurisdiction of the Sisseton-Wahpeton Oyate; and,
- WHEREAS,** The jurisdiction of the Sisseton-Wahpeton Oyate extends to lands lying in the territory within the original confines of the Lake Traverse Reservation as described in Article III of the Treaty of February 19, 1867 15 Stat. 505, and those lands subsequently acquired by the Sisseton-Wahpeton Oyate; and,
- WHEREAS,** The Sisseton-Wahpeton Oyate has a vested interest in the preservation, conservation, and protection of the environment, natural resources, and homelands of the Lake Traverse Reservation for present and future generations of Sisseton-Wahpeton Oyate and its membership; and,
- WHEREAS,** The Sisseton-Wahpeton Oyate, acting through its duly elected Tribal Council, has established the Office of Environmental Protection ("OEP") and Environmental Protection Advisory Committee ("EPAC") to insure that proper and meaningful consideration of environmental and ecological factors, including the cultural, spiritual, and historical aspects of those factors, is taken by any person, government, district, agency, school, program or corporate entity prior to approval of activities within the original boundaries of the Lake Traverse Reservation which may significantly affect Sisseton-Wahpeton Oyate homelands or its political integrity, economic security, and most specifically, the health and welfare of the Sisseton-Wahpeton Oyate and its membership; and,

WHEREAS, In Motion No. 27, passed on May 5, 2009, the Tribal Council passed Title I: The General and Administrative Provisions, and Title II: Tribal Environmental Policy Act (TEPA) of the Sisseton-Wahpeton Oyate Chapter 61 Environmental Protection Code, and Chapter 61 has been reviewed by the SWO Judicial Committee and made available to the seven districts; and,

WHEREAS, Chapter 61: The Environmental Code, shall provide a solid foundation for the authority and implementation of tribal law for the preservation, conservation, and protection of the environment and natural resources of our Tribal lands; including air and water quality.


NOW, THEREFORE BE IT RESOLVED, That the Tribal Council of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, hereby adopts Chapter 61 Environmental Protection Code in its entirety through Motion No. 49, passed on September 3, 2009; and,

FINALLY, BE IT RESOLVED, That the Tribal Council of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, hereby approves the Chapter 61 Environmental Protection Code.

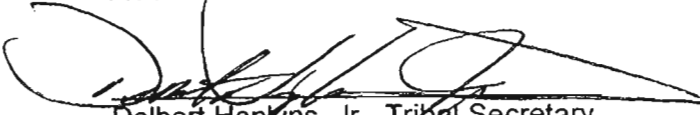
CERTIFICATION

We, the Undersigned duly elected Tribal Chairman and Tribal Secretary of the Sisseton-Wahpeton Oyate Tribal Council, do hereby certify that the above resolution was duly adopted by the Sisseton-Wahpeton Oyate Tribal Council, which is composed of 10 members (representing a total of 15 Tribal Council weighted votes and two Executive Committee votes for a total of 17 votes) of whom 10 constituting a quorum, were present at a Tribal Council meeting, duly noticed, called, convened and held at the TiWakan Tio Tipi, Agency Village, South Dakota, September 3, 2009, by a vote of 17 for, 0 opposed, 0 abstained, 0 absent from vote, 1 not voting, and that said Resolution has not be rescinded or amended in any way.

Dated this 2nd day of October, 2009.


Michael I. Selvage, Sr., Tribal Chairman
Sisseton-Wahpeton Oyate

ATTEST:


Delbert Hopkins, Jr., Tribal Secretary
Sisseton-Wahpeton Oyate

Original copy to: SWO Judicial Committee

cc: SWO Legal Counsel
SWO Office of Environmental Protection

