

**Spirit Lake Tribe
Law and Order Code**

Title 16: Environment, Health and Sanitation

Table of Contents

Chapter 1.	Spirit Lake Tribe Environmental Quality Policy and Environmental Quality Commission
§16-1-101	Findings
§16-1-102	General Provisions
§16-1-103	Definitions
§16-1-104	SLT Environmental Quality Commission
§16-1-105	Proceedings of the Environmental Quality Commission (EQC)
§16-1-106	Judicial Review of Decisions or Actions of the EQC
Chapter 2.	Spirit Lake Tribe Environment, Health and Sanitation Civil Enforcement
§16-2-101	Enforcement Policies
§16-2-102	Definitions
§16-2-103	Enforcement Authority
§16-2-104	Classification and Magnitude of Violations
§16-2-105	Citations
§16-2-106	Warning Letters
§16-2-107	Notices of Violation
§16-2-108	Administrative Orders
§16-2-109	Penalty Assessment
§16-2-110	Inability to Pay the Penalty
§16-2-111	Settlement of Civil Penalty
§16-2-112	Appeals of Enforcement Actions and Penalties
§16-2-113	Criminal Enforcement

Chapter 3: Public and Environmental Health {adopted 2008}

- §16-3-101 Purpose
- §16-3-102 Declaration of Policy
- §16-3-103 Scope
- §16-3-104 Office of Environmental Health
- §16-3-105 Interfering with Personnel of the Office of Environmental Health
- §16-3-106 Adoption of Standards
- §16-3-107 Facility Compliance with Standards and Applicable Law
- §16-3-108 Compliance and Enforcement
- §16-3-109 Complaints

Chapter 4: Solid and Hazardous Waste Control and Remediation

- §16-4-101. General Provisions.
- §16-4-102. Definitions.
- §16-4-103. Duties, Roles and Responsibilities.
- §16-4-104. Residential Municipal Solid Wastes.
- §16-4-105. Commercial and Institutional Solid Wastes.
- §16-4-106. Collection and Transportation of Solid Wastes.
- §16-4-107. Recycle, Reuse, Management and Disposal of Solid Wastes.
- §16-4-108. Prohibited Activities
- §16-4-109. Permitting of Solid Waste Facilities.
- §16-4-110. Required Fees
- §16-4-111. Operation and Maintenance of Solid Waste Disposal Facilities.
- §16-4-112. Operation and Maintenance of Solid Waste Management Facilities.
- §16-4-113. Hazardous Wastes.
- §16-4-114. Special and Industrial Wastes.
- §16-4-115. Lead Based Paint
- §16-4-116. Response Actions for Releases of Hazardous Substances, Pollutants or Contaminants.

Chapter 5: Air Quality {Reserved}

Chapter 6: Water Quality {Reserved}

Spirit Lake Tribe Law and Order Code

Title 16: Environment, Health and Sanitation

Chapter 1. Spirit Lake Tribe Environmental Quality Policy and Environmental Quality Commission

§16-1-101 Purpose

The Spirit Lake Tribal Council declares that this code is based upon and shall be interpreted based on the following purpose(s):

- (1) To restore, maintain and preserve the environmental quality on the Spirit Lake Reservation (hereinafter referred to as the Reservation);
- (2) To balance the human, economic, and social development needs, and infrastructure development efforts of the Spirit Lake Tribe with the goal of maintaining and restoring the environmental quality and health of the Reservation;
- (3) To promote preservation and restoration efforts designed to protect the Reservation environment, and to prevent, and/or eliminate damage to the Reservation;
- (4) To protect and foster the health and welfare of the members of the Spirit Lake Tribe;
- (5) to protect the cultural heritage of the Spirit Lake Tribe, and to provide public education concerning how our cultural heritage is linked to our natural resources, and the ecological systems important to the Spirit Lake Tribe;
- (6) To engage the community in efforts to protect, preserve and restore natural resources and ecological systems;
- (7) To exercise the Spirit Lake Tribe's inherent sovereignty over its natural resources and membership;
- (8) To provide for informed decision making of the Tribal Council or its designees, in performing and overseeing environmental activities which impact the Reservation;

(9) To promote, for the improvement of environmental quality, conservation, social, economic, public health, and other goals of the Spirit Lake Tribe;

(10) To develop technical and administrative systems for environmental and public health protection by the Tribal government.

§16-1-102. General Provisions

(1) **Constitutional Authority.** This Title is adopted pursuant to the authority vested in the Spirit Lake Tribal Council under Article VI of the Constitution and By-laws of the Spirit Lake Tribe.

(2) **Sovereign Immunity.** This Title does not constitute a waiver of the immunity of the Spirit Lake Tribe as a sovereign government.

(3) **Jurisdiction.** The jurisdiction and governmental authority of the Tribe to assure compliance with this Title and its Chapters, take appropriate enforcement actions and to issue and enforce permits authorized under this Title apply to the following:

- a) The Spirit Lake Reservation (aka the Reservation) including all lands, islands, waters, roads and bridges or any interests therein, whether trust or non-trust status and notwithstanding the issuance of any patent or right-of-way, within the boundaries of the Reservation as established in Article IV of the Treaty of February 19, 1867, and such lands, islands, waters or any interest therein hereafter added to the Reservation. Any future right-of-way issued by the SLT shall include a provision retaining regulatory authority for purposes of the application of this Title and it's Chapters;
- b) The Tribal Court of the Spirit Lake Tribe, and the entities listed under Chapter 2 of this Title, have civil jurisdiction under this Title over the conduct of Tribal members and all other persons on all lands within the Reservation and on tribal lands outside of the Reservation boundaries to maintain the environment, natural resources, public health, safety, welfare, political integrity and economic well-being of the Tribe.
- c) Because any violation of these Codes and any rule or regulation adopted thereunder will demonstrably and seriously impact the environment, natural resources, public

health, safety, welfare, political integrity, and economic security of the Tribe, these Codes and any rule and regulation adopted thereunder, shall apply to the following:

- i. all persons within the exterior boundaries of the Reservation, without exception, including but not limited to, all tribal members, and all other persons on the Reservation, including any Indians who are members of other Indian tribes, all non-Indians, and any other person as defined under these Codes;
 - ii. all places and lands located anywhere within the exterior boundaries of the Reservation, including all trust and non-trust lands, and notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, or any real property interest of any kind, held by any person as defined under these Codes; or any person or company that has entered into a consensual agreement with the Tribe or its members or where the conduct of such person threatens or has some direct effect on the political integrity, economic security, or health or welfare of the Tribe.
- d) Citation to statutory or administrative language, definitions, procedure, or provisions of federal or state law in these Codes does not establish jurisdiction, which otherwise does not exist, in such federal or state government.
- e) As a condition of obtaining a permit under these Codes, the permittee, his/her agents, employees, lessees, sub-lessees, successors and assigns shall consent to the jurisdiction of the Tribe and shall agree to abide by all laws of the Tribe as required by the Spirit Lake Tribe Law and Order Code and Title 16.

(4) **Prior Inconsistent Titles and Codes Repealed.** Any Title or Code of the Tribe, Tribal Council Resolution, which conflicts in any way with the provisions of this Code, is hereby repealed to the extent that it is inconsistent with or is contrary to the spirit or purpose of this Code.

(5) **Severability.** Any provision of this Title or part thereof or its application to any person in any circumstance declared invalid, shall be severed from the Title and the remaining provisions or applications of this Title shall remain in effect and enforceable.

(6) **Citation or Use of Language from Other Laws.** Citation to statutory or administrative language, definitions, procedure, or provisions of Federal law in this Title does not establish jurisdiction, which otherwise does not exist, in such Federal government. Nothing in this Title may be deemed a waiver of the Spirit Lake Tribe sovereign immunity, and if any Court of competent jurisdiction construes this provision as conflicting with any other provision in this Title, then this express retention of sovereign immunity shall control and prevail.

(7) **Effective Date.** This Title shall be in full force and effect on the date of formal approval and adoption by the Spirit Lake Tribal Council and shall remain in effect until repealed or amended by the Tribal Council.

§16-1-103. Definitions

All terms used in this Title have the meaning given to the term in accordance with their common and ordinary meaning unless otherwise required by context and shall be consistent with Title I Chapter I of the Spirit Lake Tribe Law and Order Code unless defined otherwise below:

(1) **"Adverse action"**, for the purposes of this Chapter shall include, but is not limited to:

- a. the denial, revocation or amendment of a permit to operate a system or facility for the storage, collection, transportation, or disposal of solid waste;
- b. the closure of a facility subject to tribal jurisdiction or the cessation of operations of such facility in the event of a finding of serious and imminent danger to health or public safety resulting from a violation of this Title;
- c. the denial, revocation or amendment of a permit issued under this Title; or
- d. The enforcement of any environmental protection or community health provision of This Title.

(2) **"Commission"** shall mean the Spirit Lake Tribe Environmental Quality Commission;

(3) **"Commissioner"** shall mean a member of the Environmental Quality Commission;

(4) **"Environmental Administrator"** shall mean the Administrator of the Spirit Lake Tribe Environmental Protection Administration (SLT-EPA) and Spirit Lake Refuse Control Services, or where appropriate the Administrator's duly authorized agents or staff;

(5) **"Person"** shall mean any natural individual or person, of any age, and also any corporation, partnership, association, company, agency (public, private, or governmental), institution, or other identifiable entity, whether or not it has legally recognizable status;

(6) **"Reservation"** shall mean the Spirit Lake Reservation as defined by treaty

(7) **"Environmental Health Specialist"** shall mean the Office of Environmental Health, Environmental Health Specialist, under the supervision of the Director of the Department of Tribal Community Health Services; the Environmental Health Specialist is also the Tribal Health Director.

- (8) "SLEQC" shall mean the Spirit Lake Tribe Environmental Quality Commission;
- (9) "Tribal Council" shall mean the Spirit Lake Tribe Tribal Council;
- (10) "Tribal Health Director" shall also mean the Environmental Health Specialist, SLT Office of Environmental Health.

§16-1-104. Spirit Lake Tribe Environmental Quality Commission

(1) This Section shall hereby authorize and create the Spirit Lake Tribe Environmental Quality Commission (hereinafter referred to as the Commission or EQC). The Environmental Quality Commission is a subdivision of the Spirit Lake Tribe created and authorized for the purpose of protecting the environmental of the Reservation.

(2) Composition of the Environmental Quality Commission

The Tribal Council majority shall confirm the members of the Commission and the Commission shall consist of the following:

- (a) Four representatives, one from each district, to be nominated by the elected District Council members of each district of the Spirit Lake Tribe. The nominees must be enrolled members of the Spirit Lake Tribe. The Tribal Council shall determine the minimum qualifications for Commission representatives;
- (b) One at-large resident of Benson or Eddy County to be nominated by the Tribal Chair-person, chosen without regard to their status as a member or nonmember of the Tribe. This person will represent all members of Benson and Eddy Counties;
- (c) Three Special Commission Members:
 - (i) There is established a Tribal Council position on the Environmental Quality Commission. The Council member shall abstain from voting on all business before the Commission but otherwise hold the rights and duties of a member of the Commission. Should the Tribal Council member not be re-elected to the Tribal Council during his/her four year term, the Tribal Council shall appoint another Tribal Council member to fulfill the remainder of that seat;

(ii) The Environmental Administrator of the Spirit Lake EPA. The Environmental Administrator shall provide technical assistance to the Commission in carrying out its duties and functions, as provided in this Code and provide any reports as required under this code. The Environmental Administrator shall serve as the Environmental Quality Commission's lead expert on environmental quality, protection, conservation, and maintenance and/or may employ a consultant to assist in providing this information; and

(iii) The Office of Environmental Health Tribal Environmental Health Specialist. The Environmental Health Specialist shall report to and be under the supervision of the Director of the Department of Tribal Community Health Services. The Environmental Health Specialist shall serve as the Commission's lead expert on community health matters and provide technical assistance to the Commission in carrying out its duties and functions, as provided in this code and/or may employ a consultant to assist in providing this information.

(3) Organization of the Environmental Quality Commission

(a) **Officers.** The Commission shall choose from among its members a Chairperson, Vice Chairperson, and Secretary. These Officers shall serve for two year terms. They may be re-elected;

(b) **Executive Committee.** The Chairperson of the Commission, the Environmental Administrator, the Environmental Health Specialist and one other Commissioner, selected by the Commission from among its members, shall serve as the Executive Committee. The Executive Committee shall meet upon the request of the Environmental Administrator or the Environmental Health Specialist, or when urgent action is required upon any of the Commissions duties, as provided in this chapter. Any actions of the Executive Committee must be ratified by the entire Commission to be final. All actions concerning issuance, modification or revocation of a permit, enforcement of the terms of a permit issued by the Commission, or other action to enforce the requirements of this Title or any other environmental protection code of the Tribe, shall be heard before the entire Commission.

(4) Terms of Service

(a) All of the members of the Commission shall serve four year terms of service on the Commission.

However, in order to stagger the expiration of the terms of office for the members of the EQC the terms of service for the first members of the EQC shall expire as follows:

(i) The terms of the four community representatives shall expire two years after the original appointments;

(ii) The term of the Tribal Council member on the Commission shall expire one year after the original appointment;

(iii) The County representative shall expire three years after the original appointment; and

(iv) The current or acting Environmental Administrator and the Environmental Health Specialist shall be permanent members of the EQC during their term of service in that position.

(b) A vacancy on the Commission, howsoever caused, will be filled in the same manner in which the appointment of the Commissioner whose seat is vacant and shall serve the remainder of the term.

(5) Duties of Commissioners

The duties and functions of the Commissioners shall include, but not be limited to, the following:

(a) to implement and enforce this code and other environmental and public health protection codes of the Spirit Lake Tribe;

(b) to support the Environmental Administrator and the Director of the Department of Tribal Community Health Services and Environmental Health Specialist in the implementation and enforcement of the environmental and community health policies of the Tribe, as provided in this code;

(c) to gather timely and authoritative information concerning the conditions and trends in the quality of the Reservation environment and health, both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or likely to interfere, with the environmental and health policies of the Tribe;

- (d) to report to the Tribal Council on the state and condition of the Reservation environment and health, and the permitting and regulatory activities of the Commission;
- (e) to present to the Tribal Council all recommendations for environmental and community health protection on the Reservation, including additional Codes and/or Laws, amending of existing Codes and/or Laws, developing additional policies,(including a SLT Penalty Policy as specified under §16-2-109.Civil Remedy Assessment (4)) and any/all enforcement needs;
- (f) to negotiate and enter cooperative agreements with instrumentalities or agencies of the federal, state or Tribal governments, for the protection of the reservation environment and community health. Such agreements shall require approval of the Tribal Council for ratification;
- (g) to request and obtain funding for the operation of the Commission and to fulfill the obligations of the funding requirements;
- (h) to consult with the local community, and other interested parties on the Reservation concerning the reservation environment, community health, actions and decisions of the Commission, and Tribal law, and Codes concerning environmental protection
- (i) to conduct hearings as necessary under this code;
- (j) to employ such officers, employees and consultants as may be necessary to carry out its functions, subject to the availability of funds;
- (k) to obtain technical assistance, as needed, regarding the rules and responsibilities of the Commission with respect to its legal and authoritative responsibilities in protecting the environment, the community health and how it addresses violations of its policies, and Tribal law. This technical assistance shall be provided by the Tribe, the Director of the Department of Tribal Community Health Services, the Environmental Health Specialist or the Environmental Administrator.
- (l) to develop the Commission Bylaws for the conduct of Commission meetings and business; and
- (m) to complete such other tasks or duties as assigned by Tribal Council.

(6) Conduct of Commissioners

A Commissioner must, at all times, act with high moral conduct while in office. A Commissioner shall be disqualified if he/she is convicted a crime of misdemeanor or felony or a violation of Tribal law while in office. The term of a vacated Commission seat due to this violation shall be filled in accordance with this Chapter by the Tribal Council. Any Commissioner appointed to fill a vacancy shall serve the remainder of term of appointment for the Commissioner so removed.

§16-1-105. Requirements and Procedures for Hearings.

(1) The Commission shall, prior to submitting any codes or laws to the Tribal Council for adoption, amendment or enactment by the Tribal Council provide a public comment period before the Commission. The public notice shall be posted for a period of thirty (30) days, after which a public hearing will be held before the Commission. In addition, the Commissioners shall cause the same information to be published in a newspaper of general circulation in Benson County, ND. A copy of such proposed laws and/or Codes of the Tribe shall be available to the general public for inspection in the Offices of the Environmental Administrator, Spirit Lake Tribe EPA, and the Director of the Department of Tribal Community Health Services and in the Tribal Administration Office. The Commission shall cause to be posted conspicuously at public places in the local community of the Reservation and the notice shall include:

- (a) a notice of availability of proposed laws or Codes for review;
- (b) the location(s) of the documents for review by the public;
- (c) the time and place of a public hearing; and
- (d) a statement that interested community members may provide oral or written comments to the Commission at a public hearing.

Nothing in this provision shall be construed to alter or otherwise amend the general provisions and procedures pertaining to code adoption, amendment and enactment as set forth in Title 1 of the Spirit Lake Law and Order Code.

(2) A person aggrieved by an adverse action of the Commission, the Director of the Department of Tribal Community Health Services, the Environmental Health Specialist or the Environmental

Administrator shall be entitled to a hearing before the Commission. The Procedure applicable to said grievance shall be as follows:

(a) The aggrieved person shall request a hearing in writing within ten (10) days of the date of the adverse action of the Commission. Requests for hearings shall be transmitted to the Chairperson of the Commission. Such requests shall be deemed to be made when postmarked or signed as received by the Chairperson of the Commission, whichever occurs first within in the ten day period.

(b) A hearing shall be held within forty-five (45) days of the date of the hearing request. Upon request of the aggrieved person, and for good cause, the date set for the hearing may be continued. A request to have the date of the hearing changed must be made at least five (5) days before the date set. In all cases, such request may be granted or denied by the Environmental Quality Commission.

(c) In the event of a request for a hearing by an aggrieved person under this chapter, the Commission shall notify the aggrieved person of a hearing in writing at least thirty (30) days in advance of the date scheduled for this hearing.

(d) In addition to personal notification of the aggrieved person, the Commission shall post conspicuously the notice of public hearing in the local community on the Reservation, and cause such notice to be published in a newspaper of general circulation in Benson County, no later than fifteen (15) days in advance of the date of the scheduled hearing. The notice shall include:

(i) a statement of the time, place, and nature of the proceedings;

(ii) a statement of the legal authority and jurisdiction under which the hearing is to be held to include a reference to the particular sections of the Tribal law involved in the dispute;

(iii) a short a clear statement of the issues and matters asserted by the aggrieved person;

(iv) a statement that any resident of the Reservation may appear and present oral or written evidence on either behalf;

(v) a statement that the decision of the Commission is final but may be appealed under Tribal law to the Tribal Court of Justice.

(5) Conduct of Hearings

(a) The Chairperson of the Environmental Quality Commission shall preside over a hearing and regulate its conduct. The Chairperson shall open the hearing by making a statement of the matter to be heard;

(b) The proceedings shall be recorded as specified by the Chairperson and in accordance with STL policy and procedures. The record in a hearing shall include all oral or written comments, pleadings, motions, and intermediate rulings; in the event of an appeal by an aggrieved person, the cost of transcribing the hearing and the written decision of the Commission shall be borne by the appellant or aggrieving person;

(c) An aggrieved person may be represented by legal counsel or any other representative, however such election to have personal representation shall be incurred at the expense of the aggrieved person;

(d) The Environmental Quality Commission may be advised by the Tribe's legal counsel, or by legal counsel obtained by the Commission;

(e) In the event of a hearing of an appeal from an aggrieved person the Chairperson shall administer oaths to witnesses that shall testify. The aggrieved person shall present their case first. Technical rules of evidence shall not apply to these proceedings;

(f) If a party at a hearing pursues a line of questioning of a witness that is clearly irrelevant, incompetent or immaterial, the Chairperson may stop such questioning;

(g) The members of the Commission may cross-examine or otherwise question witnesses or the aggrieved person;

(h) The Environmental Administrator, the Environmental Health Specialist, or the Director of the Department of Tribal Community Health Services that initiated the adverse action that is the subject of the hearing may cross examine or otherwise question witnesses or the aggrieved person;

(i) The Environmental Administrator, the Environmental Health Specialist or the Director of the Department of Tribal Community Health Services shall present the evidence of the

Environmental Quality Commission, including making an oral statement, calling witnesses, and presenting documented evidence; and

(j) The aggrieved person may cross examine all witnesses and submit rebuttal evidence.

(6) Hearing Decisions

The decision by the Commission shall be made by a majority vote. It shall be based upon the entire record. The Chairperson or their designee, on the Commission shall provide the decision in writing. The written decision shall include findings of fact and conclusions of the Tribal law(s) involved. The findings of fact shall consist of a concise statement of each fact found upon each contested issue or act. The Commission shall issue its written decision no later than thirty (30) days from the date of the hearing. The aggrieved party and other interested persons who appeared at the hearing shall be notified of the decision by the board.

(7) Ex Parte Contacts

Except upon notice and opportunity for all parties to be present, no Commissioner presiding at a hearing requested by an aggrieved party may consult with any person or party on any issue of fact or law in the proceeding, including the Environmental Administrator, the Environmental Health Specialist or the Director of the Department of Tribal Community Health Services excepting other Commissioners, and legal counsel.

(8) Request for Rehearing

(a) The aggrieved person may request that the Commission reconsider a hearing decision by filing a written petition within fourteen (14) days of receiving the final decision. A petition for rehearing shall state in concise fashion the errors in the decision.

(b) The Commission has the authority to grant a rehearing should the aggrieved present a persuasive argument in their request for a rehearing. The rehearing shall provide only for reviewing the evidence presented at the initial hearing, no new evidence, or testimony shall be allowed. No witnesses will be present. The issues raised in the aggrieved person's written request for a rehearing shall be the focus of the rehearing. The Commission shall have five (5) days following the rehearing to determine whether it will alter its decision. The aggrieved person shall be informed of the decision following the rehearing.

§16-1-106. Judicial Review of Decisions or Actions of the Commission.

1) The Tribal Court shall have exclusive jurisdiction to conduct a review a hearing of any decisions or action of the Commission. Such review may be obtained only upon the filing by the aggrieved person who invoked the hearing of a petition for judicial review within sixty (60) days of receipt of hearing decision.

(2) The Tribal Court may remand affirm the decision of the Commission, remand the matter with instructions back to the Commission, or reverse the hearing decision of the Commission.

(3) The Tribal Court shall only reverse a Commission decision if the Court finds that the Commission's decision violates this code, another environmental or public health protection code of the Tribe, is otherwise contrary to existing Tribal law, or constitutes an arbitrary or capricious exercise of authority.

(4) The Court may remand the matter and require the Commission to rehear the aggrieved person's complaint should the Tribal Court find that the Commission did not follow its own process detailed in this code. The hearing shall be set according to the Tribal Court's decision time and place shall be decided by the Tribal Court. A rehearing shall be restricted to points of law or fact relating to the procedural errors and shall not be an opportunity to re-hear the entire matter.

Title 16: Environment, Health and Sanitation

Chapter 2

Spirit Lake Tribe Environment, Health and Sanitation Civil Enforcement

§16-2-101: Enforcement Policies

(1) The goals of enforcement actions by the Spirit Lake Tribe are to:

(a) Protect the public health and the environment;

(b) Obtain and maintain compliance with this Title and all applicable Tribal environmental statutes, Codes, codes and laws and the permits and orders issued pursuant to this code;

(c) Deter future violators and violations; and

(d) Ensure an appropriate and consistent Reservation-wide enforcement program.

(2) The Commission, the Environmental Administrator the Environmental Health Specialist and the Director of the Department of Tribal Community Health Services shall endeavor by conference, conciliation and persuasion to solicit compliance.

(3) The SLT endeavors to address all alleged violations in order of priority, based on the actual or potential threat or impact to human health or the environment, using increasing levels of enforcement as necessary to achieve the goals set forth of this code.

(4) The SLT shall subject violators who do not comply with an initial compliance or enforcement action to increasing levels of enforcement until they come into compliance.

(5) The SLT shall assess civil fines and/or other penalties based on the class of violation, the magnitude of violation, the application of the penalty matrices and aggravating and mitigating factors, and the economic benefit realized by the respondent. Other penalties may include alternatives to an assessed civil fine such as:

(a) Community service;

(b) Public publication and notice of the violations;

(c) Banishment of a business or person from the Reservation on a temporary or permanent basis; and/or

(d) Banishment of a tribal member.

§16-2-102. Definitions.

All terms used in this Chapter have the meaning given to the term in accordance with their common and ordinary meaning unless otherwise required by context and shall be consistent with Title I Chapter I of the Spirit Lake Tribe Law and Order Code unless defined otherwise below:

"Alleged Violation" means any violation cited in a Notice of Violation (NOV), Warning Letter that the Commission, SLT-EPA, Environmental Health Specialist or other delegated or authorized Tribal government Administration official records after observation, investigation or data collection.

"Compliance" means meeting the requirements of the applicable Tribal or federal statutes, laws, and/or Codes and related Tribal permits or orders.

"Flagrant" or **"flagrantly"** means the respondent had actual knowledge that the conduct was unlawful and consciously set out to commit the violation.

"Magnitude of the Violation" means the extent and effects of a respondent's deviation from law, statutory, regulatory or code requirements, rules, standards, permits or orders.

"Negligence" or **"Negligent"** means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

"Notice of Violation" (NOV) means a written notice of violation issued to a respondent or permittee citing alleged violations of Tribal laws, codes, Codes, rules, statutes and/or permit.

"Respondent" means the person to whom a Warning Letter, NOV or Order is issued.

"Systematic" means any violation that occurred or occurs on a regular basis.

"Violation" means a transgression of any statute, law, regulation, code, rule, order, license, permit, or any part thereof and includes both acts and omissions.

"Warning Letter" (WL) means a written notice of an alleged violation for which formal enforcement is not anticipated if the terms and requirements of the letter are met in the time frame specified.

"Willful" means the respondent had a conscious objective to cause the result of the conduct and the respondent knew or had reason to know that the result was not lawful.

§16-2-103. Enforcement Authority.

(1) Title 16 Chapter 3: Public and Environmental Health shall be enforced, pursuant to this Code, by the Director of the Department of Tribal Community Health Services and the Environmental Health Specialist as an agent of that Department and violations to such codes may be referred to the Spirit Lake Environmental Quality Commission and Tribal Court as set forth in this Code and the SLT Title IV: Civil Actions of the Spirit Lake Law and Order Code.

(2) All other chapters of Title 16 by the SLT-EPA Environmental Administrator, and its agents or designees and violations to such codes may be referred to the Spirit Lake Environmental Quality Commission and Tribal Court as set forth in this code and the SLT Title IV: Civil Actions of the Spirit Lake Law and Order Code.

(3) Designated officers of the SLT Environmental Protection Administration, the Department of Tribal Community Health Services, the Environmental Health Specialist and all Law-Enforcement Officers on the Spirit Lake Reservation are hereby designated to investigate complaints or observed violations in an effort to identify and prosecute violations of this Code.

(4) Designated officers of the SLT Environmental Protection Administration, the Department of Tribal Community Health Services, the Environmental Health Specialist and all Law-Enforcement Officers on the Spirit Lake Reservation are hereby authorized to issue citations for minor violations of any part of this Title and/or refer a violation to the attention of the Spirit Lake Environmental Quality Commission or Tribal Court. Persons found in the act of violation of any part of this Code may be arrested and detained by a law-enforcement officer for committing a misdemeanor.

(5) Upon learning that a person or entity is creating an imminent and substantial endangerment to the health or welfare or the Reservation population, to the Reservation environment, or to Tribal natural resources, the SLT Environmental Administrator, Director of the Department of Tribal Community Health Services or the Spirit Lake Environmental Quality Commission may issue an Administrative Order pursuant to this Chapter on behalf of the Nation to order any person or entity to stop discharge of hazardous substances, pollutants or

contaminants causing or contributing to such endangerment, and to take (or refrain from taking) such other action as may be necessary to abate the endangerment.

(6) The Environmental Administrator, the Department of Tribal Community Health Services, the Environmental Health Specialist and all Law-Enforcement Officers on the Spirit Lake Reservation shall be authorized to take all action necessary to protect public health, welfare and the Reservation environment from an actual or threatened discharge and to stop activities causing imminent and substantial endangerment.

(7) Where probable cause exists that an individual has violated this Code, the individual may be prosecuted for such violation in Tribal Court, in accordance with the SLT Law and Order Code, or if appropriate, referred to federal or state authority for review.

(8) Every effort will be made to cooperate with officials of incorporated municipalities, Eddy and Benson Counties, the State of North Dakota and the U.S. EPA, and other federal agencies, to enforce this Code and similar provisions of federal and North Dakota State Law.

§16-2-104. Classification and Magnitude of Violations.

Any violations of this code shall be evaluated based upon the environmental policies of the Tribe, as provided in Chapter 1 of this code, the potential for harm that has been or could be caused by the violation and the extent of deviation from the requirements of this code. For the purposes of the enforcement of this code violations shall be classified as follows:

- (1) **Class 1 - MAJOR:** The violation poses or may pose a substantial risk of exposure of humans or other environmental receptors to hazardous waste or substances; actual or potential impact to human health or the environment; and/or the actions of the violator have or may have a substantial adverse effect on the regulatory purposes of this code. This may also include:
- (a) repeated moderate violations;
 - (b) violating a requirement or condition of SLT or Tribal Court administrative order, consent order, agreement, consent judgment or compliance schedule contained in a permit;

(c) submitting false, inaccurate or incomplete information to the SLT where the submittal masked a violation, caused environmental harm, or caused the SLT to misinterpret any substantive fact;

(d) failing to provide access to premises or records as required by SLT law, code, permit, order, consent order, agreement or consent judgment; or

(e) using fraud or deceit to obtain SLT approval, permit or license.

(2) **Class 2 - MODERATE:** The violation poses or may pose a potential risk of exposure of humans or other environmental receptors to hazardous, special or solid waste or substances; and/or the actions have or may have a significant adverse effect on the regulatory purposes of this code. This may also include repeated minor violations;

(3) **Class 3 - MINOR:** The violation poses or may pose a relatively low risk of exposure of humans or other environmental receptors to hazardous, special or solid waste or constituents; least likelihood of actual impact to human health and the environment; and/or the actions have or may have a small adverse effect on the regulatory purposes of this code.

§16-2-105. Citations.

(1) The Environmental Administrator the Environmental Health Specialist or the Director of the Department of Tribal Community Health Services and their Enforcement Agents and designees, may issue citations and assess civil remedies such as fines for minor violations of this code pursuant to the SLT Penalty Policy. An alternate remedy or penalty may be assessed in lieu of a monetary fine pursuant to this code and the SLT Penalty Policy. Such citations shall be in the form designated by the Environmental Administrator, the Environmental Health Specialist and the Director of the Department of Tribal Community Health Services.

(2) Persons found to be littering and/or in nominal violation of this Code may first be issued a written warning citation by any of the officials designated above.

(3) A copy of any citation shall be filed with the SLT Environmental Administrator or the Director of the Department of Tribal Community Health Services of the violations for which they are responsible.

§16-2-106. Warning Letters.

(1) Warning Letters (WL) may be issued under the direction of the Environmental Administrator the Environmental Health Specialist or the Director of the Department of Tribal Community Health Services or other authorized Tribal representative.

(2) A Warning Letter (WL) is a written notice of an alleged violation for which formal enforcement is not anticipated. WLs may contain an opportunity to correct noncompliance as a means of avoiding formal enforcement. A WL generally will identify the alleged violation(s) found, what needs to be done to comply, and the consequences of further noncompliance. A person receiving a WL may provide information to the issuing office to clarify the facts surrounding the alleged violation(s). If the issuing office determines that the conduct identified in the WL did not occur, the issuing office will withdraw or amend the WL, as appropriate, within 30 days. A WL is not a formal enforcement action and does not afford any person a right to a contested case hearing.

§16-2-107. Notices of Violation

(1) A Notice of Violation (NOV) shall be issued for:

(a) the first occurrence of an alleged major violation of the Tribal environmental or public health laws, and/or Codes; or

(b) the first occurrence of an alleged major violation of a Tribal environmental permit; or

(c) for repeated or continuing alleged moderate or minor violations of a Tribal environmental or public health law, code, rule, regulation and/or permit when a WL has failed to achieve compliance or satisfactory progress toward compliance.

(2) A NOV shall specify the violation and state that a civil fine or other stated civil remedy will be imposed for the cited violation(s) unless the respondent and/or permittee submits one of the following to the issuing office within five working days, by Tribal close of business (COB), of the date of receipt of the NOV:

(a) A written response from the respondent/permittee certifying that the respondent and/or permittee is complying with all of the Tribal laws, codes, Codes or rules and/or terms and conditions of the permit from which the violation is cited. The response must include a description of the information on which the respondent and/or permittee's certification relies sufficient to enable the issuing office to determine that compliance has been achieved. The certification must be signed by the respondent, the permittee or a Responsible Official. For purposes of this rule, "Responsible Official" means one of the following:

(i) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(ii) For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

(iii) For a tribal Administration a principal executive officer or official.

(b) A written proposal acceptable to the issuing office, describing how the respondent or permittee will comply with cited Tribal laws, and/or Codes or the permittee will bring the cited facility into compliance with the Tribal permit and/or codes. At a minimum an acceptable proposal must include the following:

(i) A detailed plan and time schedule for achieving compliance in the shortest practicable time; and

(ii) A description of the interim steps that will be taken to reduce the impact of the code or permit violation until the permittee is in compliance with the code or permit.

(3) If a compliance schedule approved by the issuing office provides for a compliance period of more than six months, the compliance schedule must be incorporated into an Administrative Order that provides for stipulated remedies in the event of any failure to comply with the approved schedule. The stipulated remedies may be set at amounts equivalent to the base remedy amount appropriate for the underlying violation.

§16-2-108. Administrative Orders.

(1) Whenever the Commission or the Environmental Administrator or the Director of the Department of Tribal Community Health Services determines that any person has violated or is in violation of this code, or any permit issued under this code, or is causing a threat to public health, welfare or the environment, and an informal compliance action, WL or NOV has failed to achieve full compliance, the Commission the Environmental Administrator or the Director of the Department of Tribal Community Health Services may initiate a formal enforcement action by the issuance of an Administrative Order.

(2) The Commission, upon the recommendation by the Environmental Administrator or the Director of the Department of Tribal Community Health Services, shall issue administrative orders for major class violations. The Environmental Administrator or the Director of the Department of Tribal Community Health Services shall issue administrative orders for moderate class of violations.

(3) An administrative order shall include a brief and concise explanation of the violation(s) and attach a copy of any previous NOV(s) for the cited violation(s). It shall order the violator to remedy the violation(s) within a specified time period, assess a civil remedy or civil fine, or both. The time period specified for compliance shall be reasonable for the violation, the threat to the environment or human health and the remedial efforts previously undertaken by the violator, if any.

(4) Any fines or remedies shall be assessed in accordance with this code and the SLT Penalty Policy.

(5) An administrative enforcement order shall include a statement that the violator may request a hearing or a formal appeal before the Commission or Tribal Court on the alleged violation(s), pursuant to this code and Spirit Lake Tribe Title IV: Civil Actions.

(6) Any person may bring a civil action for injunctive relief in the Spirit Lake Tribe Tribal Court against a person on the Reservation which violates a provision of this code, provided, however, no such action may be commenced after the issuance by the Commission, the Environmental Administrator or the Director of the Department of Tribal Community Health Services, of an administrative order and before the appeal and judicial review process for such

order is, completed. In any action under this Section the Commission may intervene as a matter of right.

(7) An **Administrative Order** issued pursuant to this code may be a:

(a) **Compliance Order.** Whenever, on the basis of any information, the Commission or the issuing office determines that any person has violated or is in violation of this code or any permit issued under this code, the issuing office may issue an administrative order assessing a civil remedy and/or fine for any past or current violation, requiring compliance immediately or within a specified time period, or both; or the Commission may commence a civil action, with fine or penalty, in the Spirit Lake Tribe Tribal Court in accordance with the SLT Title V. The Commission may consider other remedies for violations of this code to include, but not limited to, revocations or restrictions of other tribal permits or land leases or the ability to conduct business on tribal lands.

(b) **Cease and Desist Order.** The Commission is authorized to issue a Cease and Desist Order for the immediate closure of a facility or waste management operation, or the cessation of operations if the Commission determines that any owner, operator or person is committing an act or failing to take action, or threatening either, inclusive, and which will cause substantial pollution, the harmful effects of which cannot be remedied immediately thereafter and/or such facility or operation poses an imminent and substantial danger to public health or the environment. Such order may compel any owner, operator or person to stop, avoid, moderate, or perform the cessation of the act so that it is in compliance with this code, inclusive, or so that the substantial pollution or harm will not occur. The order is effective immediately upon receipt by the person to whom it is directed, unless the Commission directs otherwise. If the order is not complied with in a timely manner, the Commission and appropriate office may take such action as is necessary to contain and recover pollutants to limit or prevent pollution or injury to public health or welfare. Upon issuing a Cease and Desist Order, the order shall specify a place and time for a hearing before the Commission, not later than five (5) days thereafter, unless the person to whom the order is directed shall request a later time. The Commission may deny a request for a later time if the Commission finds that the person to whom the order is directed is not complying

with the order. The person has all rights to appeal such order to the Commission and to Tribal Court as specified in this code and SLT Title IV.

(c) **Corrective/Remedial Action Order.** Whenever, on the basis of any information, the Commission determines that an activity or a release of a hazardous waste, substance, pollutant or contaminant poses an imminent threat to public health, life or the environment or there is or has been a release of a hazardous waste, substance, pollutant or contaminant into the environment from a facility or site permitted to operate under this code, and:

(i) such release does not require immediate or emergency action, the Commission may issue an order requiring corrective or remedial action or such other response measure as the Commission deems necessary to protect human health or the environment; or

(ii) such release does require immediate or emergency action, the Environmental Administrator may issue an order requiring immediate corrective or remedial action or such other response measure as deemed necessary to protect human health or the environment. Such corrective or remedial action shall be conducted as directed by the Commission and the Environmental Administrator and the requirements of Chapter 4 of this code.

In addition, the Commission may commence a civil action in the SLT Tribal Court for appropriate relief, including a temporary or permanent injunction in accordance with the procedures specified under SLT Title IV.

(8) Any order issued under this code may include a suspension or revocation of:

(a) a permit issued pursuant to this code; or

(b) an authorization to operate a facility under this code.

(9) Any administrative order issued under this code shall become final unless, no later than thirty (30) days after the order is served, the person or persons named therein requests a hearing before the Commission.

§16-2-109. Civil Remedy Assessment

(1) Any person who violates any provision of this Title may be subject to fines and/or other civil remedies such as, but not limited to, loss of permits, closure of business, or payments to environmental cleanup efforts imposed pursuant to this Title.

(2) Any person who violates the requirements of this Title shall be:

(a) liable for a civil penalty not to exceed fifteen thousand dollar (\$15,000.00) each day for each violation, to be assessed by the designated tribal office or authority; and/or

(b) may be required to provide not less than eight (8) hours, but not more than two hundred (200) hours of community service assisting the SLT Solid Waste Program, or performing other kinds of community service designated by the Environmental Administrator or the Director of the Department of Tribal Community Health Services; and/or

(c) may be subject to other penalties or alternatives to an assessed civil fine pursuant to the SLT Penalty Policy such as:

(a) Community service;

(b) Public publication and notice of the violations;

(c) Banishment of a business or person from the Reservation on a temporary or permanent basis; and/or

(d) Banishment of a tribal member.

(3) Any person, cited for littering or other acts of illegal disposal in violation of this Code may also be ordered by the SLT Environmental Administrator to immediately remove any destructive, injurious or unsightly material from the public right of way, road or highway or other tribally owned land within the boundaries of the Spirit Lake Reservation.

(4) The SLEQC shall develop a "SLT Penalty Policy", in consultation with the Environmental Administrator and the Director of the Department of Tribal Community Health Services, to determine an appropriate range of remedies or penalties to be assessed for violations of this Title based on the classification and magnitude of the violation, the severity of the violation and potential threat to public health or the environment. The policy shall be subject to review and approval of the Tribal Court. The SLT Penalty Policy shall:

(a) Consider the aggravating and mitigating factors to adjust the fine and/or penalty to reflect the particular circumstances surrounding the violation. These factors include the duration of the violation, the respondent's past compliance history, the mental state of the respondent, and the respondent's cooperativeness in achieving compliance or remedying the situation;

(b) Consider the economic benefit gained by the respondent to adjust the fine and to achieve deterrence and create equity between the respondent and those regulated persons who have borne the expense of maintaining compliance; and

(c) Include a table of standardized fines for minor offenses and a matrix that is applied for more serious offenses.

(5) In addition to the factors listed above, the SLEQC may consider any other relevant law, code or regulation of the Tribe or federal government in assessing a civil penalty and will state the effect that law, code or regulation had on the penalty amount.

(6) Any person who commits a violation of this Title may be subject to criminal penalties and also may be liable for any civil damages caused by the commission of such acts and may be excluded from the Reservation. Any person who commits any violations of this Title, or whose employees or agents in the course of their employment or Administration commit any violations of this Title, may have its rights to engage in activities on the Reservation suspended or terminated.

(7) Disposition of Civil Penalty Funds. Civil penalty funds collected by the Commission, the Environmental Administrator and the Director of the Department of Tribal Community Health Services shall be paid to the Tribal Environmental Special Projects Fund. Such funds shall be designated for meeting the costs of responses to environmental emergencies, releases or spills on the Reservation or other costs of protecting the public health or the environment within the Reservation.

(8) Penalties In Addition to Others Penalties under this Chapter are in addition to and do not supersede or limit any other remedies, civil or criminal.

(9) Injunctive Relief The Tribal Court shall have jurisdiction to enjoin violations of this Title, and grant such additional relief as it deems necessary or appropriate to secure compliance with the provisions of this Title or any order, license, permit approval or regulation issued or adopted thereunder upon the petition of the SLEQC or the Tribe.

(10) The SLEQC has the discretion to decrease or increase the penalty per violation based upon the facts and circumstances of the individual case and the SLT Penalty Policy. Factors that may be taken into consideration in increasing or decreasing a base penalty include the respondent's compliance history, the likelihood of future violations, the degree of environmental or human health impact, the deterrence impact and other similar factors. Any such decision of the SLEQC may be subject to a hearing under the requirements of §16-1-104(2).

§16-2-110. Inability to Pay the Penalty

(1) After a fine or penalty is assessed, the SLEQC may reduce a fine or penalty based on the respondent's inability to pay the full penalty amount or perform a penalty. In order to do so, the SLEQC must receive information regarding the respondent's financial or other condition in a format required by the SLEQC along with any additional documentation requested.

(2) If the respondent is currently unable to pay the full fine amount, the first option is to place the respondent on a payment schedule with interest. The SLEQC may reduce the fine only after determining that the respondent is unable to meet a payment schedule of a length the SLEQC determines is reasonable.

(3) The SLEQC, the Environmental Administrator and the Director of the Department of Tribal Community Health Services, at its discretion, may refuse to reduce an assessed civil fine or penalty. In exercising this discretion, the SLEQC may take into consideration any factor related to the violations or the respondent, including but not limited to the respondent's mental state, whether the respondent has corrected the violation or taken efforts to ensure the violation will not be repeated, whether the respondent's financial condition poses a serious concern regarding the respondent's ability to remain in compliance, the respondent's future ability to pay, and the respondent's real property or other assets.

(4) The Environmental Administrator and the Director of the Department of Tribal Community Health Services, at its discretion, may consider alternatives to an assessed civil fine such as community service.

§16-2-111. Settlement of Civil Penalty

(1) Any time after service of a formal enforcement action, the SLEQC may compromise or settle a civil penalty at any amount that the SLEQC deems appropriate.

(2) In determining whether a penalty should be compromised or settled, the SLEQC may take into account the SLT Penalty Policy and the following:

- (a) New information obtained through further investigation or provided by the respondent that relates to the penalty determination;
- (b) The effect of compromise or settlement on deterrence;
- (c) Whether the respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;
- (d) Whether the respondent has had any previous penalties which have been compromised or settled;
- (e) Whether the respondent has the ability to pay the civil penalty;
- (f) Whether the compromise or settlement would be consistent with the SLT's goal of protecting human health and the environment; and
- (g) The relative strength or weakness of the SLEQC's evidence.

§16-2-112. Appeals of Enforcement Actions and Penalties

(1) Any person subject to a formal enforcement action under this Chapter, such as a Notice of Violation or an administrative order (A.O.) may request a hearing or a formal appeal before the Commission or Tribal Court on the alleged violation(s) and/or penalties/fines, pursuant to this code and Spirit Lake Tribe Title IV: Civil Actions.

(2) The person or persons named in any NOV or Administrative Order must request a hearing before the Commission in writing no later than thirty (30) days after the NOV or Order is served.

§16-2-113. Criminal Enforcement

(1) The Commission, the Environmental Administrator or the Director of the Department of Tribal Community Health Services shall refer any criminal enforcement action or portion of such action to the appropriate SLT, U. S. BIA, U.S. EPA or other appropriate federal or state entities.

(2) Criminal enforcement shall be conducted in accordance with Title three (3) of the Spirit Lake Law and Order Code or under applicable Federal or State law.

Title 16: Environment, Health and Sanitation

Chapter 3

PUBLIC AND ENVIRONMENTAL HEALTH

§ 16-3-101. Purpose

This Chapter is intended to promote public health and safety in facilities on the Spirit Lake Reservation. It also provides a basis under tribal law for implementation of the self-determination contract between the Tribe and Indian Health Service for operation of environmental health services and programs.

§ 16-3-102. Declaration of Policy

It is the policy of the Tribe to regulate and control persons engaged in activities affecting public and environmental health as reasonably necessary to protect, promote, and preserve the health and general welfare of the public, to establish rules and Codes governing such activities and provide for effectively enforcing rules and Codes through inspection procedures. The provisions of this Chapter shall be liberally construed and applied to promote its underlying purpose of protecting the public health.

§ 16-3-103. Scope

This Chapter shall apply to the businesses, structures and activities included in the Environmental Health Reporting System list maintained by the Office of Environmental Health, which shall include, but shall not be limited to, all of the following: food and/or beverage service and retail operations, manufacturing facilities, casinos, licensed child care facilities, foster care homes, schools, head start programs, health care facilities, government buildings, community water systems, liquid waste systems, solid waste systems, picnic and recreational areas, trailer parks, residences, hotels, motels, tourist rooming houses, and public swimming pools, water slides, water parks, celebrations, and any special environmental health events occurring on the Spirit Lake Reservation ("Facility" or "Facilities").

§ 16-3-104. Office of Environmental Health

The Office of Environmental Health is established and is charged with the responsibility of enforcing the provisions of this Chapter. The Office of Environmental Health shall be a program of the Department of Tribal Community Health Services. The Office of Environmental Health shall be

administered by the Tribal Environmental Health Specialist ("Environmental Health Specialist") who shall report to and be under the supervision of the director of the Department of Tribal Community Health Services. The Environmental Health Specialist shall be a registered Environmental Health Specialist. The Office of Environmental Health shall have the following duties and authority:

(1) To promote environmental and public health through data collection and analysis, education and consultation;

(2) To conduct surveys, inspections and investigations of complaints for compliance and enforcement of this Chapter as well as applicable provisions of federal law, including the Occupational Health and Safety Act, environmental statutes, including the Lead Contamination Control Act of 1988, the Safe Drinking Water Act, Federal, Insecticide, Fungicide, and Rodenticide Act of 1972 and the Federal Rehabilitation Act and statutes enforced by the Food and Drug Administration;

(3) To order the closure of a Facility subject to tribal jurisdiction or the cessation of operations of such Facility in the event of a finding of serious and imminent danger to health or public safety resulting from a violation of this Chapter;

(4) To seek from the Tribal Court an order or injunction to enforce the provisions of this Chapter;

(5) To update, no later than July 1 of each year, the Environmental Health Reporting System list described in Section 16-3-103, subject to review and approval by the Director of Tribal Community Health Services and the Tribal Council; and

(6) To issue Codes and carry out specific duties delegated in this Chapter.

§16-3-105. Interfering with Personnel of the Office of Environmental Health

It is unlawful for any person to fail or refuse to obey a lawful order of the Environmental Health Specialist or to hinder, delay or otherwise interfere with any survey, inspection or investigation by personnel of the Office of Environmental Health in the performance of their duties.

§ 16-3-106. Adoption of Standards

(1) For the purpose of establishing reasonable rules and Codes governing public health and safety, the Tribal Council adopts, subject to the provisions of subsection (2), the following standards, including future updates and revisions of such standards:

(a) National Fire Protection Association Life Safety Code (NFPA 101), provided that Chapter 43 and Section 4.6.7.2 shall not apply, and Section 4.6.7.1 shall be amended to read "All new work shall comply with the requirements for new construction to the extent practicable."

(b) National Fire Protection Association Uniform Fire Code (NFPA 1).

(c) National Fire Protection Association National Fuel Gas Code (NFPA 54).

(d) National Fire Protection Association Health Care Facilities Code (NFPA 99).

(e) ICC Uniform Building Code.

(f) ICC Uniform Plumbing Code.

(g) Food and Drug Administration Food Code.

(h) Model Tribal Head Start Code.

(i) Standards for foster care homes adopted by the Spirit Lake Department of Social Services. (licensing standards or just standards relating to health inspections—be specific)

(j) Standards for licensed child care adopted by the Spirit Lake Department of Social Services. (some of the licensing standards exceed health standards so this should be cross-reference with existing licensing standards for foster care providers—homes studies are required by existing code so you should also cross-reference with those requirements—they are in the SLT Children's Code)

(k) U.S. Consumer Product Safety Commission Handbook for Playground Safety.

(2) The Environmental Health Specialist shall have the authority to issue Codes modifying or exempting from application pursuant to this Chapter provisions of the standards described in subsection (1) when the Environmental Health Specialist finds such Codes necessary in order to achieve the purposes described in Section § 16-3~101 and implement the policy described in Section § 16-3102. Such Codes shall become effective only after the Environmental Health

Specialist has: (a) provided notice of such Codes in proposed draft form for no less than ninety days to the Director of the Department of Tribal Community Health Services, the Tribal Council, any identifiable class of Facilities likely to be affected by such regulation, and to the public by publication in a local newspaper or newsletter, (b) invited comments on such draft Codes for the ninety-day period, and (c) considered comments received on the draft Codes. The Environmental Health Specialist's final decision issuing Codes pursuant to this subsection (2) shall include responses to any comments received on the draft Codes and explanations of any changes made to the draft Codes. The Tribal Council may by resolution modify or rescind any regulation issued pursuant to this subsection (2).

§ 16-3-107. Facility Compliance with Standards and Applicable Law

Facilities coming within this Chapter as provided in Section § 16-3-103 shall be maintained and operated in accordance with the standards adopted pursuant to Section § 16-3-106 as well as applicable federal law.

§ 16-3-108. Compliance and Enforcement

Follow Chapter 2 AND

(1) **Right of Entry.** The Environmental Health Specialist and other authorized personnel of the Office of Environmental Health shall have the authority to enter the premises of any Facility subject to tribal jurisdiction for the purpose of making such surveys, inspections; and investigations as may be reasonably necessary to determine compliance with this Chapter. The Environmental Health Specialist and other authorized personnel of the Office of Environmental Health may enter the premises of a Facility with the consent of the owner or manager of the Facility in order to perform inspections. All inspections shall be made at reasonable hours. All records of the Facility pertaining to the operation and maintenance of the Facility being inspected shall be made available to the inspector.

(2) **Surveys.** Surveys of Facilities shall be conducted by a registered Environmental Health Specialist from the Office of Environmental Health. An Environmental Health Specialist in-training working under the direct supervision of a registered Environmental Health Specialist may conduct surveys.

(a) Frequency.

(i) All Facilities shall be surveyed or inspected by the Office of Environmental Health as required in Section 16-3-109 and as necessary to protect public health and safety, subject to the availability of funding and staff.

(ii) Follow-up surveys shall be conducted when non-compliant conditions are not corrected on site during the scheduled survey. A reasonable time frame for corrective action shall be established by the Environmental Health Specialist and a follow-up survey will be conducted after that date.

(b) Reports. Following each survey a written report shall be completed promptly and sent to the owner and/or management for the Facility.

(3) Recommendations and Orders. Whenever an inspection finds that a Facility is not maintained or operated as required by this Chapter, the Environmental Health Specialist shall notify the Facility's owner and/or manager in writing and shall recommend specific actions to make the Facility conform to the standards established by this Chapter. Such notice shall also state the time period for taking corrective action or when a follow-up inspection will be performed.

(a) The Environmental Health Specialist may issue orders for corrective action to the Facility subject to tribal jurisdiction for repeated violations which are not corrected as ordered pursuant to Chapter 2 of this Title.

(b) The Environmental Health Specialist may order the closure of a facility or a cessation of operations of such Facility for a violation of this Chapter which the Environmental Health Specialist finds presents a serious and imminent threat to public health and safety.

(c) Notice of an order issued pursuant to §16-2-106 shall be in writing, shall be delivered by mail or Personal delivery to the owner and/or manager of the facility and shall provide a deadline for correcting the violation(s).

(4) Judicial Remedies.

(a) A facility affected by an order issued pursuant to §16-2-106 may appeal such order to the Spirit Lake Tribe Tribal Court. The Tribal Court shall

set aside or modify such order to the extent that the Tribal Court finds such order arbitrary, capricious or contrary to law.

(b) The Office of Environmental Health may seek a court order or an injunction from the Spirit Lake Tribe Court to enforce provisions of an order issued pursuant to §16-2-106.

(c) The Tribal Court shall have jurisdiction over claims brought pursuant to this subsection (4).

(5) Reopening of Facility after Closure. Should an order for corrective action or court order result in the closure of a Facility or cessation of its operations, the Facility shall not reopen or resume operations until the Office of Environmental Health performs a re-inspection and finds that the necessary corrective action has been taken, and there is no violation of this Chapter.

§16-3-109. Complaints.

The Office of Environmental Health shall investigate all complaints regarding possible violations of this Chapter as soon as possible after receipt of the complaint.

Spirit Lake Tribe

Law and Order Code

Title 16: Environment, Health and Sanitation

Chapter 4: Solid and Hazardous Waste Control and Remediation

Table of Contents:

- §16-4-101. General Provisions.
- §16-4-102. Definitions.
- §16-4-103. Duties, Roles and Responsibilities.
- §16-4-104. Residential Municipal Solid Wastes.
- §16-4-105. Commercial and Institutional Solid Wastes.
- §16-4-106. Collection and Transportation of Solid Wastes.
- §16-4-107. Recycle, Reuse, Management and Disposal of Solid Wastes.
- §16-4-108. Prohibited Activities
- §16-4-109. Permitting of Solid Waste Facilities.
- §16-4-110. Required Fees
- §16-4-111. Operation and Maintenance of Solid Waste Disposal Facilities.
- §16-4-112. Operation and Maintenance of Solid Waste Management Facilities.
- §16-4-113. Hazardous Wastes.
- §16-4-114. Special and Industrial Wastes.
- §16-4-115. Lead Paint Abatement
- §16-4-116. Response Actions for Releases of Hazardous Substances, Pollutants or Contaminants.

§16-4-101. General Provisions

- (1) **Title.** This Chapter shall be known as the Spirit Lake Tribe Solid and Hazardous Waste Control and Remediation Code (SLT-SHWCRC or SHW Code).
- (2) **Purpose.** It is the purpose of this Chapter to provide performance criteria and standards for the management of solid and hazardous waste or the assessment and remediation

of a release of a hazardous substance, pollutant or contaminant within the boundaries of the Spirit Lake Reservation in a manner that will control nuisance and litter, protect the public health, safety, and welfare, and prevent or minimize injury of environmental resources from exposure to solid or hazardous waste or constituents of solid or hazardous waste.

(3) **Findings.** The Council finds that it has the responsibility to protect the public health and regulate persons and business within the boundaries of the Reservation. The Council finds that enactment of this Solid and Hazardous Waste Control and Remediation Code will protect the public health, welfare and environment, promote the proper management of solid and hazardous waste, promote the proper remediation of releases of hazardous substances and benefit the members of the Spirit Lake Tribe.

(4) **Scope.** This Title shall apply to all persons and households, commercial businesses, schools, governmental facilities, and all other facilities regarding the storage, collection, transfer, recycling, disposal, and treatment of solid waste or hazardous waste, or that may be the source or cause of a release of a hazardous substance, pollutant or contaminant within the boundaries of the Spirit Lake Reservation, as established in Article IV of the Treaty of February 19, 1867, and such other lands, islands, waters or any interest therein hereafter added to the Reservation.

(5) **Prohibition.** It shall be unlawful for any person or entity to discharge, or threaten to discharge hazardous substances, pollutants or contaminants into the land, air or water of the Spirit Lake Reservation environment unless authorized or permitted to do so under appropriate federal and/or tribal laws and codes.

§16-4-102. Definitions.

"**Agricultural processing operation**" means a facility that processes crops, livestock, or other agricultural products in preparation for wholesale or retail sale to the public such as meat packing, the milling of grain, the selling of livestock by licensed livestock auction facilities, or other similar activities.

"**Agricultural waste**" means solid waste derived from the production and processing of crops and livestock such as manure, spoiled grain, grain screenings, undigested rumen material, livestock

carcasses, fertilizer, and fertilizer containers, but does not include pesticide waste or pesticide containers.

"Aquifer" means a geological formation, group of formations, or portion of formation capable of yielding significant quantities of ground water to wells or springs.

"Asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

"Asbestos containing waste materials" (ACM) means any waste that contains commercial asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S. C. 9601), as amended by the Superfund Amendments and Reauthorization Act of 1986 and the Small Business Liability Relief and Brownfields Revitalization Act of 2002.

"Certification" means a statement of professional opinion based upon knowledge and belief.

"Closed unit" means a landfill or surface impoundment or a portion thereof that has received solid waste in the past for which closure is complete.

"Closure" means the taking of those actions to close and reclaim a solid waste management unit or facility. Closure actions may include, but are not limited to, sloping filled areas to provide adequate drainage, applying final cover, providing erosion control measures, grading and seeding, installing monitoring devices, constructing surface water control structures, installing gas control systems, and measures necessary to secure the site.

"Commercial Facility" means any business, stores, offices, restaurants, warehouses, and other non-manufacturing activities no matter what the ownership structure, which operates to package, store, distribute, or market any product or service on the Reservation, exclusive of household waste, industrial waste, and special waste.

"Commercial waste" means solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, no matter what the ownership structure, exclusive of household waste, industrial waste, and special waste.

"Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

"Construction Wastes" means materials and rubble from construction, remodeling, repair and demolition operations.

"Detachable container" means a reusable container for the collection, storage, or transportation of solid waste that is mechanically loaded or handled (for example, "dumpsters" and "roll-offs").

"Discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

"Disposal Site" means a site, location, tract of land, landfill site, or premises used or intended to be used for partial and or total solid waste disposal.

"Emergency Response" means immediate containment and/or removal of oil or hazardous substances, pollutants or contaminants from the land, air or water or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare of

- the Tribe (including, but not limited to, fish, shellfish, wildlife, tribal, public and private property) or to the environment.
- "Environmental Administrator"** means the Administrator of the Spirit Lake Tribe Tribal Environmental Protection Administration (SLT-EPA). Also means the Director of the tribal solid waste utility of the Spirit Lake Tribe known as the "SLT Refuse Control Services."
- "Facility"** means all contiguous land and structures, other appurtenances, and improvements on land which include one or more solid waste management units, such as a transfer station, solid waste storage building, a solid waste processing system, a resource recovery system, an incinerator, a surface impoundment, a surface waste pile, a land treatment area, or a landfill. A facility may or may not be used solely for solid waste management.
- "Final cover"** means any combination of compacted or un-compacted earthen material, synthetic material, and suitable plant growth material which, after closure, will be permanently exposed to the weather and which is spread on the top and side slopes of a landfill or facility.
- "Floodplain"** means the lowland and relatively flat areas adjoining inland waters that are inundated by a one-hundred-year flood or below an elevation designated by the Tribe.
- "Free moisture or liquid"** means the liquid which separates from the solid portion of a solid waste under ambient pressure and normal, above freezing temperature. The U. S. Environmental Protection Agency paint filter liquids test method or visual evidence must be used to determine if a waste contains free liquid.
- "Garbage"** means putrescible solid waste such as rejected food wastes, including waste accumulation of animal, fruit or vegetable matter used or intended for food or resulting from the handling, preparation, use, cooking, consumption, or storing of meat, fish, fowl, fruit or vegetables, including wastes from markets, storage facilities, and processing plants.
- "Groundwater"** means water occurring in the zone of saturation in an aquifer below the land surface in a geologic unit in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure.
- "Hazardous Wastes"** means solid waste or combination of solid wastes which, because of its quantity, concentration or physical, chemical or infectious characteristics may:
- (1) Pose a substantial present or future hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise mismanaged; or
 - (2) Meet the specifications, description or listing as a hazardous waste in 40 CFR Part 261 pursuant to 3001 of the Solid Waste Disposal Act (U.S.C. 6901 et seq.), as amended.
- "Hazardous Substance"** means any substance designated pursuant to section 311(b)(2)(A) of the CWA; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); any toxic pollutant listed under section 307(a) of the CWA; any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. 7521 et seq.); and any imminently hazardous chemical substance or mixture with respect to which the U. S. EPA Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).
- "Household waste"** means solid waste, such as trash and garbage, normally derived from households, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas.
- "Incinerator"** means any enclosed device that:

- (1) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or
- (2) Meets the definition of infrared incinerator or plasma arc incinerator.

"Industrial waste" means waste which may include, but is not limited to, residues or spills of any industrial or manufacturing process and waste resulting from the following:
fertilizer/agricultural chemicals; inorganic chemicals; leather and leather products; organic chemicals; plastics and resins manufacturing; plastic, resin, fiberglass, or carbon-fiber based products; textile, or textile product manufacturing; transportation equipment; petroleum refining; and the combustion of municipal waste or regulated infectious waste.

"Inert waste" means non-putrescible solid waste which will not generally contaminate water or form a contaminated leachate. Inert waste does not serve as food for vectors. Inert waste includes, but is not limited to: construction and demolition material such as metal, wood, bricks, masonry and cement concrete; asphalt concrete; metal; and tree branches.

"Junk" means, for the purposes of this Chapter, materials which will not be utilized if not collected and processed for reuse or recycling, including but not limited to mean lead scrap, copper, brass, iron, steel, rope, wire, glass, rags, batteries, paper, trash, rubber, debris, demolition waste, abandoned mobile homes, dismantled or wrecked vehicles, untaxed, untitled or unlicensed vehicles or parts thereof; and other old scrap ferrous or nonferrous materials.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal and that is not a land treatment unit, surface impoundment, injection well, or waste pile.

"Land treatment" means the controlled application of solid waste, excluding application of animal manure, into the surface soil to alter the physical, chemical, and biological properties of the waste.

"Lateral expansion" means a horizontal extension of the waste boundaries of an existing landfill disposal unit.

"Leachate" means liquid that has passed through or emanating from land disposal cell or solid waste and contains soluble, dissolved, suspended, miscible materials and/or microbial contaminants from the solid waste.

"Leachate removal system" means any combination of landfill base pumps, holding areas or retention structures, treatment systems, or other features that are designed, constructed, and maintained to contain, collect, detect, remove, and treat leachate.

"Lessee" means any party leasing land from another person, entity or government agency to include the SLT or the Bureau of Indian Affairs.

"Littering" means the improper disposal, depositing, release, leaking or placing of any solid waste or junk by any person, acting on his own or on behalf of a firm, corporation governmental subdivision or agency in any location, other than an approved solid waste collection, storage, treatment or disposal area within the boundaries of the Spirit Lake Reservation.

"Open burning" means the combustion of solid waste without:

- (1) Control of combustion air to maintain adequate temperature for efficient combustion,
- (2) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and
- (3) Control of emission of the gaseous combustion products.

"Operator" means the person responsible for the overall operation of a facility or part of a facility.

"Owner" means the person who owns a facility or part of a facility.

"Permit by Rule" means a permit issued by the SLT-EPA pursuant to these Codes that does not require a formal public notice or a Record of Decision and may be issued administratively by the SLT-EPA upon receipt of the required complete permit application and payment of any required fees.

"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.

"Pile" means any non-containerized accumulation of solid, non-flowing hazardous waste that is used for treatment or storage and that is not a containment building.

"Plan of operation" means the written plan developed by an owner or operator of a facility detailing how a facility is to be operated during its active life.

"Pollutant or contaminant" shall include, but not be limited to:

- (1) Any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term pollutant or contaminant shall also include a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) and petroleum or petroleum product; or
- (2) Any pollutant or contaminant that may present an imminent and substantial danger to public health or welfare of the Tribe or any person within the exterior boundaries of the Spirit Lake Reservation.

"Pollution" means contamination of the environment to a measurable degree and adverse nature, including but not limited to hazardous substances pollutants or contaminants (as defined in Section 101(14) and (33) of CERCLA, 42 U.S.C. 9601); hazardous waste (as defined in the Solid Waste Disposal Act, 42 U.S.C. 6901 and 40 CFR Part 261), a controlled substance (as defined in Section 102 of the Controlled Substances Act – 21 U.S.C. 802); petroleum or petroleum byproducts or other toxic organic waste or toxic chemicals.

"Post-closure period" means the period of time following closure of a solid waste management unit during which the owner or operator must perform post-closure activities.

"Public Facility" means any facility used for public purposes such as schools, churches, gyms, activity and recreational facilities, offices, etc., generally used from time to time by the public.

"Radioactive waste" means solid waste containing radioactive material

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 et seq.

"Recyclable material" means a solid waste material that has been segregated for recycling or converted into a raw material, substitute for a raw material, or a commodity.

"Recycle or Reuse Processing" means an operation designed to separate, shred, compress, or otherwise modify a recyclable material to facilitate the transport or resource recovery of the material.

"Recycled agricultural material" means agricultural waste generated by a farming operation or agricultural processing operation that is recycled or applied to soils as a nutrient or as a fertilizer

at appropriate agronomic rates, or that is left in place on soils during harvesting, grazing or other similar agricultural activities. Recycled agricultural materials also include:

(1) Material, including manure, generated by any concentrated or confined animal feeding that is stored in a feedlot or waste storage structure, provided that the material is stored in a manner that is not likely to pollute the waters of the Tribe or the State, and recycled or applied to soils as nutrients or fertilizers; or

(2) Material, including manure, generated by any agricultural processing operation that is stored in a manner that is not likely to pollute the waters of the Tribe or the State, and recycled or applied to soils as nutrients or fertilizers.

(3) Recycled agricultural material does not include agricultural waste that is discarded as garbage, refuse, or other solid waste.

"Recycling" means collecting, sorting, or recovering material that would otherwise be solid waste and performing all or part of a method or technique, including processing, to create a recyclable material.

"Refuse Control Manager" means the manager of the Tribal solid waste utility and transfer station of the Spirit Lake Tribe that reports to the Tribal Health Director.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant). Release also means threat of release. The normal application of fertilizer is excluded.

"Remediation waste" means all solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing a site remediation or response.

"Remedy or Remedial Action" means those actions consistent with the permanent remedy taken in the event of a release or threatened release of a hazardous substance, pollutant or contaminant into the environment, to prevent or minimize the release so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment; and (1) The term also includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment and, where appropriate, post-removal site control activities.

(2) The term also includes off-site transport and off-site storage, treatment, destruction, or secure disposition of hazardous substances, pollutants or contaminants and associated contaminated materials.

"Reservation" means The Spirit Lake Reservation, including all lands, islands, waters, roads and bridges or any interests therein, whether trust or non-trust status and notwithstanding the issuance of any patent or right-of-way, within the boundaries of the Reservation as established in Article IV of the Treaty of February 19, 1867, and such lands, islands, waters or any interest therein hereafter added to the Reservation.

"Runoff" means any snowmelt, rainwater, leachate, or other liquid that drains from any part of a facility over another part of the facility or over land adjoining the facility.

"Run-on" means any snowmelt, rainwater, or other liquid that drains from land adjoining a facility onto any part of the facility or that drains from one part of the facility onto another part of the facility.

"Scavenging" means the unauthorized, uncontrolled and unsafe removal of materials from any solid waste management facility or at any point in the solid waste stream.

"Sludge" means any solid, semi-solid or liquid waste consisting of a mixture of solids and water, oils, or other liquids generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

"Solid Waste" means any garbage, refuse, rubbish, sludge, and other material, other than recyclable material that has been segregated for recycling, 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 material in domestic sewage, or solid 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 byproduct material as defined by the Atomic Energy Act of 1954, as amended (68Stat.923).

"Source control" means the construction or installation and start-up of those actions necessary to prevent the continued release of hazardous substances or pollutants or contaminants (primarily from a source on top of or within the ground, or in buildings or other structures) into the environment.

"Special Waste" means solid waste that is not a Hazardous Waste as defined herein that can be designated by the SLT Environmental Administrator as a Special Waste and may require special storage, management, transportation or handling because it is a:

- (1) solid waste that causes corrosion or decay or otherwise reduces or impairs the integrity of containment structures or storage containers; or
- (2) solid waste that, if mixed or commingled with other solid waste, produces violent reaction, heat, pressure, fire or explosion, toxic by-products, reaction products, or otherwise poses a threat to the health and safety of solid waste workers, handlers and/or transporters, that require a higher level of containment, is a hazardous material, or impairs the integrity of containment features; or
- (3) solid waste that otherwise requires specific storage, management, transportation or disposal requirements to protect public health or the environment.

"Storage" means the interim containment or holding of solid waste at the generation source, or other location, prior to collection, treatment and/or ultimate disposal or recovery elsewhere.

"Surface impoundment" means a human-made excavation, diked area, or natural topographic depression designed to hold an accumulation of solid waste which is liquid, liquid bearing, or sludge for containment, treatment, or disposal. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

"Tank" means a stationary device, designed to contain an accumulation of waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

"TENORM" means Technically Enhanced Naturally Occurring Radioactive Material whose radionuclide concentrations are increased by or as a result of past or present human practices. TENORM does not include background radiation or the natural radioactivity of rocks or soils. TENORM does not include "source material" and "byproduct material" as both are defined in the Atomic Energy Act of 1954, as amended (AEA 42 USC §2011*et seq.*) and relevant Codes implemented by the NRC.

"TENORM WASTES" means wastes defined as solid, special or hazardous wastes that are or contain Technically Enhanced Naturally Occurring Radioactive Materials (TENORM) at concentrations greater than 185 becquerel per kilogram (5 picoCuries/gram or pCi/gm). There is no adjustment made for the background of blended waste material. The 5 pCi/gm limit is for the waste stream or material as measured using a SLT-EPA approved analytical method and procedures.

"Transfer station or facility" means a site or building used to transfer solid waste from a vehicle or a container, such as a roll-off box, into another vehicle or container for transport to another facility.

"Treatment" means any method, technique, or process including neutralization designed to change the physical, chemical or biological character or composition of a solid or hazardous waste or leachate so as to neutralize or render such waste or leachate amendable for safe transport, amendable for safe recovery, amendable for safe storage or disposal 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. The term does not include resource recovery.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

"Waste pile" means any non-containerized accumulation of non-flowing solid waste.

"Water table" means the surface of underground gravity controlled water beneath which all interconnected pore space is water-filled or saturated.

§16-4-103. Duties, Roles and Responsibilities.

(1) **Spirit Lake Tribe Environmental Administrator:** The Environmental Administrator is the Administrator of the Spirit Lake Tribe Tribal Environmental Protection Administration (SLT-EPA) responsible for the daily management and supervision of the SLT EPA and its staff and resources; The Environmental Administrator is employed by the Tribal Council and complies with personnel policies and procedures of the Tribe. The Environmental Administrator shall report to the Environmental Quality Commission, and provide technical assistance to the Commission in carrying out its duties and functions, as provided in this Code. For the purposes of this Chapter the Spirit Lake Tribe Environmental Administrator shall oversee the implementation and operation of the Spirit Lake Tribe Refuse Control Services and related operations and resources. The duties of the Environmental Administrator may be delegated to the Refuse Control Manager or other

authorized tribal personnel. The rate of pay for the Environmental Administrator is determined by the Tribal Council. The duties, roles and responsibilities of the Environmental Administrator shall include:

(a) serving as the Environmental Quality Commission's lead expert on Environmental quality, protection, conservation, and maintenance and/or may employ a consultant to assist in providing this information;

(b) prescribe such policies, guidance or procedures as are necessary to carry out his/her functions under this Code pursuant to the provisions of this Code;

(c) authority to Delegate to a member of the SLT staff, or other Tribal agency staff, the authority to perform any of the powers, duties and responsibilities of the EA as provided in this Code.

(d) serving as the Tribal enforcement agent, pursuant to Chapter 2 of this Title, entrusted with the duty and responsibility of ensuring proper transportation, treatment, storage and disposal solid and hazardous waste on the Reservation to include:

(i) conducting investigations and gathering information necessary for the enforcement of this Code and ensuring compliance by all persons, entities and government agencies.

(ii) ensuring compliance, enforcement and administration of the policies and permits issued by the SLT-EPA under this Code to include carrying out a permit compliance and inspection program;

(iii) ensuring compliance with administrative orders and other enforcement actions taken under this Code;

(iv) Initiating appropriate compliance and enforcement actions, to include warnings letters, citations, NOVs, administrative orders and assessment of civil fines or penalties as necessary and appropriate as specified pursuant to Chapter 2 of this Title;

(v) receive and record information or complaints submitted by any persons concerning any regulated activity or facility. If requested, the Director shall provide a written response to any person providing such information within sixty (60) days of the request.

(v) conduct investigations, inspections and tests to carry out the duties of this office pursuant to the provisions of this Code;

(vi) inspect at any time any site or premises at which regulated activities are conducted and make photographic, video, or other records of information obtained during the inspection and make video or photographic records of any regulated activity or facility;

(vii) enter any site or premises subject to the tribal permit programs or at which records relevant to regulated activity or facility are kept and review and reproduce any records relevant to the regulated activity or facility;

(viii) obtain any information, including records and reports, from any owner or operator of a facility or operation permitted under this Code, necessary to determine whether the owner or operator is in compliance with this Code;

(ix) conduct any independent monitoring or testing necessary to ensure that owners or operators of a facility or operation permitted under this Code are in compliance with this Code;

(x) conduct any and all independent tests or samplings necessary to verify the adequacy of methods (including sampling) used by owners or operators to obtain information to determine compliance with this Code, including, but not limited to, testing and inspecting any equipment used by the owner or operator to test, sample, or obtain information;

(xi) interview persons employed in the operation of any regulated facility or service subject to the requirements of this Code;

(xii) participate in hearings related to any aspect of or matter within the authority of this Code and, in connection therewith, compel the attendance of witnesses and the production of records, and participate on behalf of the Tribe in such hearings;

(e) conduct compliance assistance, community outreach and education on the requirements and goals of this Code, and solicit public comment and obtain expert advice when appropriate;

(f) investigating the release, or threat of release, of a hazardous substance, pollutant or contaminant, petroleum product, controlled substance or mining materials and initiating appropriate actions to address or remediate such releases;

(g) assess and collect authorized fees on persons involved with the commercial collection, management, storage, transportation, and disposal of solid and/or hazardous waste, including construction and/or demolition contractors, provided that all monies resulting therefrom shall be deposited in the Environmental Special Projects Fund;

(h) seek, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this Code, provided that all monies resulting therefrom shall be deposited in the Spirit Lake Tribe Finance Department;

(i) prescribing solid and hazardous waste policies and requirements under this Code, in consideration of, but shall not be limited to, the relevant factors prescribed by Subtitles C & D of the Resource Conservation and Recovery Act (RCRA) and the Codes thereunder, except that the policies and requirements prescribed by the Environmental Administrator shall be at least as stringent as those promulgated under RCRA;

(j) ensure compliance with the notification and response requirements of this Code in the event of an accidental release or spill of a hazardous substance, pollutant or contaminant to the air, land or waters or groundwater of the Reservation resulting in a potential threat to the public health, welfare or the environment within the boundaries of the Reservation and ensure the appropriate entity addresses the immediate and long term impacts of the release or spill to include all necessary containment, remediation, assessment of impacts and long term monitoring;

(k) ensure compliance with any Tribal Institutional Controls or land use restrictions resulting from actual or suspected contamination from solid or hazard waste or other hazardous substances, pollutants or contaminants;

(l) render inoperative, shut down, close, modify or otherwise control the methods of any operation involved with the collection, transportation, storage, disposal or release of solid or hazardous waste that poses a threat to public health or the environment;

(m) collect, organize and catalog existing information and studies available from all sources, both public and private, pertaining to the management of solid and hazardous waste and past releases of hazardous substances, pollutants or contaminants within the exterior boundaries of the Spirit Lake Reservation;

(n) develop such additional data and studies pertaining to solid and hazardous waste and solid waste management as are necessary to accomplish the objectives of this Code;

and

(o) perform such other activities as the Tribal Council may find necessary to carry out his/her functions under this Code.

(2) SLT Environmental Protection Administration (SLT-EPA)

The SLT-EPA, and the staff of the SLT-EPA under the supervision of the Environmental Administrator, is hereby designated as the civil enforcement Administration entrusted with the duty and responsibility of ensuring compliance by all Persons with all Chapters of this Code, other than Chapter 3, for the proper treatment, storage and disposal of solid and hazardous waste on the Reservation and ensuring compliance with this Code and proper responses to spills or releases of hazardous substances, pollutants or contaminants within the Reservation.

(3) Tribal Health Director

The Office of Environmental Health shall be a program of the Department of Tribal Community Health Services. The Office of Environmental Health shall be administered by the Tribal Environmental Health Specialist ("Environmental Health Specialist")/Tribal Health Director. The Office of Environmental Health and the Tribal Environmental Health Specialist/Tribal Health Director is hereby designated as the civil enforcement administration entrusted with the duty and responsibility of ensuring compliance by all Persons with Chapter 3 of this Code. Such duties shall include, but not limited to:

(a) conducting studies of the nature, extent, and methods of reducing and controlling litter or illegal disposal problems on the Reservation including, but not limited to, methods of improving public education and incentives to reduce waste generation and littering, necessary additional legislation, and improved methods of implementing existing laws;

(b) conducting, monitoring, sampling or other studies, regarding new or improved methods of solid waste handling, treatment, and disposal and prepare and implement a solid waste management information storage and retrieval system coordinated with other information systems;

(c) assessing and determine whether there is a need to create a waste disposal site(s) on the Reservation or other territory over which the Tribe has jurisdiction and assess and determine whether the creation of a waste disposal site on the Reservation would negatively impact the health, safety and welfare of the residents and environment of the Reservation and comply with tribal and federal criteria and standards;

(d) preparing and implementing Tribal policies and management plans for solid waste management, reuse and recycling;

(e) studying and quantify the waste streams produced by residents and businesses of the Reservation or other territory over which the Tribe has jurisdiction;

(f) implementing the requirements of Chapter 4 of this Code for proper management of residential solid wastes and supports the SLT EPA in the enforcement of this Code;

(g) seeking grants or other sources of funding to support the tribal solid waste management and recycling programs; and

(h) Communicate with U.S. EPA regarding the Tribe's solid waste management program and make any required reports to the U.S. EPA in a manner and containing such information as necessary, excluding any confidential or privileged information.

(4) Governmental Cooperation. The provisions of this Chapter may be carried out by agreements between the Spirit Lake Tribe and federal, state or county agencies, including but not limited to the Indian Health Service and the Bureau of Indian Affairs.

(5) Interfering with SLT EPA or Refuse Control Services Personnel

(a) It is unlawful for any person to fail or refuse to obey a lawful order of the Environmental Administrator or to hinder, delay or otherwise interfere with any survey, inspection or investigation by authorized personnel of the SLT-EPA in the performance of their duties.

(b) It is unlawful for any person to hinder, delay or otherwise interfere with any authorized personnel of the Spirit Lake Tribe Refuse Control Services in the performance of their duties.

§16-4-104. Residential Municipal Solid Wastes

(1) **Applicability.** This Code is applicable to any person who owns, rents, leases, dwells in or operates any residential premises or related areas, buildings or structures. Such person is responsible for the solid waste management activities, such as storage, transportation, resource recovery, or disposal, of solid waste generated or managed at that premises.

(2) **Waste Containment.** No person shall be allowed to keep in, on or about any dwelling, building or premise or any other place on the Spirit Lake Reservation uncontained garbage or refuse of any kind that may be injurious to the public health, creates harborage for insects, rats, or other vermin or is offensive to the residents of the Spirit Lake Reservation . It shall be unlawful to litter, throw or sweep into the streets, roads, alleys, parks, or any other public grounds any paper, nails, glass, refuse, waste, or rubbish of any kind. No person may permit garbage or refuse to accumulate and all persons shall remove the same from their property within twenty-four hours after being notified to do so by the SLT-EPA, the Tribal Refuse Control Services, the Environmental Health Specialist or other authorized official of the Spirit Lake Tribe. All waste shall be placed and stored in:

- (a) solid waste containers of a type approved by the Environmental Administrator;
- (b) approved solid waste containers constructed of galvanized metal or heavy-duty plastic in good repair, leak proof, rodent proof, free from holes with a tight-fitting cover;
- (c) individual containers not exceeding 32 gallons capacity except for special containers provided by a tribal collection service or other collection service that has a tribal collection and transportation permit;
- (d) bulk containers or detachable containers, such as dumpsters, constructed of rigid and durable, rust-resistant and corrosion-resistant material, equipped with tight-fitting lids or doors to prevent entrance of insects or rodents, and leak-proof. Lids and covers must be closed except when adding or removing waste; and
- (e) containers that are broken or otherwise fail to meet requirements of this Code must be promptly replaced with complying containers.

(3) Container Storage. Refuse containers shall be stored in such a manner that spilling and animal pilferage is prevented and must be covered except when adding or removing waste. All refuse containers must be maintained in good repair and in a manner as necessary to prevent litter, nuisances, odors, insect breeding, and rodents. Containers shall be placed in the location(s) designated by the Environmental Administrator prior to schedule collection days and times.

(4) Waste Storage. Enclosed storage areas for solid wastes or refuse containers such as storage rooms or buildings must be of rodent-proof construction which is readily cleanable with proper drainage. Storage rooms or buildings must be adequately vented and all openings must be screened.

(5) Unconfined waste. Unconfined waste materials such as brush, leaves, tree cuttings, recyclables, bulky materials and other debris for manual pickup and collection shall be placed in the designated location (usually curbside) before scheduled times or collection days, or other special collection/cleanup events, as directed and approved by the Environmental Administrator.

(6) Waste Accumulation. No person shall allow the accumulation of wastes, junk or other scrap materials to the extent that such accumulation is a potential hazard to the environment or public health accept:

(a) on property that is purely agricultural in character; or

(b) on property for special collection/cleanup events directed and approved by the Tribal Health Director.

The SLT-EPA, the Environmental Health Specialist or the Tribal Health Director shall have the power to investigate all complaints of accumulation of wastes, junk or other scrap materials. Unlawful accumulation or storage of waste materials shall be reported to the Environmental Administrator of the SLT-EPA for appropriate compliance or enforcement action pursuant to this Title.

(7) Rural Waste Management. A person living outside of the Districts or housing areas in the rural areas of the Reservation may store or dispose of household refuse upon his own land, subject to review and approval by the Environmental Administrator and the Environmental Health Specialist, as long as such storage and disposal does not create a nuisance or hazard to health and

such storage or disposal does not adversely impact any wetland, waterway or drainage area that drains to a surface water or waterway on the Reservation.

(8) Exceptions. This Code is not intended to prevent:

(a) the beneficial use or reuse of materials, substances, energy, or other products derived from a resource recovery activity; or

(b) appropriate management of agricultural waste from a primarily agricultural operation that is managed or disposed of on land owned by the farming or ranching operation and which is not likely to create a public health hazard or pollute the air or waters of the Tribe. All such waste management is subject to review and approval by the Environmental Administrator and the Tribal Health Director and such exemption can be denied for just cause.

(9) Waste Burning. No burning of residential solid waste is allowed within the boundaries of the Spirit Lake Reservation unless a written Burning Permit is obtained in advance from the SLT-EPA or the SLT Fire Department. Such burning shall be only under controlled burning conditions. Arrangements shall be made for notification and coordination with the local Fire Chief prior to any burning to prevent or control any undesirable or unintended burning.

§16-4-105. Commercial and Institutional Solid Wastes

(1) §16-4-104 shall also apply to commercial establishments and public facilities, permanent or temporary, in their handling of solid waste unless otherwise permitted or authorized a variance by the Tribal Health Director and the SLT-EPA.

(2) No commercial or public facility or contractor shall burn solid waste without first obtaining a Burning Permit from the SLT-EPA or the SLT Fire Department. Such burning shall be only under controlled burning conditions. Arrangements shall be made for notification and coordination with the local Fire Chief prior to any burning to prevent or control any undesirable or unintended burning.

(3) Solid waste collection and transportation vehicles utilized by a commercial establishment, public institution or public facility for collection and transportation of any solid wastes to include residue, sludge, agricultural, inert, industrial waste, or special waste must be:

(a) loaded, covered and moved in such a manner that the contents will not fall, leak, or spill therefrom. Where spillage does occur, the collector or transporter shall immediately return spilled waste to the vehicle or container and, if necessary, clean and decontaminate the area; and

(c) maintained in good repair and in sanitary condition.

(4) Solid wastes shall be removed on a regular schedule or at least once a week from business, institutional, industrial or commercial areas and buildings or as scheduled by the Spirit Lake Tribe Refuse Control Services. Waste removal shall be scheduled as appropriate and needed for temporary public facilities or activities.

§16-4-106. Collection and Transportation of Solid Wastes.

(1) No person, firm, institution or corporation, other than the SLT Refuse Control Services, shall collect, transport, or dispose of solid waste for a fee within the Spirit Lake Reservation without a written permit from the SLT-EPA. All solid waste originating from multiple, commercial or industrial sources within the boundaries of the Spirit Lake Reservation shall be collected and transported by:

(a) the Spirit Lake Tribe Refuse Control Services, under the supervision of the Environmental Administrator; or

(b) commercial waste collection and haulers permitted by the STL-EPA.

(2) All vehicles used by a person, firm, institution or corporation to collect, transport, or dispose of solid waste, whether for personal or private purposes or for a fee within the Spirit Lake Reservation, to include residue, sludge, agricultural, inert, industrial, or special waste, must be:

(a) equipped with a tight box and so covered, loaded and moved in such a manner that the contents will not fall, leak, scatter, or spill there from; and

(b) kept clean and in good repair.

(3) Any waste material spilled or released from a transportation vehicle must be immediately returned to the transport vehicle or container and, if necessary, the area must be cleaned and decontaminated. If the spilled or released wastes or materials are a special waste or

a hazardous waste, substance or pollutant the release and any response action taken must be immediately reported to the Environmental Administrator.

(4) Tribal waste collection and transportation services shall be operated by the Refuse Control Services under the supervision of the Environmental Administrator; and/or a "Contract for Services" through the Tribal Refuse Control Services with a person, firm, or corporation that has obtained a permit as described in this Code. The Environmental Administrator shall set and collect such rates/fees as necessary to provide the collection service. Rates shall be set only at a properly advertised public meeting(s) where user comment is encouraged. Nothing in this section shall prohibit anyone from receiving a permit under this Code to service the same area.

(5) Collection and transportation of trees, branches, and other bulky items that do not fit in approved containers shall be the responsibility of the generating resident, tenant or property owner unless other arrangements have been made with the Tribal Refuse Control Services or other authorized collection service.

(6) Solid waste shall be collected and/or transferred at the areas or location(s) designated areas by the Environmental Administrator.

§16-4-107. Recycle, Reuse, Management and Disposal of Solid Wastes.

(1) It is the intention of the Spirit Lake Tribe to encourage and facilitate the recycling and reuse of solid waste materials in a manner that protects the public health and the environment and is in accordance with the traditional values of the Spirit Lake Tribe. Every effort will be made in the implementation and enforcement of this Code to encourage such recycling and reuse.

(2) No person, firm, corporation, government subdivision or agency shall dispose, treat or store of any solid waste any place within the boundaries of the Spirit Lake Reservation except in a solid waste disposal, transfer, treatment or recycle/reuse facility which has been authorized, designated or permitted under this Code.

(3) Any person, firm, corporation, government subdivision or agency that generates any/or collects any solid waste within the boundaries of the Spirit Lake Reservation and transports it for disposal outside of the Reservation is responsible to assure that such material is disposed of in a

facility that is properly licensed or permitted under the laws of the State or Reservation where such facility is located.

(4) The Spirit Lake solid waste utility known as the SLT Refuse Control Services may operate solid waste disposal, treatment, storage or transfer areas on the Spirit Lake Reservation. It is the intention of the Spirit Lake Tribal Council to allow for such operations and areas to be used for:

(a) disposal of construction/inert waste disposal;

(b) composting of non-hazardous organic wastes;

(c) recycling or reuse of solid waste; or

(d) transfer stations for the temporary storage of solid waste to be transported and disposed of or recycled outside of the Reservation in accordance with this Code.

(5) Any other solid waste disposal, treatment, storage or transfer areas operated on the Spirit Lake Reservation operated by a non-tribal entity shall require a permit to operate pursuant to this Code.

(6) Any person, acting on his own or on behalf of a firm, corporation governmental subdivision or agency, who deposits any solid waste or litter in any location other than an approved solid waste collection, storage, treatment or disposal area or in any way causes littering within the boundaries of the Spirit Lake Reservation shall be in violation of this code and subject to appropriate compliance or enforcement actions, including fines or penalties as designated in Chapter 2 of this Title.

§16-4-108. Prohibited Activities

- a) Littering or Dumping: It is expressly prohibited and shall be unlawful, for any person to dispose of, or dump, throw, discard, litter, scatter, or place, or cause to be dumped, scattered or placed, any solid waste as defined under these regulations, including any special or hazardous waste as defined under these regulations, upon any public or private property or at or near an open dump site within the exterior boundaries of the Reservation, on any other land within the exterior boundaries of the Reservation, and any subsequently purchased land, or upon or into any river, lake, pond, or other stream or body of water within the exterior boundaries of the Reservation, except as disposal may be permitted under these Codes at a duly authorized, permitted and designated MSWLF. 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 such site is specifically determined by SLT-EPA to be in compliance with 40 CFR Part 257 or 258 and these Codes.
- b) Littering from Motor Vehicle: It is expressly prohibited and shall be unlawful for any person to dump, deposit, drop, throw, discard, or otherwise dispose of litter from any motor vehicle or vessel upon any public highway, upon any public or private property or body of

water, nor shall any person transport by any means, garbage or refuse from any dwelling, residence, place of business, farm, or other site to another site without adequate containment or a tarp to prevent such littering.

- c) **Accumulation of Litter or Solid Waste on Property:** It is expressly prohibited and shall be unlawful for any person to accumulate solid waste upon real property, of which the person charged is the owner or tenant in control, in such a manner as to constitute a public nuisance, that may be injurious to the public health, is offensive to residents of the community, or is accumulated in such a manner that the litter may be blown or otherwise carried by the natural elements onto the real property of another person.
- d) **Open Burning of Solid Wastes:** It is expressly prohibited, and shall be unlawful, for any person to burn any solid, special or hazardous waste anywhere within the exterior boundaries of the Reservation, including all subsequently purchased land, except as SLT-EPA may specifically authorize by permit or Code which is not prohibited by federal law. The SLT-EPA may amend the prohibition based on the availability of alternative waste stewardship options on the Reservation or emergency situations. The SLT-EPA may authorize by permit, rule and Code, the infrequent open burning of agricultural wastes, silvicultural wastes, land cleaning debris, diseased trees, or debris from emergency cleanup operations. The SLT-EPA will coordinate the approval of any burning permits with the other tribal programs, local Police Department, Fire Department and the BIA.
- e) **Unauthorized Construction or Operation of Waste Site or Facility:** It is expressly prohibited and shall be unlawful, for any person to construct, alter, manage or operate a waste management facility or disposal site without a business license and a permit, in violation of these Codes, or in violation of the terms and conditions of its permit.
- f) **Scavenging:** It is expressly prohibited and shall be unlawful for any unauthorized person to remove solid waste, special waste or hazardous waste at any point in the waste management system, including but not limited to, collection sites, containers, storage sites, transfer sites or disposal sites.
- g) **Misleading Representations.** It shall be a violation of this Title for any person to knowingly omit material information or make any false statement or representation in any label, record, report, or other document filed maintained or used for purposes or application or compliance with this Title or permits issued there under.

§16-4-109. Permitting of Solid Waste Management Services or Facilities

(1) All solid waste collection, transfer, treatment and disposal services or sites within the exterior boundaries of the Reservation, except those operated by the Spirit Lake Tribe Refuse Control Services, are required to be permitted by the Spirit Lake Tribe and pay all required fees. Such Permits are to be issued, denied or terminated by the Environmental Administrator

or the Tribal Health Director as appropriate. Some permits may also require the concurrence of the SLT-EQC.

(2) General Permitting Requirements

- a) The SLT-EPA may issue the following type of permits required pursuant to this Chapter:
 - i. a "Waste Management, Treatment, or Disposal Permit";
 - ii. a "Permit-by-Rule"; or
 - iii. other specific type of permit(s) required pursuant to this Chapter.
- b) All persons, entities, or agencies conducting any activities requiring a permit under this Chapter within the exterior boundaries of the Reservation shall be required to obtain a permit prior to taking any physical action, beginning any services or beginning construction of a facility subject to these permit requirements. Existing services or facilities subject to these permit requirements upon the effective date of this Title shall apply for and obtain such permit(s) within 90 days of the effective date of this Chapter unless an extension is granted by the SLT-EPA.
- c) Any person, firm, corporation, governmental subdivision or agency, or group seeking to conduct an activity defined in this Chapter that is required to obtain a permit shall make application to the SLT-EPA in the form and content required by the Environmental Administrator and shall contain such information, reports or data as deemed necessary by the SLT-EPA.
- d) Such permit may be revoked or suspended by the SLT-EPA when deemed necessary due to non-compliance with the permit, this Title or to protect the environment, public health or welfare.
- e) The permit shall expire on the date specified in the permit up to a maximum of 2 years from the date of issuance of the permit. The SLT-EPA may reissue a permit where the permittee continues to meet its operational requirements, maintains full compliance with this Title, pays all required fees, and for which a need still exists.
- f) A routine inspection of any permitted services, operations or facilities may be conducted at any time by a designated agent of the SLT-EPA. A written report of each inspection shall be filed with the Environmental Administrator and the Tribal Health Director. The SL-EQC shall be notified of any major or repetitive violations.
- g) Permits are not required for any immediate remedial or corrective actions whether initiated by the owner/operator, responsible party, the SLT-EPA, the Tribe or U.S. EPA. However such actions may be subject to inspection by the SLT-EPA and/or an Administrative Order.

- h) The SLT-EPA shall review all permit applications utilizing the requirements of this Title, applicable federal Codes, criteria or standards, as appropriate, to include any Tribal standards and criteria regarding the location; design; performance; operating standards; and other environmental, community, and economic concerns; and financial assurance requirements for the construction and operation of any facility, discharge or operation subject to the permitting requirements of this Chapter. In addition the SLT-EPA may:
 - i. refer to existing state codes governing construction or operation of such facilities;
 - ii. refer to other existing tribal codes and Codes governing facilities siting, design, and construction;
 - i) The Tribe reserves the right to be more stringent than state or federal Codes, codes or criteria.
 - j) The Tribal Council 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 the issuance of any permit under this Chapter.
- (3) **Permit Administrative Record:** The SLT-EPA shall maintain an Administrative Record of all permit applications, documents accompanying such applications and permits issued under this Chapter. This file shall be available for public inspection and comment. If any applicant or permittee is required to submit information entitled to protection from disclosure, the applicant or permittee may submit such information separately. The SLT-EPA shall also notify the public of, and the public shall have the right to review, all permit applications, reissuances, modifications, and determinations.
- (4) **Protection of Proprietary Information:** Upon the SLT-EPA's approval of the written request of any person furnishing any report, notice, application, or other document required hereby, the SLT-EPA shall not make available for inspection by the public those portions of such report, notice, application, or other document that contains information declared proprietary or confidential information. However, such report, notice, application, or other document or portions thereof, shall be made available to SLT-EPA, the EQC, or appropriate tribal agencies and to any other government agency or agencies, provided that, the information is at all times kept confidential, and/or used for enforcement or investigative purposes. Such declaration of proprietary or confidentially is subject to review by the Tribal Court.
- (5) **General Permit Conditions:** As condition of obtaining a SLT-EPA Permit a Permittee shall be subject to the following permit conditions:
- a) the SLT-EPA or its agents shall have the right to enter the facility to conduct inspections, take samples and conduct monitoring, as provided under this Chapter;

- b) the SLT-EPA shall have the right to enter any premises where records relevant to determining compliance with this Chapter or the requirements of the permit are kept;
- c) the SLT-EPA may require feasible mitigation measures identified in any Environmental Assessment or Environmental Impact Statement prepared pursuant to the National Environmental Policy Act (NEPA) 42 U.S.C. 4321 *et seq.*; 40 C.F.R. Parts 1500-1508, be incorporated as permit conditions; and
- d) the SLT-EPA, the EQC or the Tribal Council may add any additional conditions or requirements to a permit as need to ensure protection of the public health and the environment and meet the purposes of this Chapter.
- e) Each permit 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 tribal, federal or state regulation. Any report required to be submitted by a permit issued to a corporation under these Codes shall be signed by a corporate official, who shall certify its accuracy.
- f) The SLT-EPA or the Tribal Council may require a permittee to provide appropriate financial assurance and/or liability insurance as a condition of permit issuance or reissuance.
- g) 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 Spirit Lake Tribe with respect to those activities conducted pursuant to this permit issued by the SLT-EPA pursuant to the provisions of the Spirit Lake Tribe Title 16. 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.”
- h) A Permittee shall include the foregoing statement 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 Spirit Lake Reservation in connection with any permit issued by the SLT-EPA 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.

(10) Waste Management, Treatment or Disposal Facility Permits

- a) The Environmental Administrator shall, within thirty days of receipt of a complete permit application, hold a public meeting and seek comment on the application. The

- Tribal Health Director shall also review the application and public comments and make a recommendation for issuance or denial to the Environmental Administrator within 30 days of the receipt of the application and public comments. The Environmental Administrator shall make a determination for approval or denial of the application to the SLEQC within thirty days after receiving the recommendation from the Tribal Health Director. Such permit shall not be issued until the Environmental Administrator has determined that the proposed facility or service shall be in full compliance with the requirements of this Title and all applicable Spirit Lake Tribe fees have been paid.
- b) A routine inspection of all such permitted solid waste facilities shall be conducted at least quarterly by a designated agent of the SLT-EPA. A written report of each inspection shall be filed with the Environmental Administrator and the Tribal Health Director. The SL-EQC shall be notified of any major or repetitive violations.
 - c) Any facility permitted by the SLT-EPA as an approved solid waste treatment, storage, transfer, recycle/reuse or disposal facility shall be so identified by a sign displayed at the site as specified by the SLT-EPA.
 - d) "Waste Management, Treatment or Disposal Facility" permits may require the concurrence of the EQC and/or the Tribal Council prior to issuance.
 - e) "Waste Management, Treatment or Disposal Facility" permits shall be issued for fixed terms, not to exceed five (5) years, unless otherwise stipulated in in this Chapter or the permit.
 - f) Each permit shall include enforceable standards, a schedule of compliance, a requirement that the permittee submit to the SLT-EPA , 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 emergency or alternative operating scenarios, and such other conditions as are necessary to assure compliance with applicable requirements of this Chapter including all applicable federal or state Codes.
- 3) **Permit-by-Rule.** All tribally chartered corporations or agencies, private enterprises or any other persons, entities, or agencies conducting any of the following activities within the exterior boundaries of the Reservation shall be required to obtain a "Permit by Rule", unless otherwise exempted under this Chapter, for the following activities prior to taking any physical action:
- a) the burning of any solid waste, to include abandoned buildings or structures, within the Reservation;
 - b) the commercial collection and/or transportation of solid waste within the Reservation;
 - c) "Construction and Demolition Waste Management Permits" for Prime Contractors;

- d) the temporary storage, treatment, transportation or other management of solid wastes (other than residential, household, institutional or commercial wastes in proper containers for regular collection), for less than 90 days;
- e) the demolition of a building or structure of greater than 100 Sq. Ft.;
- f) "Emergency" or "Temporary" permits (less than 180 days of operation) for solid waste management or disposal not otherwise exempt under these Codes; and
- g) any other solid waste management or disposal activities or emergencies that the SLT-EPA or the Tribal Council deems necessary to comply with this Chapter.

4) Specific Permits by Rule Requirements

a) **Open Burning Permit:** The SLT-EPA may authorize a Permit by Rule for the infrequent open burning of agricultural wastes, silviculture wastes, land cleaning debris, diseased trees, abandoned structures or debris from emergency cleanup operations at a safe location or facility unless it is otherwise prohibited by federal law or regulation. Note: a solid waste "incineration unit" must be permitted as a "Waste Management, Treatment and Disposal Facility" and the requirements of this Chapter. The SLT-EPA will coordinate the approval of such burning permits with the local Fire Department, the BIA and other appropriate officials or agencies. An Open Burning Permit shall include, at a minimum:

- i. specific date(s) and/or number of days allowed to burn;
- ii. specific weather conditions allowed for burning;
- iii. specific monitoring requirements;
- iv. restrictions on materials and quantities allowed to be burned;
- v. notification requirements to inform appropriate tribal and federal officials or agencies of the exact date and time of the burning; and
- vi. emergency procedures and contacts.

b) Commercial Collection and Transportation of Solid or Special Waste Permit:

The SLT-EPA may authorize a Permit by Rule for the commercial collection and transportation of solid, special or hazardous wastes. Such permits may be for no more than one (1) year and must be renewed annually by SLT-EPA on a calendar basis. Such Permit applications shall include the following information at a minimum:

- i. Name and Address of applicant;
- ii. A description of the number and type of the vehicles and related mechanical and other equipment to be used by the applicant;
- iii. Area(s) or facility to which the applicant seeks to provide services;
- iv. Type of waste(s) to be collected and/or transported;
- v. Sites, facilities, communities or population to be served;
- vi. Days of operation and routes proposed for each day of operation;
- vii. A site evaluation report describing the location and physical characteristics of the place or places, including uses of adjoining properties, where the applicant will store or

- maintain waste collection and/or transportation vehicles and related equipment, if located on the Reservation;
- viii. An operation plan, including a description of the practices, technologies and procedures that will be employed to ensure adequate protection of the environment, public health and welfare to include prevention of leakage, excessive noise, odors, and other releases or spillage and the capability to respond to any such releases;
- ix. Assurances of the manner in which the applicant will meet the financial assurance requirements established pursuant to these Codes and the permit;
- x. Proof of insurance, subject to the review and approval by the SLT-EPA, that addresses:
 - a. response to personal injury claims, public or private property damage claims, environmental and natural resource damage claims; and
 - b. response to a release from the collection or transportation equipment that may result from the collection or transportation of wastes;
- xi. Proof of a valid Tribal business license;
- xii. A description of the training program for employees in environmental concerns in managing solid waste, addressing any releases, recognizing hazardous or improper wastes and to provide such employees with needed skills for the safe operation of the transportation equipment and related facilities; and
- xiii. Such other information as the SLT-EPA deems necessary.

c) Construction and Demolition Waste Management Permits:

The SLT-EPA may authorize a Permit by Rule for Prime contractors are required to obtain an SLT-EPA Permit pursuant to these Codes prior to beginning any construction or demolition work on the Reservation. The one time permit fee shall be payable to the SLT-EPA and shall be for the sum of 1% of the total contract cost which shall be noticed in the solicitation for bids for such contract. If a Prime contractor has two (2) different projects a separate permit application and fee must be submitted for each project (one for each individual project). Failure to obtain such a permit prior to construction or demolition is a violation of this Chapter. The permit shall be issued for the term of the project. Such permit application shall be provided to the SLT-EPA in the form and format designated by the SLT-EPA.

- i. If a construction project begins without a permit, the construction site will be closed down and penalties/fines along with interest will be assessed according to the number of days the construction project was in operation without a permit. Any false information given on such permit application can result in the Tribe, the SLT-EPA and/or other departments denying permits or contracts on any projects within the Reservation boundaries for that Prime contractor for a period of up to two years.
- ii. For the purposes of this requirement a "prime contractor" is the prime contractor for construction or demolition projects funded by a federal agency, Tribal Government, or other commercial construction. This does not apply to private residential or agricultural property construction or demolition.
- iii. The permit fee does NOT include the cost of waste collection, transportation or disposal which remains the responsibility of the Prime Contractor.

d) All Other Permits by Rule

All Permit by Rule applications shall be provided to the SLT-EPA in the form and format designated by the SLT-EPA. The SLT-EPA may authorize a Permit by Rule for other waste management activities to include:

- i. the temporary storage, treatment, transportation or other management of solid wastes (other than residential, household, institutional or commercial wastes in proper containers for regular collection), for less than 90 days;
- ii. the demolition of a building or structure of greater than 100 Sq. Ft. (not addressed under 4) c) above);
- iii. "Emergency" or "Temporary" permits (less than 180 days of operation) for solid waste management or disposal not otherwise exempt under these Codes; and
- iv. any other solid waste management or disposal activities or emergencies that the SLT-EPA or the Tribal Council deems necessary to comply with this Chapter.

§16-4-110. Required Fees

- (1) Permit Application Fee: A "Waste Management, Treatment, or Disposal Permit" permit application fee may be required for shall be paid to the SLT-EPA by the permit applicant prior to processing the application in an amount determined by SLT-EPA and approved by the EQC. A schedule of such fees shall be made public and available upon request. A permit application fee may be increased for complex permit applications to reflect the Tribe's costs of processing such applications, including but not limited to the cost of technical and legal assistance, preparing or reviewing an environmental assessment, attendance at the public notice and hearing, costs of technical and legal consultants to review the application, and costs to prepare the permit, exhibits, administrative record and guidance documents.
- (2) Permit Issuance Fee: A permit issuance or renewal fee shall be paid by the permit applicant to the SLT-EPA prior to issuance or renewal of any permit required under this Chapter in an amount determined by SLT-EPA and approved by Tribal Council. A permit renewal fee to be imposed by SLT-EPA shall be specifically referred to in each permit. A final determination on a permit application for issuance or renewal shall be made following full payment of all tribal and permit fees. A schedule of such fees shall be made public and available upon request.
- (3) Prime Contractor Fee: A one time, project specific, waste removal and disposal permit fee of 1% of the total project cost shall be paid by Prime contractors for construction projects. If a Prime contractor has two (2) different projects a separate permit application and fee must be submitted for each project (one for each individual project). (SLT Resolution No. A05-06-046). The permit fee does not cover the cost of waste collection, hauling or disposal.
- (4) Oversight Fee: In order to recover operating costs, the SLT-EPA may also impose

reasonable permit oversight, compliance inspection or sampling fees on each permittee.

- (5) Fee Waiver: All permit fees may be waived by the Council when the application is filed by an entity under contract to the Tribe or is an entity of Tribal Government or the activity is deemed an emergency action by the SLT-EPA.
- (6) Unpaid Fees: All unpaid permit fees shall become delinquent after thirty (30) days from the due date specified. The fees shall bear simple interest of 2% as a late fee to be attached to the next billing. The SLT-EPA may institute Tribal Court proceedings for the collection of delinquent fees. Delinquent fees or any other violation of this Title shall constitute civil violation against the Tribe. Nonpayment of permit fees may result in denial or termination of a permit.
- (7) Disposition of Fees. All monies collected or received by the Tribe from permit fees imposed under this Chapter shall be available solely for the administration and implementation of Title 16 and this Chapter and for meeting the costs of SLT-EPA responses to environmental emergencies, releases or spills on the Reservation or other costs of protecting the public health or the environment within the Reservation. The SLT-EPA shall deposit such monies into a duly established Account to be expended by the SLT-EPA for use by the SLT-EPA, in accordance with a plan of operation pursuant to an approved budget. Any monies contained in said account at the end of the fiscal year shall remain available for appropriation by the SLT-EPA.

§16-4-111. Operation and Maintenance of Solid Waste Disposal Facilities.

(1) This Code applies to the design, maintenance and operation of solid waste disposal facilities to be used for disposal of "Construction or Inert Waste" only. No other waste disposal is allowed or shall be permitted within the boundaries of the Spirit Lake Reservation. The disposal site shall be designed, maintained and operated at all times in compliance with this Code, Subtitle D of the Resource Conservation and Recovery Act (42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, 6938 and 6974), and so as to not constitute a nuisance to adjoining properties or a hazard to public health or the environment.

(2) Should the Tribal Council allow for the designation of other types of disposal sites in the future, this Code will be amended to include maintenance and operating requirements that will comply with Subtitle D of the Resource Conservation and Recovery Act. (42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, 6938 and 6974).

(3) Access to the facility must be controlled by lockable gates and a combination of fencing, natural barriers, or artificial barriers. Operating procedures, hours and 24 hour emergency contacts shall be clearly posted on signs at the site entrance. Public access to the disposal site shall be permitted only during the hours when operating personnel are supervising the site. Operations of disposal sites shall establish reasonable hours of operation for public convenience. Access roads shall be designed, constructed, and maintained so that traffic will flow smoothly and will not be interrupted by ordinary inclement weather.

(4) Surface water courses and run-off shall be diverted from the disposal site by devices such as trenches, conduits and proper grading to minimize infiltration erosion of cover material. Re-grading shall be done as required to avoid ponding of precipitation. All wastes deposited at the site must be spread and periodically compacted and covered to promote drainage of surface water and minimization of odors and dust.

(5) All wastes must be covered at least two times per year with a minimum of six inches [15.2 centimeters] of suitable earthen or other approved cover material. The Environmental Administrator may provide a variance from this requirement to the owner or operator of the landfill based on the type and amount of waste received at the landfill and the site location.

(6) Decomposition gases generated by disposal sites shall be controlled on-site, as necessary, to avoid posing a hazard or nuisance to occupants of adjacent property.

(7) Dumping of waste materials at the site shall be confined to the smallest practical area.

(8) Operation of the disposal site shall include a program for the control of insects, rodents and other vermin.

(9) Cinders, ashes and other combustible wastes may be deposited in special sites or containers designated for such wastes until determined to no longer be combustible or a source of combustion.

(10) The following wastes are prohibited from disposal as construction, demolition or inert waste and must be removed and properly handled or disposed of before demolition or disposal:

- (a) Household garbage, food, animal carcasses, and other putrescible wastes;
- (b) Liquids, solvents, and paint;
- (c) Laboratory supplies and cleaning supplies;

- (d) Insecticides, herbicides, or fungicides and their containers;
- (e) Oil, waste oil and oil containers;
- (f) lead-acid batteries;
- (g) all appliances, computers, TVs, photocopiers and printers;
- (h) fluorescent light fixtures and bulbs, mercury-containing electrical switches and thermostats, and transformers;
- (i) regulated asbestos-containing materials; and
- (j) any other waste which may form contaminated leachate, pollute surface water or groundwater, pollute the air, create problem odors or attract vectors.

(11) Disposal of the following solid waste is also prohibited: municipal solid waste, commercial waste, industrial waste, special waste, regulated infectious waste, liquid solid waste, hazardous waste, and radioactive waste. Lime sludge from a water treatment plant may be disposed in an inert waste landfill contingent upon approval by the Environmental Administrator, which must be based upon factors such as site characteristics, site design, site operation, or permit conditions.

(12) Open burning at disposal sites shall be prohibited unless a permit is obtained from the SLT-EPA, to allow for burning of tree waste, vegetation, and untreated waste lumber. Such burning shall be only under controlled burning conditions. Arrangements shall be made for notification and coordination with the local Fire Chief prior to any burning to prevent or control any undesirable or unintended burning.

(13) The following activities shall be prohibited in conjunction within or upon the approved disposal site:

1. All unauthorized scavenging operations;
2. All grazing or feeding of farm or domestic animals; and
3. The discharging of fire arms, except by operating personnel for approved purposes.

(14) On-site vegetation should be cleared only as necessary to conduct an efficient operation. Natural windbreaks and green belts should be maintained where they will improve the appearance and operation of the disposal site.

(15) Use rates for the operation of the disposal sites may be established to cover operating costs. Use charges may be made to users of the site and to collection services. Users who fail to pay user fees or who violate the rules for the disposal site operation shall be prosecuted as specified in This Code.

(15) Closure Criteria: Closure of an existing unit must be completed as specified by the SLT-EPA. All existing disposal units must be covered with two feet [61.0 centimeters] or more of earthen material, the lower twelve inches [30.5 centimeters] of which must be compacted clay-rich earthen material, free from cracks and extrusions of solid waste. If a cover of four feet [1.2 meters] or more of clay-rich earthen material is achieved, compaction is not required. At least six inches [15.2 centimeters] of suitable plant growth material must be placed over the covered landfill and planted with adapted grasses.

(16) Post Closure Criteria: Owners or operators of inert waste landfills shall conduct annual post closure inspections for a minimum period of five years after closure and effect maintenance and repairs as needed to maintain the integrity of the cover materials and grasses.

§16-4-112. Operation and Maintenance of Solid Waste Management Facilities.

(1) Solid waste storage, treatment, transfer and recycle/reuse facilities shall be operated and maintained pursuant to this Section, all applicable requirements of this Title and any permit issued pursuant to this Title. Such facilities shall also be maintained and operated in compliance with any applicable requirements of Subtitle D of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, 6938 and 6974). The Tribe reserves the right to implement more stringent requirements than the RCRA.

(2) The facility shall be operated at all times so as to not constitute a nuisance to nearby residents or a hazard to public health or the environment.

(3) Access roads shall be designed, constructed, and maintained so that traffic will flow smoothly and will not be interrupted by ordinary inclement weather.

(4) Surface water courses and run-off shall be diverted from the facility by devices such as trenches, conduits and proper grading to minimize infiltration erosion of cover material. Re-grading shall be done as required to avoid ponding of precipitation.

(5) Decomposition gases generated on site shall be controlled on-site, as necessary, to avoid posing a hazard or a nuisance to occupants of adjacent property.

(6) The site shall be fenced adequately with an entrance gate that can be locked. Operating procedures, hours and 24 hour emergency contacts shall be clearly posted on signs at the site entrance.

(7) Public access to the site shall be permitted only during the hours when operating personnel are supervising the site. No dumping or disposal of waste materials is permitted at the facility. Any waste materials left at the entrance of the facility are the responsibility of the operator of the facility.

(8) Operation of the site shall include a program for the control of insects, rodents and other vermin and shall be maintained to prevent an unsightly appearance or nuisance odors.

(9) Opening burning at sites shall be prohibited unless a permit is obtained from the SLT-EPA or SLT Fire Dept. Any burning shall be only under controlled burning conditions. Arrangements shall be made for notification and coordination with the local Fire Chief prior to any burning to prevent or control any undesirable or unintended burning.

(10) The following activities shall be prohibited in conjunction with or upon the approved site:

(a) all unauthorized scavenging operations;

(b) all grazing or feeding of farm or domestic animals; and

(c) the discharging of fire arms, except by operating personnel for approved purposes.

(11) On-site vegetation should be cleared as necessary to conduct an efficient operation. Natural windbreaks and green belts should be maintained where they will improve the appearance and operation of the site.

(12) Operation of sites shall establish reasonable hours of operation to minimize nuisance noise and impacts on any nearby residential areas.

§16-4-113. Hazardous Wastes.

(1) All hazardous waste generated, managed or transported within the boundaries of the Spirit Lake Reservation shall be subject to the requirements of the Resource Conservation and Recovery Act (42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, 6938 and 6974), as amended. Hazardous wastes shall be all solid wastes designated in 40 Code of Federal Codes (CFR) Part 261 as hazardous, as amended, and as defined in this Code.

(2) A specific solid waste may be designated as a hazardous waste and subject to the requirements of this Chapter if so designated by the Environmental Administrator of the SLT-EPA.

(3) All generators of hazardous waste located within the boundaries of the Spirit Lake Reservation, as applicable under 40 CFR Part 262, shall comply with the appropriate federal and Tribal requirements for storage and transportation and reporting of such hazardous waste. All generators shall provide copies of all required reports and manifests to the SLT-EPA. All required records shall be available for inspection and review by the SLT-EPA upon request.

(4) All transportation of hazardous wastes regulated under this Code and originating from, or being shipped to, a location within the boundaries of the Spirit Lake Reservation shall be conducted in compliance with 40 CFR Part 263. Transporters of such hazardous waste must provide copies of all required reports and manifests to the SLT-EPA. All required records shall be available for inspection and review by the SLT-EPA upon request.

(5) In the event of a discharge or release of hazardous wastes within the boundaries of the Spirit Lake Reservation by a generator or transporter the party must take appropriate immediate action to protect human health and the environment and notify appropriate federal, state and tribal authorities in a timely manner. Copies of all required reports and notices required under 40 CFR Parts 262 or 263, or other applicable federal statutes, must be provided to the SLT-EPA.

(6) No hazardous waste may be disposed of within the boundaries of the Spirit Lake Reservation. No hazardous waste subject to the requirements of this Code may be treated or stored within the boundaries of the Spirit Lake Reservation except as specifically provided for

under 40 CFR Parts 261 and 262 for small quantity generators and/or less than 90 day storage; or unless permitted for storage or treatment under 40 Parts 264 or 265.

§16-4-114. **Special and Industrial Wastes**

(1) A specific solid waste may be designated as a Special Waste and subject to the requirements of this Code, or other specific storage, management or disposal requirements, if so designated by the Environmental Administrator. Every person, commercial establishment, government agency or facility or industrial facility who generates or stores Industrial Waste or Special Waste within the boundaries of the Spirit Lake Reservation shall comply with this Code.

(2) The following special wastes may be not be stored, treated, disposed of or discharged within the boundaries of the Spirit Lake Reservation except at a designated land disposal or treatment facility specifically approved by the Environmental Administrator:

(a) General industrial wastes to include: Bulk liquids and semi-liquids; Sludge containing free moisture; or Industrial process wastes.

(b) **Septic Tank Pumping** and other sanitary wastes may be not disposed of or discharged within the boundaries of the Spirit Lake Reservation except at a designated land disposal or treatment facility specifically approved by the Environmental Administrator and after payment of any applicable fees.

(c) **Used oil, lead-acid batteries, major appliances (also known as “white goods”), and scrap metal** are designated as Special Wastes and may not be collected or transported for disposal to any solid waste disposal, transfer or storage unit or facility unless such unit or facility is in full compliance with this Code and has provision for intermediate storage and recycling of these materials and all such materials are appropriately segregated for recycling.

(d) **Infectious institutional wastes, laboratory wastes and surgical operating room pathological specimens and disposal fomites** attendant thereto and similar emergency room and mortuary wastes may not be disposed of within the boundaries of the Spirit Lake Reservation unless such wastes are first incinerated in an incinerator approved by the Tribal Health Department, permitted by the SLT-EPA if required, and disposed of at a solid waste disposal site

approved by the Environmental Administrator or the State. Regulated infectious waste may not be subject to mechanical stress or compaction during loading, unloading, and transit.

(e) Junk Motor Vehicles (cars and trucks):

(i) within Tribal Housing areas, no person shall accumulate or store junk cars or trucks on their property or place of residence that are not currently registered or licensed unless authorized to do so in writing by the Tribal Housing Director;

(ii) outside of Tribal Housing areas, no person shall accumulate or store more than 4 used cars or trucks on their property or place of residence that are not currently registered or licensed. An accumulation of more than 4 such vehicles shall be considered to be a commercial salvage operation and subject all applicable requirements and fees for such an operation; and

(iii) a private farm or ranch that has cause to maintain an accumulation of used farm equipment or used motor vehicles shall do so in a manner that poses no threat to public health of the environment and shall be subject to inspection by the SLT-EPA at all times to assure compliance with Code.

(f) Commercial Motor Vehicle and Farm Equipment Salvage: Any commercial operation maintains an accumulation of used farm equipment, industrial equipment or used motor vehicles for salvage purposes shall obtain a permit from the Administrator of the SLT-EPA to maintain a Commercial Salvage Yard. Commercial Salvage Yards shall collect and contain all liquids that may be released from equipment or vehicles and be fenced with locking gates and maintained in a manner to prevent environmental, community health or nuisance hazards. All Salvage Yards may be inspected at any time by the SLT-EPA to assure compliance with this Code.

(g) Abandoned Vehicles: Roads, streets, alleys, highways, and public parking areas shall be considered public facilities. Any motor vehicle not currently licensed that is left on the above facilities for more than 48 hours shall be considered solid waste and may be impounded and towed away at the direction of the local law enforcement department to an impoundment area. Any person claiming such vehicle shall give proof of ownership and pay any towing and storage charges. Vehicles not claimed within 30 days of impoundment shall be declared abandoned, advertised, and sold at auction by the law enforcement department to pay for towing

and storage charges. All remaining income from the sale of the vehicle shall be remitted to the SLT-EPA pursuant to the requirements of Title 6 of the SLT Code.

(h) Pesticide and Herbicide Wastes: Every person, commercial or industrial facility who handles surplus agricultural pesticides or herbicides and/or pesticide or herbicide containers shall comply with this Code. Surplus pesticides or herbicides may not be discarded within the boundaries of the Spirit Lake Reservation in any manner which endangers humans, animals, and/or the environment. Pesticide and herbicide containers must be drained or emptied according to label directions and power or triple-rinsed before processing or disposal.

(i) Vehicle Tires:

(i) Individual persons may store up to a maximum of 20 tires for personal use on their own property.

(ii) Individuals or commercial businesses must obtain a permit from the Administrator of the SLT-EPA to store the equivalent of a semi- truck load of whole or shredded scrap tires for transport to a recycling or disposal facility subject to the following conditions:

(A) storage must not create a public nuisance;

(B) access to the storage area must be controlled;

(C) the storage area must be accessible to fire control equipment;

and

(D) funds must be set aside for disposing or recycling the stored scrap tires.

(iii) Storage of larger quantities requires a formal solid waste storage permit. Individuals or businesses accepting scrap tires are subject to enforcement action if the activity:

creates a nuisance; endangers public health or safety; or presents a threat to environmental resources.

(iv) Tires must be transported to an end-user who will process, recycle and/or dispose the materials in a manner that complies with the laws of the Tribe or the governmental jurisdiction having authority over waste management activities. Tires may not be

delivered to a facility within the boundaries of the Spirit Lake Tribe that is not in compliance with this Code or abandoned upon any street, alley, highway, public place or private premises. Anyone hauling scrap tires to unapproved disposal sites (i.e. ravines, coulees, dumps, gravel pits, tree rows, etc.) is in violation of this Code and subject to civil enforcement action pursuant to the appropriate provisions of Chapter 2 of this Title. If scrap tires are taken to a location which comes under enforcement action, the generators of the tires may be liable for cleanup costs.

(j) Dead Animals: Dead animals must be removed in a timely manner and be managed by renderers, disposed of at a permitted solid waste landfill or at an alternative location designated by the Tribal Health Department. The Environmental Administrator may issue variances for one-time disposal events based on various practical factors during emergency conditions. During an emergency, potentially large numbers of livestock may need to be managed as rapidly and as efficiently as possible. The Environmental Administrator, Director of the Department of Tribal Community Health Services and other local, state and federal agencies will work together with livestock owners to accomplish the efficient and environmentally sound disposal of animal carcasses and related materials so as to minimize impacts to human and animal health and to water sources. Disposal under variances must be restricted to dead animals and associated, generally inert waste, unless otherwise authorized.

(k) Abandoned Mobile Homes-Trailers: Mobile homes or trailers that are an unsafe structure unfit for habitation, junked, partially dis-assembled, wrecked or non-operative and which are abandoned or not inhabited for more than 180 days may be declared a solid waste by the Environmental Administrator and must be managed accordingly and in full compliance with this Code. The property owner will be provided a Warning Letter by the SLT-EPA to properly repair, remove and/or dispose of the mobile home or trailer in accordance with this Code and any other applicable Tribal, state or federal Codes within 30 days. Failure to comply with this Warning Letter may result in further enforcement action and penalties pursuant to this Code. The right to a hearing may be provided to the property owner to allow for repair of the mobile home or trailer to make it safe and fit for habitation or to provide additional time to dispose of the mobile home or trailer and comply with the Warning Letter or Notice of Violation.

(l) Asbestos and Asbestos Containing Materials:

(i) Asbestos and Asbestos Containing Materials must be disposed of outside of the Reservation at a state approved landfill facility. Friable asbestos-containing material must be disposed into landfills that have agreed to accept the material and have appropriate facilities, procedures, equipment and training for managing such waste. Asbestos disposal must be coordinated with the landfill owner/operator. Records of receipts for disposal of Asbestos or ACMs must be maintained by the contractor or property owner for a minimum of 3 years and a copy provided to the Environmental Administrator upon request;

(ii) Prior to shipping, friable asbestos-containing material must be wetted. Friable asbestos-containing material must be placed in leak-tight containers and be properly labeled. Containers should be carefully handled. Handling of regulated asbestos-containing material must be performed by certified asbestos personnel; and

(iii) Removal, transportation and disposal of Asbestos and Asbestos Containing Materials (ACM) must be conducted in compliance with the applicable requirements of this Code, the Clean Air Act, 42 U.S.C. 7401-7671q, 40 CFR Part 61 Subpart M and follow U.S. Environmental Protection Agency rules, Codes and guidelines. A copy of all U. S. EPA required forms and reports must be submitted to the Environmental Administrator. For the purposes of this Section transportation includes movement of a house or structure with ACM beyond the property boundary;

(iv) The Environmental Administrator must be notified at least 14 days prior to the demolition of a building or structure that contains Asbestos or ACMs.

(m) Wastes from Oil & Gas Exploration and Production:

Waste from crude oil and natural gas exploration or production, to include petroleum or crude-oil contaminated soils, contaminated drilling cuttings, produced water or other fluids from an oil or gas exploration or production well are designated as Special Waste. Such wastes are not exempted from being regulated as a solid or hazardous wastes by the SLT-EPA.

(n) Coal Combustion Ash or Fly Ash:

Large quantities (over nine (9) cubic feet) of wastes generated primarily from the combustion of coal or other fossil fuels shall not be stored, treated, disposed of or used for solidification or other treatment processes on the Reservation without the prior permission of the Environmental

Administrator and an SLT-EPA Waste Management or Disposal Permit if the Director determines that one is necessary. This shall also include Cement Kiln Dust.

(o) Technically Enhanced Naturally Occurring Radioactive Materials (TENORM):

Wastes that are or contain Technically Enhanced Naturally Occurring Radioactive Materials (TENORM) at concentrations greater than 185 becquerel per kilogram (5 picoCuries/gram or pCi/g) may not be dumped, spilled, leaked, burned or otherwise improperly disposed of within the boundaries of the Reservation. TENORM includes naturally occurring radioactive material whose radionuclide concentrations are increased by or as a result of past or present human practices. TENORM does not include background radiation or the natural radioactivity of rocks or soils. TENORM does not include "source material" and "byproduct material" as both are defined in the Atomic Energy Act of 1954, as amended (AEA 42 USC §2011*et seq.*) and relevant Codes implemented by the NRC. Such wastes shall be collected and/or transported for disposal off of the Reservation.

§16-4-115. Lead Based Paint Abatement

(1) Scope and Applicability.

(a) This section contains procedures and requirements for the accreditation of training programs for lead-based paint activities and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This section also requires that, except as discussed below, all lead-based paint activities, as defined in this section are performed by certified individuals and firms.

(b) This section applies to all individuals and firms who are engaged in lead-based paint activities as defined in this section and 40CFR745.223, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities

are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(c) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal or Tribal Government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be subject to, and comply with, all Federal and Tribal requirements, both substantive and procedural, including the requirements of this section regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.

(d) While this section establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in this section requires that the owner or occupant undertake any particular lead-based paint activity.

(2) Definitions.

The definitions in §16-4-102 apply to this section. In addition, the following definitions apply:

“Abatement” means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(3) Specifically, abatement includes, but is not limited to:

(a) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(A) Shall result in the permanent elimination of lead-based paint hazards; or

(B) Are designed to permanently eliminate lead-based paint hazards and are described in paragraphs (1) and (2) of this definition.

(b) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with this section and 40CFR745.226, unless such projects are covered by paragraph (4) of this definition;

(c) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by paragraph (4) of this definition; or

(d) Projects resulting in the permanent elimination of lead-based paint hazards that are conducted in response to State or local abatement orders.

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

“Accredited training program” means a training program that has been accredited by the U.S. EPA pursuant to 40CFR745.225 to provide training for individuals engaged in lead-based paint activities.

“Adequate quality control” means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

“Business day” means Monday through Friday with the exception of Spirit Lake Tribal holidays.

“Certified firm” means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which the U.S. EPA has issued a certificate of approval pursuant to 40 CFR 745.226(f).

“Certified inspector” means an individual who has been trained by an accredited training program, as defined by this section, and certified by the U.S. EPA pursuant to 40CFR745.226 to conduct inspections. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

“Certified abatement worker” means an individual who has been trained by an accredited training program, as defined by this section, and certified by the U.S. EPA pursuant to 40CFR745.226 to perform abatements.

“Certified project designer” means an individual who has been trained by an accredited training program, as defined by this section, and certified by the U.S. EPA pursuant to 40CFR745.226 to prepare abatement project designs, occupant protection plans, and abatement reports.

“Certified risk assessor” means an individual who has been trained by an accredited training program, as defined by this section, and certified by U.S. EPA pursuant to 40CFR745.226 to conduct risk assessments. A risk assessor also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

“Certified supervisor” means an individual who has been trained by an accredited training program, as defined by this section, and certified by the U.S. EPA pursuant to 40CFR745.226 to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

“Child-occupied facility” means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

“Clearance levels” are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

“Common area” means a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

“Component or building component” means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, corner boards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

“Containment” means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during abatement.

“Course agenda” means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

‘Course test’ means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

“Course test blue print” means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

“Deteriorated paint” means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

“Discipline” means one of the specific types or categories of lead-based paint activities identified in this section for which individuals may receive training from accredited programs and become certified by EPA. For example, “abatement worker” is a discipline.

“Distinct painting history” means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

“Documented methodologies” are methods or protocols used to sample for the presence of lead in paint, dust, and soil.

“Elevated blood lead level” (EBL) means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15–19 µg/dl in two consecutive tests taken 3 to 4 months apart.

“Encapsulant” means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

“Encapsulation” means the application of an encapsulant.

“Enclosure” means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

“Guest instructor” means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

“Hands-on skills assessment” means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in 40 CFR 745.225(d), as well as any other skill taught in a training course.

“Inspection” means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

“Interim certification” means the status of an individual who has successfully completed the appropriate training course in a discipline from an accredited training program, as defined by this section, but has not yet received formal certification in that discipline from the U.S. EPA pursuant to 40 CFR 745.226. Interim certifications expire 6 months after the completion of the training course, and is equivalent to a certificate for the 6-month period.

“Interim controls” means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

“Lead-based paint” means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

“Lead-based paint activities” means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined in this section.

“Lead-based paint activities” courses means initial and refresher training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training programs.

“Lead-based paint hazard” means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the Administrator pursuant to TSCA section 403.

“Lead-hazard screen” is a limited risk assessment activity that involves limited paint and dust sampling as described in 40CFR745.227(c).

“Living area” means any area of a residential dwelling used by one or more children age 6 and under, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

“Local government” means a district, association or other public body (including a tribal agency) created under Tribal law.

“Multi-family dwelling” means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

“Nonprofit” means an entity which has demonstrated to any branch of the Federal Government or to a State, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual.

“Paint in poor condition” means more than 10 square feet of deteriorated paint on exterior components with large surface areas; or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or more than 10 percent of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

“Permanently covered soil” means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

“Principal instructor” means the individual who has the primary responsibility for organizing and teaching a particular course.

“Recognized laboratory” means an environmental laboratory recognized by the U.S. EPA pursuant to TSCA section 405(b) as being capable of performing an analysis for lead compounds in paint, soil, and dust.

“Reduction” means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

“Residential dwelling” means (1) a detached single family dwelling unit, including attached structures such as porches and stoops; or (2) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

“Risk assessment” means (1) an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and (2) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

“Start date” means the first day of any lead-based paint activities training course or lead-based paint abatement activity.

“Start date provided to SLT-EPA” means the start date included in the original notification or the most recent start date provided to SLT-EPA in an updated notification.

“Target housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age 6 years or under resides or is

expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

“Training curriculum” means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

“Training hour” means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

“Training manager” means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

“Training provider” means any organization or entity accredited under 40CFR745.225 to offer lead-based paint activities courses.

“TSCA” means the Toxic Substances Control Act, 15 U.S.C. s/s 2601 et seq. (1976)

“Visual inspection for clearance testing” means the visual examination of a residential dwelling or a child-occupied facility following abatement to determine whether or not the abatement has been successfully completed.

“Visual inspection for risk assessment” means the visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

(3) Lead-based paint activities requirements.

Lead-based paint activities, as defined in this section, shall only be conducted according to the procedures and work practice standards contained in 40CFR745.227 and this section. No individual or firm may offer to perform or perform any lead-based paint activity as defined in this part, unless certified to perform that activity according to the procedures in 40 CFR745.226 and this section.

(8) Enforcement of §16-4-115.

Any individual or firm that violates the requirements of this section, this Title or performs any of the following acts shall be deemed to have committed a prohibited act and are subject to civil and criminal sanctions pursuant to Title 16 Chapter 2 for each violation.

(A) Failure or refusal to comply with any requirement of §16-4-115 or 40 CFR §§745.225, 745.226, 745.227, or 745.233;

(B) Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by §16-4-115 or 40 CFR §§745.225, 745.226, or 745.227;

(C) Failure or refusal to permit entry or inspection as required by §16-4-115 or 40 CFR §745.237;

(D) In addition to the above, any individual or firm that performs any of the following acts shall be deemed to have committed a prohibited act under §16-4-115. These include the following:

(a) Obtaining certification through fraudulent representation;

(b) Failing to obtain certification from the U.S. EPA and performing work requiring certification at a job site; or

(c) Fraudulently obtaining certification and engaging in any lead-based paint activities requiring certification.

(5) Inspections.

The SLT-EPA or the SLT Office of Environmental Health, a program of the Department of Tribal Community Health Services, may conduct reasonable inspections pursuant to the provisions of this Title and Spirit Lake Tribal Laws to ensure compliance with this section.

§16-4-116. Response Actions for Releases of Hazardous Substances, Pollutants or Contaminants.

(1) Releases or Spills: In the event that there has been a release of a hazardous substance, pollutant or contaminant to the air, land or waters or groundwater of the Spirit Lake Reservation resulting in a potential threat to the public health, welfare or the environment the persons causing the release or the originating facility's or vehicle's owner or operator must implement the procedures of this Code in addition to any other applicable federal or state requirements. Failure to take timely and appropriate action, as directed by this Code and the SLT-EPA may result in enforcement action pursuant to this Code and other Tribal Laws or Codes and/or referral to appropriate state or federal agencies.

(2) Notification: All spills or releases of any hazardous substance, pollutant or contaminant that may result in an immediate danger to human health or safety; exceeds 25 gallons or causes a sheen on surface water; or is potentially a significant pollution of the air, land or waters of the Spirit Lake Reservation must reported by the owner operator of the source facility or vehicle to the Tribal Environmental Protection Administration within 24 hours of discovery of the spill at **701-766-1259** or any telephone number designated by the Environmental Administrator. In the event that the release is required to be reported according to SARA, Title III, § 304 (1986); notification must also be provided to the Environmental Administrator.

(3) Reporting: Any release or spill report should contain the following information to the best of the reporting person's ability:

- (i) name and telephone number of the reporter;
- (ii) name and address of the facility (or location of the spill or accident);
- (iii) name of facility/vehicle owner contact if different than reporter;
- (iv) time and type of incident, for example spill, release, fire, etc.
- (v) name and quantity of materials involved, to the extent known;
- (vi) the extent of injuries, if any; and
- (vii) the possible hazard to human health or the environment outside the facility or to the nearby area.

Subsequent to the initial report, the responsible person shall immediately notify the SLT-EPA of information that changes the accuracy of the initial report. As directed by the SLT-EPA, the responsible person shall make additional reports verbally or in writing.

(4) Response Measures Assessment: The owner or operator shall, within thirty (30) days of finding that any release of a hazardous substance, pollutant or contaminant has occurred, initiate an assessment of appropriate response measures that complies with the following:

(a) The assessment must be completed within a reasonable period of time, as agreed upon with the Environmental Administrator, and a draft "Response Measures Assessment Plan", to include sampling and analysis QA/QC, must be submitted to the SLT-EPA for review and approval before implementing the Assessment;

(b) The assessment must characterize the nature and extent of the contamination and the effectiveness of any emergency response or spill response actions taken previously;

(c) As part of characterizing the nature and extent of the release, ground water monitoring wells must be installed, if so directed by the Environmental Administrator. In the event of a release of a hazardous substance, pollutant or contaminant to the ground water at least one well must be installed at the facility boundary in the direction of contaminant migration to determine whether or not the contaminants have migrated past the facility boundary. All monitoring wells must be installed in accordance with SLT-EPA guidelines;

(d) Analysis of ground water must consider all parameters required by the SLT-EPA;

(e) The SLT-EPA must be notified of assessment findings in a written draft report submitted to the SLT-EPA for review and comment. The report shall be finalized and submitted to the SLT-EPA as directed by the Environmental Administrator;

(f) If contamination has migrated offsite, the individuals who own land or reside on land impacted by the release must be notified;

(g) The assessment monitoring, if required, must be continued through the remedy selection phase;

(h) All sampling and analysis must be conducted using appropriate Quality Assurance/Quality Control (QA/QC) procedures. The SLT-EPA reserves the right to split samples

for separate analysis at any time in the assessment and monitoring process. The SLT-EPA may require the owner/operator to pay for such analysis;

(i) The assessment shall include an analysis of the effectiveness of potential response measures to be considered in the remedy selection phase;

(j) In the event the owner/operator fails to conduct the RMA in an appropriate or timely manner the Environmental Administrator may take appropriate enforcement action under this Title and/or refer the owner operator to the appropriate state or federal agencies; and

The SLT-EPA may conduct the Response Measures Assessment (RMA) and require the responsible owner/operator to pay all costs plus 25%.

(5) Response Action Selection: Upon notification from the Environmental Administrator that the Response Measures Assessment (RMA) has been accepted as final and that a response action will be required the owner/operator will provide the SLT-EPA with a Response Action Plan describing the proposed response action and schedule within thirty (30) days of such notification. Based on data obtained in the RMA, the owner or operator must evaluate alternative response measures and propose the appropriate response action(s) acceptable to the Environmental Administrator. The response action(s) proposed must:

(a) Manage all solid wastes and/or wastewaters at the facility in a manner that is protective of human health and the environment and that complies with applicable Spirit Lake Tribe and federal Codes;

(b) Control the source(s) of releases so as to reduce or eliminate to the maximum extent practicable, further releases of contaminants into the environment that may pose a threat to human health or the environment ;and

(c) Attain the soil, air, surface water and ground water remediation standards specified by the Environmental Administrator;

(d) Consider:

(i) the long- and short-term effectiveness and protectiveness and degree of certainty that the response action(s) will be successful;

(ii) the effectiveness of the response action(s) in controlling the source to reduce further releases;

(iii) the ease or difficulty in implementing the response action(s);
(iv) technical and economic capability of the owner/operator; and
(v) the degree to which the community concerns are addressed.

(e) propose a schedule for initiating and completing the response action activities;
(f) indicate what temporary or permanent institutional or engineering controls may be necessary or appropriate.

(6) Public Notification and Participation: The public shall have access to all documents and related materials that the owner/operator and the SLT-EPA are relying upon to make response action decisions or conduct the site activities and the public shall be provided a minimum of 14 days' notice for any public meetings on the Response Action and for an opportunity to comment on a Response Action Plan and related activities.

(7) Public Request for Assessment: Any person residing within the exterior boundaries of the Spirit Lake Reservation who is, or may be, affected by a release of a hazardous substance, pollutant or contaminant at a property located in the community in which the person works or resides may request that an assessment of the site be conducted. The Environmental Administrator shall consider such a request and respond appropriately.

(8) Remedy Implementation: After the response action, and schedule, is selected and the Response Action Plan is approved by the Environmental Administrator, the owner/operator is required to implement the response action, establish a response action monitoring program, and take any necessary interim measures in accordance with the approved schedule. If, for some reason, a requirement for the remedy cannot be achieved, the owner/operator shall notify the Environmental Administrator and request approval to implement an alternative response action or schedule. All solid wastes and/or waste waters that are managed pursuant to the response action shall be managed in a manner protective of human health and environmental resources and in accordance with this Code and applicable state and federal rules. Once implemented, the response action must continue until compliance with the established remediation standards is demonstrated.

(9) Remedy Completion and Verification: Upon completion of the response action, the owner/operator must notify the Environmental Administrator within thirty (30) days that the

response action has been completed as required. The SLT-EPA reserves the right to access the property, inspect the response activities and take any samples necessary to verify the effectiveness of the response action, compliance with the established remediation standards or requirements at any time during the response action.

(10) Remedy Certification: The Environmental Administrator, upon written notification of completion of the response action by the owner/operator, shall review all documentation and reports to determine if the response action has been completed as required. The Environmental Administrator shall issue a letter to the owner/operator to certify that the response action has been completed; or if any additional response, information, data, institutional controls or other follow up or post-response actions or monitoring shall be needed. In the event the owner/operator fails to complete the response action in accordance with the approved Response Action Plan or in an appropriate or timely manner the Environmental Administrator may take appropriate enforcement action under this Title, and/or refer the owner operator to the appropriate state or federal agencies; and The SLT-EPA may conduct or complete the response action and require the responsible owner/operator to pay all costs plus 25%.

(11) Institutional Controls: In the event that a hazardous substance, pollutant or contaminant is suspected to have been released or present in groundwater, a water body or soils at a property, or may remain present at a level that may pose a threat to the environment or the public health, the Environmental Administrator may implement institutional controls to mitigate the potential threat, exposure or impact of such contaminants. Such controls may include restriction or control of current and future land uses and shall be subject to review and approval by the SLT-EQC and Tribal Council. All such controls shall be implemented in coordination with appropriate federal agencies that may control the use of such land or property.

**SPIRIT LAKE TRIBE
RESOLUTION NO. A05-15-098**

COPY

TO REPEAL THE SPIRIT LAKE TRIBE LAW AND ORDER CODE, TITLE 16: HEALTH AND SANITATION AS APPROVED BY Res. A05-89-030 AND TO ENACT AND CODIFY TITLE 16: ENVIRONMENT, HEALTH and SANITATION.

WHEREAS, the Spirit Lake Tribe, formerly known as the Devils Lake Sioux tribe of Indians is a federally recognized Indian tribe recognized American Indian Tribe governed by a revised Constitution dated May 5, 1960, approved by the Acting Commissioner, Bureau of Indian Affairs, July 14, 1961, and as subsequently amended July 17, 1969; May 3, 1974; April 16, 1976; May 4, 1981; and August 19, 1996; and

WHEREAS, the Constitution of the Spirit Lake Tribe generally authorizes and empowers the Spirit Lake Tribal Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribe and of the enrolled members thereof; and

WHEREAS, the Spirit Lake Tribal Council (hereinafter the "Tribal Council") is the governing body of the Tribe and is empowered to administer the economic resources and financial affairs of the Tribe; and

WHEREAS, Article VI, Section 4 of the Constitution authorizes and empowers the Tribal Council to "enact ordinances to regulate the conduct and domestic relations of the members of the Tribe, or Indians from other tribes on the reservation, subject to the review of the Secretary of the Interior or his duly authorized representative,"; and

WHEREAS, the current Title 16: Health and Sanitation, lacks sufficient language to meet the regulatory needs of the Spirit Lake Tribe; and

WHEREAS, the Spirit Lake Tribe finds it necessary to enact comprehensive legislation that will define and provide sufficient regulations pertinent to environment, health and sanitation within the jurisdiction of the Spirit Lake Tribe; and

WHEREAS, Title 16: Environment, Health and Sanitation, once codified in the Spirit Lake Law and Order Code shall repeal Title 16: Health and Sanitation, as approved by Res. A05-89-030; and

WHEREAS, the Tribal Council, in accordance with existing law has introduced these code revisions to the general public at two general assemblies on the October 2, 2014 and November 3, 2014; and

NOW THEREFORE BE IT RESOLVED, that Title 16: Environment, Health and Sanitation shall hereafter read and be codified; and

**SPIRIT LAKE TRIBE
RESOLUTION NO. A05-15-098**


COPY

BE IT FURTHER RESOLVED, that Title 16: Environment, Health and Sanitation shall repeal Title 16: Health and Sanitation as approved by Res. A05-89-030, and shall supersede all other previous resolutions pertaining to Title 16; and

BE IT FURTHER RESOLVED, that amendments and additions to the Code shall become a part of the Code for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering and organization of this Code pursuant to Section 1-3-101 of Title 1, Chapter 3 of the Spirit Lake Tribe Law and Order Code.

CERTIFICATION

I, the undersigned as Secretary-Treasurer of the Tribal Council, do hereby certify that the Tribal Council is composed of six (6) members of whom six (6) were present, constituting a quorum for a Special Meeting duly called and convened on this 05th day of January, 2015 and approved this resolution by an affirmative vote of four (4) in favor, none (0) opposed, none (0) abstaining, and none (0) absent. (The Secretary-Treasurer does not vote and the Chairman votes only in case of a tie.)


Nancy Greene-Robertson
Secretary-Treasurer


Myra Pearson
Chairperson