

**BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043**



IN REPLY REFER TO:
Executive Direction

JUL 31 2013

Winfield Russell, Acting President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear Mr. Russell:

This is in reference to Northern Cheyenne Tribal Ordinance No. DOI-013 (2013) enacted by the Council on July 11, 2013 and received in this office on July 18, 2013.

Ordinance No. DOI-013 (2013) – approves a revised Solid Waste Code.

Ordinance No. DOI-013 (2013) is hereby noted. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1(k) and (r) of the Northern Cheyenne Tribe's Amended Constitution and Bylaws.

All necessary copies of this resolution have been retained for our files.

Sincerely,

Superintendent

Enclosure

**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

RESOLUTION NO. DOI-013 (2013)

APPROVAL OF REVISED SOLID WASTE CODE

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Tribe under the Constitution and Bylaws of the Tribe, as amended; and

WHEREAS, under the Tribal Constitution, the Tribal Council has governing authority over the Northern Cheyenne Reservation, including without limitation authority to promulgate and enforce ordinances:

- to protect property, wildlife and natural resources of the Reservation;
- to regulate trade and property on the Reservation;
- to protect the health and general welfare of the Tribe; and
- to establish, delegate powers to, and regulate the procedures of Tribal boards, agencies, other instrumentalities, and officials, subject to the right of the Tribal Council to review actions taken under such delegated powers;

WHEREAS, the Tribal Council is greatly concerned about the existing and increasing volume and variety of solid waste (including hazardous waste) generated and disposed of on the Reservation (the "Reservation Solid Waste Problem"); and

WHEREAS, to address the Reservation Solid Waste Problem, the Tribal Council adopted a Solid Waste Code in 2010 by Ordinance No. DOI-005 (2011) and amended that Solid Waste Code in 2011 by Resolution No. DOI-147 (2011); and

WHEREAS, the Tribe's Environmental Protection Department has conducted a three-year review of the Tribe's Solid Waste Code and recommends that revisions to the Code be enacted to improve the ability of the Tribe to successfully address the Reservation Solid Waste Problem; and

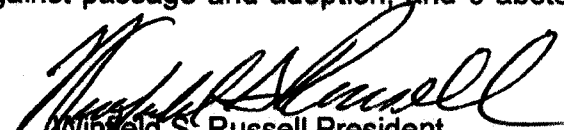
WHEREAS, the Tribal Environmental Protection Department has provided the attached Revised Solid Waste Code to the Tribal Council for its consideration, made an oral presentation on the Revised Code to the Tribal Council, answered Council questions regarding the Revised Code, and recommended that it be enacted as Tribal law to address the Reservation Solid Waste Problem; and


WHEREAS, the Tribal Council is satisfied with the terms of the attached Revised Code, and has concluded that the Revised Code should be adopted and enacted as Tribal law to address the Reservation Solid Waste Problem; now


THEREFORE, BE IT ORDAINED AS FOLLOWS:

The attached Northern Cheyenne Tribe Revised Solid Waste Code is hereby approved, adopted, and enacted as Tribal law. The prior version of the Solid Waste Code, enacted by Ordinance No. DOI-005 (2011) and amended by Resolution No. DOI-147 (2011) is hereby repealed.

PASSED, ADOPTED AND APPROVED by vote of the Northern Cheyenne Tribal Council by 8 votes for passage and adoption, 1 vote against passage and adoption, and 0 abstentions, this 11th day of July 2013.


Winfield S. Russell, President
Northern Cheyenne Tribe

ATTEST:

Melissa Lonebear, Tribal Secretary
Northern Cheyenne Tribe

NOTED:  **JUL 31 2013**

SUPERINTENDENT

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NORTHERN CHEYENNE TRIBE
SOLID WASTE CODE
JULY 2013

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1 **CHAPTER ONE—GENERAL PROVISIONS**

2 **Section 1-1: Short Title.**

3 This Code shall be known as the Northern Cheyenne Tribe's Solid Waste Code.

4 **Section 1-2: Definitions.**

5 The following definitions shall apply to the terms used in this Code unless otherwise specified:

- 6 (1) "Approved container" means any receptacle approved by the Director of the Solid Waste
7 Department for the temporary storage of solid waste, including liquids.
- 8 (2) "BIA" means the United States Bureau of Indian Affairs.
- 9 (3) "Carcass" means any dead animal or portion of any dead animal.
- 10 (4) "Certification" means a written statement of professional opinion based upon knowledge
11 or belief.
- 12 (5) "Closure" means the termination of the receiving, handling, recycling, treatment,
13 composting, or disposal of solid waste at a solid waste facility and includes all operations
14 necessary to prepare the facility for other future use or post-closure maintenance. Closure
15 actions may include, but are not limited to, sloping filled areas to provide adequate
16 drainage, applying final cover, providing erosion control.
- 17 (6) "Code" means this Solid Waste Code, including any amendments hereof or supplements
18 hereto adopted by the Tribal Council and approved by the President.
- 19 (7) "Collection" means the act of collecting solid waste or hazardous waste at the place of
20 generation by an approved collection agent and does not mean "removal".
- 21 (8) "Commercial facility" means, any business, store, office, restaurant, warehouse, or other
22 non-manufacturing facility, no matter what the ownership structure, that operates to
23

1 package, store, distribute, or market any product or service on the Reservation, exclusive
2 of household waste, industrial waste, or special waste.

3 (9) "Compliance Officer" means the Environmental Protection Department's Compliance
4 Officer appointed pursuant to this Code and any person with authority to act on behalf of
5 the Compliance Officer pursuant to this Code.

6 (10) "Composting" means the controlled biological decomposition of organic solid waste
7 under aerobic conditions.

8 (11) "Construction" means the erection or building of new structures and the acquisition,
9 replacement, expansion, remodeling, alteration, modernization, or extension of existing
10 structures.

11 (12) "Construction and demolition debris" or "C&D debris" means uncontaminated solid
12 waste resulting from the construction, remodeling, repair, and demolition of utilities,
13 structures and roads; and uncontaminated solid waste resulting from land clearing. Such
14 waste includes but is not limited to bricks, concrete, other masonry materials, soil, rock,
15 wood (including painted, treated, and coated wood and wood products), land clearing
16 debris, wall coverings, plaster, drywall, plumbing fixtures, non-asbestos insulation,
17 roofing shingles and other roof coverings, asphaltic pavement, glass, plastics that are not
18 sealed in a manner that conceals other wastes, empty buckets ten gallons or less in size
19 and having no more than one inch of residue remaining on the bottom, electrical wiring
20 and components containing no hazardous liquids, and pipe and metals that are incidental
21 to any of the above. Solid waste that is not C&D debris (even if resulting from the
22 construction, remodeling, repair and demolition of utilities, structures and roads and land
23 clearing) includes, but is not limited to asbestos waste, garbage, corrugated container

1 board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or
2 transformers, fluorescent lights, carpeting, furniture, appliances, tires, drums, containers
3 greater than ten gallons in size, any containers having more than one inch of residue
4 remaining on the bottom, and fuel tanks. Specifically excluded from the definition of
5 C&D debris is solid waste (including what otherwise would be C&D debris) resulting
6 from any processing technique, other than that employed at a C&D debris processing
7 facility approved pursuant to this Code, that renders individual waste components
8 unrecognizable, such as pulverizing or shredding.

9 (13) "Cover material" means soil or other material suitable for use in covering compacted solid
10 waste in a sanitary landfill. A material is suitable for use as a cover material if, when
11 properly used, it will prevent (1) the propagation, harborage, or attraction of vectors; (2)
12 the progress of fires; (3) the escape of odor; (4) excess infiltration of surface water runoff;
13 and (5) erosion.

14 (14) "Director of the Environmental Protection Department" means the Director of the Tribe's
15 Environmental Protection Department and any other person with authority to act on
16 behalf of the Director of the Environmental Protection Department pursuant to this Code.

17 (15) "Director of the Solid Waste Department" means the Director of the Tribe's Solid Waste
18 Department and any other person with authority to act on behalf of the Director of the
19 Solid Waste Department pursuant to this Code.

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

22 (17) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing
23 of any solid waste or hazardous waste into or on any land or water so that such solid

1 waste or hazardous waste or any constituent thereof may enter the environment or be
2 emitted into the air, or discharged into any surface waters or groundwaters.

3 (18) "Disposal site" means a site, location, tract of land, landfill site, or premises used or
4 intended to be used for partial or total solid waste disposal.

5 (19) "EPA" means the United States Environmental Protection Agency.

6 (20) "Fomite" means any substance that may harbor or transmit pathogenic organisms.

7 (21) "Groundwater" means water below the land surface in a zone of saturation.

8 (22) "Guidance document" means a document issued by the Director of the Environmental
9 Protection Department that supplements criteria under the Code. A guidance document
10 may provide specific technical direction regarding the manner in which an owner or
11 operator shall comply with the Code and other applicable laws and regulations relating to
12 the transport, storage, or disposal of solid waste. A guidance document may also provide
13 direction as to how the Director of the Environmental Protection Department interprets
14 the Tribe's Code or solid waste program consistent with Tribal law and federal law.

15 (23) "Hazardous waste" means any waste substance, material, smoke, gas, particulate matter,
16 or combination thereof that:

17 (a) because of its quantity, concentration, or physical, chemical, or infectious
18 characteristics, may either cause or significantly contribute to an increase in
19 mortality or serious irreversible or incapacitating illness or pose a substantial
20 present or potential hazard to human health, living organisms, or the environment
21 when improperly handled, treated, stored, transported, or disposed of;

22 (b) is specifically defined to be hazardous or toxic by the Federal Comprehensive
23 Environmental Response, Compensation, and Liability Act of 1980 or the

1 Resource Conservation and Recovery Act of 1976 as either act may be amended
2 from time to time, and by any regulations promulgated there under, including but
3 not limited to 40 C.F.R. Part 261 and any substance, material, smoke, gas,
4 particulate matter, or combination thereof containing asbestos, petroleum or its
5 byproducts, or polychlorinated biphenyls ("PCBs");

6 (c) is hazardous, toxic, ignitable, reactive, or corrosive and is defined and regulated as
7 such by the Tribe or the United States of America pursuant to 40 C.F.R. Part 261;

8 or

9 (d) is specifically designated by the Director of the Environmental Protection
10 Department as a hazardous waste.

11 (24) "Household hazardous waste" means hazardous waste discarded by households.

12 (25) "Household waste" means any solid waste (including garbage, trash, and sanitary waste in
13 septic tanks) derived from households (including single and multiple residences, hotels
14 and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and
15 day-use recreation areas).

16 (26) "Inert waste" means non-putrescible solid waste which will not generally contaminate
17 water or generate a contaminated leachate and does not serve as food for vectors. Inert
18 waste includes, but is not limited to, construction and demolition material such as metal,
19 wood, bricks, masonry, steel rebar, and cement concrete; asphalt concrete; and tree
20 branches.

21 (27) "Infectious waste" means:

22 (a) Laboratory wastes, including but not limited to cultures of etiologic agents, which
23 pose a substantial threat to health due to their volume and virulence.

1 (b) Pathologic specimens, including but not limited to human or animal tissues, blood
2 elements, excreta, and secretions that contain etiologic agents, and attendant
3 disposable fomites.

4 (c) Surgical specimens including but not limited to human or animal parts and tissues
5 removed surgically, or at autopsy that, in the opinion of the attending physician or
6 veterinarian, contain etiologic agents and attendant disposable fomites.

7 (d) Human dialysis waste materials including but not limited to arterial lines and
8 dialysate membranes.

9 (e) Carcasses of animals infected with etiologic agents that may present a substantial
10 hazard to public health if improperly managed.

11 (f) Equipment, instruments, utensils, or any other material that is likely to transmit
12 etiologic agents.

13 (g) Any other material that is likely to transmit etiologic agents or presents a
14 significant danger of infection because it is contaminated with, or may reasonably
15 be expected to be contaminated with, etiologic agents.

16 (28) "Integrated Solid Waste Management Plan" or "ISWMP" means the Tribe's objectives,
17 policies, and plans for all solid waste collection, handling, transportation, disposal,
18 treatment, storage, recycling, and resource conservation, on or off the Reservation,
19 adopted pursuant to this Code.

20 (29) "Institutional controls" means restrictions on the use of a site or facility established by the
21 Tribal Council, President, or other appropriate responsible governmental entity or entities
22 due to the presence of hazardous substances, pollutants, or contaminants in soils, water, or
23 groundwater.

- 1 (30) "Landfill" means an area of land or an excavation in which wastes are placed for
2 permanent disposal, and that is not a land treatment unit, surface impoundment, injection
3 well, or waste pile.
- 4 (31) "Land treatment" means the controlled application of solid waste, excluding application
5 of animal manure, into the surface soil to alter the physical, chemical, and biological
6 properties of the waste.
- 7 (32) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing
8 solid waste facility.
- 9 (33) "Leachate" means any liquid formed by the drainage of liquid from solid waste or by the
10 percolation or flow of liquid through solid waste including but not limited to any
11 constituents extracted from the solid waste and dissolved or suspended in the liquid.
- 12 (34) "Liner" means a continuous layer of natural or artificial material or a continuous
13 membrane of artificial material installed beneath or on the sides of a solid waste facility
14 which acts as a barrier to vertical or lateral fluid movement.
- 15 (35) "Liquid waste" means any waste material which contains free liquid that is defined by
16 Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating
17 Solid Wastes, Physical/Chemical Methods" (EPA Pub. No. SW-846).
- 18 (36) "Litter" means all waste material including but not limited to disposable packages or
19 containers thrown or deposited in a manner prohibited by this Code, including solid waste
20 that is illegally dumped. "Littering" means the act of disposing of litter.
- 21 (37) "Mobile home or trailer" means a portable habitable or formally habitable structure that
22 was originally fitted with wheels to facilitate movement or transportation on public roads.
23 Such wheels may or may not still be present on the structure.

1 (38) "Municipal solid waste landfill" or "MSWLF" means a discrete area of land or an
2 excavation that receives household waste and other types of RCRA Subtitle D waste and
3 is not a land application unit, surface impoundment, injection well, or waste pile as
4 defined in 40 C.F.R. Part 257. An MSWLF may be publicly or privately owned. Unless
5 otherwise specified, the term MSWLF includes new MSWLFs, existing MSWLFs, and
6 lateral expansions.

7 (39) "Nuisance" means a condition that occurs as a result of the handling, treatment,
8 composting, or disposal of solid waste that (1) is injurious to human health or is indecent
9 or offensive to the senses and interferes with the comfortable enjoyment of life or
10 property, and (2) adversely affects an entire community or neighborhood or any
11 considerable number of persons.

12 (40) "100-year flood" means a flood that has a one percent or greater chance of being equaled
13 or exceeded in a one-year period based on criteria established by the Director of the
14 Environmental Protection Department.

15 (41) "Open burning" means the combustion of solid waste without:

16 (a) Control of combustion air to maintain adequate temperature for efficient
17 combustion,

18 (b) Containment of the combustion reaction in an enclosed device to provide
19 sufficient residence time and mixing for complete combustion, and

20 (c) Control of the emission of the combustion products.

21 (42) "Open dump" means any facility or site on the Reservation where solid waste has been
22 disposed of that is not a sanitary landfill authorized under the Code and compliant with
23 the criteria prescribed in 40 C.F.R. Parts 257 and 258 as applicable.

- 1 (43) "Operator" means the person(s) responsible for the overall operation of a solid waste
2 facility or part of a solid waste facility.
- 3 (44) "Owner" means the person(s) who owns any interest in a solid waste facility or part of a
4 solid waste facility.
- 5 (45) "Part 258 Criteria" means the environmental criteria contained in 40 C.F.R. Part 258 for
6 the location, operation, design, groundwater monitoring, corrective action, closure, post-
7 closure care, and financial assurance requirements for MSWLFs.
- 8 (46) "Permit" means an authorization and license issued by the Director of the Environmental
9 Protection Department for the collection and/or transportation of solid waste, construction
10 and/or operation of a solid waste facility on the Reservation, or other solid waste related
11 activities as provided for in this Code.
- 12 (47) "Permittee" means a person who is authorized by a permit issued by the Director of the
13 Environmental Protection Department pursuant to this Code to engage in solid waste
14 related activities.
- 15 (48) "Person" means any individual, trust, firm, association, partnership, corporation or other
16 business entity, and any political subdivision, government agency, municipality, public
17 corporation, or other governmental entity, and includes the Tribe and its
18 instrumentalities, members of the Tribe, non-member Indians, and non-Indians.
- 19 (49) "Pesticide" means any substance or mixture of substances intended for preventing,
20 destroying, repelling, or mitigating any pest, or intended for use as a plant regulator,
21 defoliant, or desiccant. The term "pesticide" includes insecticides, herbicides, fungicides,
22 rodenticides, and other pest control agents regulated under the Federal Insecticide,
23 Fungicide, and Rodenticide Act.

1 (50) "Pollutant or contaminant" means any element, substance, compound, mixture, or
2 disease-causing agent that, after release into the environment and upon exposure,
3 ingestion, inhalation, or assimilation into any organism, either directly from the
4 environment or indirectly by ingestion through food chains, will or may reasonably be
5 anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation,
6 physiological malfunctions (including malfunctions in reproduction), or physical
7 deformations in such organism or their offspring. The term "pollutant or contaminant"
8 includes but is not limited to hazardous substances, hazardous wastes, toxic substances,
9 controlled substance (as defined in section 102 of the Controlled Substance Act (21
10 U.S.C. 802)) and petroleum or petroleum product. The term "pollutant or contaminant"
11 also means any pollutant or contaminant that may present an imminent and substantial
12 danger to public health or welfare of the Tribe or any person within the exterior
13 boundaries of the Northern Cheyenne Reservation.

14 (51) "Pollution" means the unauthorized disposal of any solid waste or hazardous waste into
15 the air, land, surface water, or groundwater. The term "pollution" also means the
16 condition caused by the presence in or on soil, air, or water of any pollutant in such
17 quantity, of such nature and duration, or under such condition that the quality, appearance
18 or usefulness of the soil, air, or water is degraded or adversely altered.

19 (52) "Post-closure maintenance" means all activities undertaken at a closed solid waste facility
20 where solid waste remains in place following closure to maintain the integrity of
21 containment features and to monitor compliance with applicable performance standards
22 required under the Code.
23

1 (53) "Post-closure maintenance period" means the period of time following closure of a solid
2 waste management unit during which the owner or operator must perform post-closure
3 activities.

4 (54) "Premises" means a tract or parcel of land with or without habitable buildings.

5 (55) "President" means the President of the Northern Cheyenne Tribe.

6 (56) "Produced oil" means crude petroleum oil and other hydrocarbons regardless of gravity
7 which are produced at the wellhead in liquid form and the liquid hydrocarbons known as
8 distillate or condensate recovered or extracted from gas, other than gas produced in
9 association with oil and commonly known as casing head gas.

10 (57) "Putrescible" means organic matter that is capable of being decomposed by micro-
11 organisms and that can result in the formation of foul smelling products.

12 (58) "Recycle" means to process a material or substance, including solid waste, in order to
13 regain material for human use. "Recyclable material" means material capable of being
14 recycled. "Recycle or reuse processing" means an operation designed to separate, shred,
15 compress, or otherwise modify a recyclable material to facilitate the transport or resource
16 recovery of the material.

17 (59) "Recovery" means the recovery of material, byproducts, or energy from solid waste.

18 (60) "Regulated hazardous waste" means:

- 19 (a) a solid waste that is a hazardous waste as defined in 40 C.F.R. Part 261 that is not
20 excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b) or was
21 not generated by a conditionally exempt small quantity generator as defined in 40
22 C.F.R. § 261.5; and
23

1 (b) any other solid waste specifically designated as a regulated hazardous waste in this
2 Code or by regulation promulgated by the Director of the Environmental
3 Protection Department pursuant to the requirements of this Code.

4 (61) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying,
5 discharging, injecting, escaping, leaching, dumping, or disposing into the environment
6 (including the abandonment or discarding of barrels, containers, and other closed
7 receptacles containing hazardous substances or pollutant or contaminant). Release also
8 means threat of release.

9 (62) "Remedial action" means those actions consistent with the permanent remedy taken in the
10 event of a release or threatened release of a hazardous substance, pollutant or contaminant
11 into the environment, to prevent or minimize the release so that they do not migrate to
12 cause substantial danger to present or future public health or welfare or the environment.

13 The term includes, but is not limited to:

14 (a) Such actions at the location of the release as storage, confinement, perimeter
15 protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of
16 released hazardous substances and associated contaminated materials, recycling or
17 reuse, diversion, destruction, segregation of reactive wastes, dredging or
18 excavations, repair or replacement of leaking containers, collection of leachate and
19 runoff, on-site treatment or incineration, provision of alternative water supplies,
20 any monitoring reasonably required to assure that such actions protect the public
21 health and welfare and the environment and, where appropriate, post-removal site
22 control activities;

1 (b) Off-site transport and off-site storage, treatment, destruction, or secure disposition
2 of hazardous substances, pollutants or contaminants and associated contaminated
3 materials; and

4 (c) Corrective actions taken pursuant to the federal Solid Waste Disposal Act as
5 amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-
6 6992k.

7 (63) "Removal" means the act of taking solid waste or hazardous waste from the place of
8 generation either by a permitted collection agency or by the owner of the solid waste or
9 hazardous waste.

10 (64) "Reservation" means the Northern Cheyenne Indian Reservation and all lands of any kind
11 within the exterior boundaries of the Reservation as established by the Presidential
12 Executive Orders of November 26, 1884, and March 19, 1900, and any other lands which
13 now or hereafter are subject to the jurisdiction of the Tribe.

14 (65) "Rules and regulations" means any rules and regulations, not inconsistent with this Code,
15 promulgated by the Director of the Environmental Protection Department, in consultation
16 with the Director of the Solid Waste Department, and approved by the Tribal Council and
17 the President, regarding the collection, storage, treatment, transportation, or disposal of
18 solid waste on the Reservation that implement or supplement any provision of the Code.

19 (66) "Run-off" means any snowmelt, rain water, leachate, or other liquid that drains from any
20 part of a facility over another part of the facility, over land adjoining the facility, or into
21 surface waters.

1 (67) "Run-on" means any snowmelt, rain water, or other liquid that drains from land adjoining
2 a facility onto any part of the facility or from one part of the facility onto another part of
3 the facility.

4 (68) "Sanitary landfill" means a disposal facility employing a method of disposing of solid
5 waste on land without creating a nuisance, pollution, or a hazard to public health or
6 safety, by using methods to confine the solid waste to the smallest practical area, reduce it
7 to the smallest practical area, reduce it to the smallest practical volume, and cover it with
8 a layer of suitable cover material at specific designated intervals. A sanitary landfill by
9 definition must comply with all applicable federal law, including the criteria at 40 C.F.R.
10 Parts 257 and 258 as applicable.

11 (69) "Scavenging" means the uncontrolled and unsafe removal of solid waste from containers,
12 vehicles, or any approved solid waste management facility or disposal site.

13 (70) "Service" means the delivery of one or more documents to a recipient in accordance with
14 the procedures described in Rule 3 of the Tribe's Rules of Civil Procedure.

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

19 (72) "Solid waste" means any discarded material, including solid, liquid, semi-solid, or
20 contained gaseous material resulting from industrial, commercial mining, agricultural
21 operations, and community activities, but does not include (1) sewage sludge, (2) solid or
22 dissolved material in irrigation return flows or industrial discharges that are point sources
23 subject to permit under 33 U.S.C. 1342, or (3) source, special nuclear, or by-product

1 material as defined by the Atomic Energy Act of 1954, as amended. "Solid waste"
2 includes special waste as defined in this Code, liquid waste, garbage, refuse, human waste
3 that is not sewage sludge, and any other substance or material determined to be solid
4 waste by the Director of the Environmental Protection Department pursuant to this Code.

5 (73) "Solid waste facility" means all contiguous land and structures, other appurtenances, and
6 improvements on the land used for the management, treatment, storage, or disposal of
7 solid waste or special wastes, such as a transfer station, a solid waste storage building,
8 land on which solid waste processing or resource recovery systems are located, an
9 incinerator, surface impoundment sites, a surface pile, a land treatment area, a MSWLF
10 subject to the criteria of 40 C.F.R. Part 258, or an inert landfill subject to the criteria in 40
11 C.F.R. Part 257. A solid waste facility may or may not be used solely for solid waste
12 management.

13 (74) "SWDA" means the Federal Solid Waste Disposal Act, 41 U.S.C. §§ 6901-6992k, as
14 amended.

15 (75) "Special waste" means solid waste specifically designated as special waste in this Code or
16 by regulation promulgated by the Director of the Environmental Protection Department
17 pursuant to the requirements of this Code. Special waste may require special storage,
18 management, transportation, or handling under this Code.

19 (76) "Storage" means the confining, containing, holding or stockpiling of solid waste for a
20 limited period of time prior to collection, treatment, transportation, utilization, processing,
21 recovery, or final disposal.

22 (77) "Surface impoundment" means a human-made excavation, diked area, or natural
23 topographic depression designed to hold an accumulation of solid waste which is liquid,

1 liquid bearing, or sludge for containment, treatment, or disposal. Examples of surface
2 impoundments are holding, storage, settling, and aeration pits, ponds and lagoons.

3 (78) "Transfer station" means a temporary holding facility for solid waste for the purpose of
4 interim collection and transfer to a landfill or other facility.

5 (79) "Transporter" means any person, contractor, or solid waste facility operator who
6 transports solid waste to solid waste facilities on or off the Reservation.

7 (80) "Treatment" means any method, technique, or process, including neutralization, designed
8 to change the physical, chemical, or biological character or composition of any hazardous
9 waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for
10 transport, amendable to recovery and storage, or reduced in volume. Such term includes
11 any activity or processing designed to change the physical form or chemical composition
12 of hazardous waste so as to render it nonhazardous.

13 (81) "Tribal Council" or "Council" means the governing body of the Northern Cheyenne Tribe.

14 (82) "Tribal Court" means the courts of the Tribe.

15 (83) "Tribe" means and "Tribal" refers to the Northern Cheyenne Tribe.

16 (84) "Tribe's solid waste program" means the authorities, activities, and procedures in the
17 Code, the Tribe's Integrated Waste Management Plan, and any other Tribal laws or
18 regulations that comprise the Tribe's system for regulating the collection, handling,
19 transportation, disposal, treatment, and storage of solid waste, including all of the
20 provisions of 40 C.F.R. Parts 257 and 258, which are incorporated herein by reference.

21 (85) "Vector" means any insect, arthropod, rodent, or other animal capable of transmitting a
22 pathogen from one organism to another or of disrupting the normal enjoyment of life by
23 adversely affecting the public health, safety, or well-being.

1 **Section 1-3: Purpose.**

2 The purpose of this Code is to provide for the establishment of a comprehensive solid and
3 hazardous waste collection and disposal system to protect the health, safety, and well-being of
4 residents within the jurisdiction of the Northern Cheyenne Tribe. This Code is intended to:

- 5 (a) Protect the health, welfare, political integrity, and economic security of the Tribe, its
6 members, and residents and other persons living on the Reservation;
- 7 (b) Protect the historical and cultural values and traditions of the Tribe and ensure
8 preservation of the Reservation as a permanent Tribal homeland;
- 9 (c) Prevent the deterioration of the natural environment on the Reservation by minimizing
10 impacts from the improper management or disposal of solid waste to the air, surface
11 water, groundwater, wildlife, and land resources;
- 12 (d) Reduce littering and eliminate disposal of waste in open dumps through regulation of the
13 storage, collection, treatment, transportation, and disposal of solid waste on the
14 Reservation by persons subject to the jurisdiction of the Tribe;
- 15 (e) Encourage the development of a Reservation-wide system for curbside solid waste pickup
16 and recycling;
- 17 (f) Encourage solid waste source reduction on the Reservation;
- 18 (g) Create uniform regulations for the storage, collection, disposal, treatment, and
19 management of solid waste and hazardous waste on the Northern Cheyenne Reservation,
20 and for the remediation of any releases of hazardous substances, pollutants, or
21 contaminants; and
- 22 (h) Comply with the requirements of federal and Tribal law relating to the generation,
23 storage, transportation, treatment, and disposal of solid waste on the Reservation.

1 **Section 1-4: Findings.**

2 The Council makes the following findings and declarations in support of the Code:

3 (a) The existing and increasing volume and variety of solid waste, including hazardous waste,
4 generated and disposed of on the Reservation, in combination with the often inadequate
5 existing methods of managing solid waste and hazardous waste, contribute to land, air,
6 and water pollution, and threaten the economy, public health, safety, welfare, and
7 wellbeing of the Tribe, its members, and residents and other persons on the Reservation.

8 These circumstances also negatively impact the Tribe's natural resources and contribute
9 to deterioration of the environment and quality of life on the Reservation.

10 (b) The enactment of this Code is in the best interest of ensuring, promoting, and protecting
11 the health and welfare of the Tribe, its members, and residents and other persons on the
12 Reservation; the character, culture, and historical significance of the Reservation; and the
13 Reservation's natural environment.

14 **Section 1-5: Jurisdiction and Applicability.**

15 (a) This Code is adopted pursuant to the authority vested in the Tribal Council under Article
16 IV of the Constitution of the Tribe as amended.

17 (b) The Tribe has inherent sovereignty to exercise civil authority and jurisdiction over the
18 conduct of Tribal members and all other persons on all lands within the exterior
19 boundaries of the Reservation to maintain the environment, natural resources, health,
20 safety, welfare, political integrity, and economic security of the Tribe.

21 (c) Because any violations of this Code or any rules or regulations adopted thereunder will
22 demonstrably and seriously impact the environment, natural resources, public health,
23 safety, welfare, political integrity, and economic security of the Tribe, this Code, and any

1 rules and regulations adopted thereunder, shall apply to (1) all persons within the exterior
2 boundaries of the Reservation including but not limited to Tribal members, Indians who
3 are members of other Indian Tribes, non-Indians, and any other person as defined in the
4 Code; (2) all persons, households, commercial businesses, schools, governmental
5 facilities, farmers, ranchers, private contractors, and all other entities and/or facilities that
6 operate within the Reservation or impact the storage, collection, disposal, or treatment of
7 solid waste on the Reservation; and (3) all places and lands located anywhere within the
8 exterior boundaries of the Reservation, including all trust and non-trust lands,
9 notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, or any real
10 property interest of any kind, held by any person as defined under the Code.

11 **Section 1-6: The Tribe's Sovereign Immunity.**

- 12 (a) Neither the Code, nor the Tribe's solid waste program, nor any action or agreement of the
13 Solid Waste Department or its Director, nor the Environmental Protection Department or
14 its Director or Compliance Officer, nor their respective employees, agents, contractors,
15 subcontractors, or other delegates shall in any respect constitute waiver or modification of
16 the sovereign immunity of the Tribe, or its instrumentalities, officials, employees, or
17 agents, unless expressly and explicitly provided otherwise in this Code or other Tribal
18 law, federal law, or a written agreement approved by the Council and the President.
- 19 (b) The Tribe reserves the right to contest the jurisdiction of the federal courts in any citizens'
20 suit filed against it or its instrumentalities, officials, employees, or agents under Section
21 7002 of the SWDA.
- 22 (c) On behalf of the Tribe, the Solid Waste Department and its Director, and the
23 Environmental Protection Department and its Director, may enter into such contracts as

1 are specifically or generally authorized by the President, subject to available funding, for
2 the purpose of implementing or enforcing the Code and the Tribe's solid waste program.

3 **Section 1-7: Consensual Relationship between Non-Members, the Tribe, and Tribal**
4 **Members.**

5 Any person who is not a member of the Tribe authorized to use or occupy land anywhere within
6 the Reservation, whether trust or non-trust land, shall be conclusively presumed to have entered
7 into a consensual relationship with the Tribe or its member(s), through commercial dealings,
8 contracts, leases, or other arrangements. Such use or occupancy of land, to the extent it involves
9 the storage, collection, transportation, and/or disposal of solid waste on the Reservation, is hereby
10 conclusively presumed to threaten or potentially have a serious impact upon the environment,
11 natural resources, public health, safety, welfare, political integrity, and economic security of the
12 Tribe, and its members.

13 **Section 1-8: Indemnification.**

14 Any person who contracts with the Tribe to collect, transport, distribute, or dispose of solid waste
15 on the Reservation shall indemnify ("inseminator") and defend the Tribe and/or any of its
16 members, officers, agents or employees from any claim of liability and from all resulting
17 liabilities of any nature resulting from the inseminator's violation of: any permit issued under the
18 Code; any provision of this Code; any rule, regulation, or guidance document adopted under this
19 Code; or any other applicable Tribal or federal law, to the extent that such claims or liabilities
20 were not proximately caused by the wrongful conduct of the party claiming indemnity hereunder.

21 **Section 1-9: Interpretation.**

22 If any provision in this Code conflicts with any other provision of this Code, other Tribal law, or
23 federal law, the most stringent and protective provision shall be controlling.

1 **Section 1-10: Severability.**

2 If any provision of the Code, or application of any provision of the Code to any person or
3 circumstance, is determined to be invalid or unlawful, the application of such provision to other
4 persons and circumstances, and the remaining provisions of the Code, shall not be affected.

5 **Section 1-11: Applicability of 40 C.F.R. Parts 257 and 258.**

6 The Code incorporates by reference all of the requirements contained in 40 C.F.R. Parts 257 and
7 258. If any provision of 40 C.F.R. Parts 257 or 258 is modified or repealed, such modification or
8 repeal shall automatically incorporated by reference as part of this Code, and supersede the
9 provisions that were modified or repealed. Any specific requirements of the Code or a permit
10 issued pursuant to this Code that are more stringent than the criteria in 40 C.F.R. Parts 257 or 258
11 are applicable and controlling.

12 **CHAPTER TWO—TRIBAL ADMINISTRATION**

13 **Section 2-1: The Tribe's Environmental Protection Department.**

- 14 (a) The Tribe's Environmental Protection Department is designated as the Lead Tribal
15 Agency for all purposes under this Code. The Environmental Protection Department shall
16 have the powers, duties, and responsibilities provided for in this Code.
- 17 (b) The Director of the Environmental Protection Department is authorized to hire and retain
18 Department staff and consultants, and acquire Department equipment and facilities to the
19 extent of available resources and if necessary for the proper discharge of the
20 Environmental Protection Department's responsibilities under this Code.
- 21 (c) The Director of the Environmental Protection Department, in consultation with the
22 Director of the Solid Waste Department, shall develop and periodically review and revise
23 the Tribe's Integrated Solid Waste Management Plan pursuant to this Code.

- 1 (d) The Director of the Environmental Protection Department shall, pursuant to the
2 requirements of this Code, issue permits for solid waste collection, transport, treatment,
3 storage, and disposal activities on the Reservation.
- 4 (e) The Director of the Environmental Protection Department shall conduct administrative
5 hearings, as more specifically set forth in this Code, and take action to grant, deny,
6 revoke, suspend, or modify permits as authorized in this Code.
- 7 (f) The Director of the Environmental Protection Department may, subject to approval by the
8 President, expend available funds to perform any cleanup, abatement, or remedial work
9 necessary to remedy violations of permits issued pursuant to this Code, any other part of
10 this Code, or any rule, regulation, or guidance document adopted under this Code.
- 11 (g) The Director of the Environmental Protection Department, in consultation with the
12 Director of the Solid Waste Department, may propose to the Tribal Council and the
13 President rules and regulations to implement or enforce any provision or requirement of
14 the Code and, upon approval thereof by the Tribal Council and the President, promulgate
15 such rules and regulations, which shall enforceable as Tribal law.
- 16 (h) The Director of the Environmental Protection Department, in consultation with the
17 Director of the Solid Waste Department, may issue guidance documents as part of the
18 Tribe's solid waste program, which may prescribe specific technical or scientific criteria
19 for implementing the location, construction, design, operational, closure, or post-closure
20 requirements for solid waste facilities, and may also provide guidance on implementation
21 and interpretation of this Code. Guidance documents may supplement the criteria at 40
22 C.F.R. Parts 257 and 258, but any criteria set forth in any guidance document shall not be
23 in conflict with any such criteria or contain any criteria which are less stringent than the

1 criteria at 40 C.F.R. Parts 257 and 258. Guidance documents issued by the Director of the
2 Environmental Protection Department, however, may provide more stringent criteria for
3 solid waste facilities than are required in 40 C.F.R. Parts 257 or 258. Guidance
4 documents shall be enforceable if they are specifically referenced or attached as part of, or
5 as a condition of, any permit issued under the Code.

6 (i) The Director of the Environmental Protection Department, in consultation with the
7 Director of the Solid Waste Department, shall apply, as soon as practicable, for federal
8 and state financial aid, training, and technical assistance for development of the Tribe's
9 Integrated Solid Waste Management Plan and to implement the Tribe's solid waste
10 program. This shall include seeking grants available from EPA's Regional Office as may
11 be authorized under the SWDA and any other grants, funds, or assistance which may be
12 available from the EPA, BIA, the U.S. Indian Health Service, the U.S. Department of
13 Housing and Urban Development, the Administration for Native Americans, USDA
14 Rural Development, and any other agency or public or private source.

15 (j) The Director of the Environmental Protection Department, in consultation with the
16 Director of the Solid Waste Department, shall prepare and file an annual report with the
17 Council and the President no later than July 1 of each year which shall review the
18 progress achieved under the Tribe's solid waste program and shall include any additional
19 reports requested by the Tribal Council or the President. The Director of the
20 Environmental Protection Department may recommend in the annual report or on other
21 occasions specific actions that should be taken by the Council or the President regarding
22 the Tribe's solid waste program.

1 (k) The Director of the Environmental Protection Department may communicate and
2 coordinate with federal, state, and local regulatory agencies regarding implementation of
3 the Tribe's solid waste program.

4 (l) The Director of the Environmental Protection Department may, subject to available
5 funding and approval of the President, hire additional Environmental Protection
6 Department staff to help ensure implementation and enforcement of the Code.

7 (m) The Director of the Environmental Protection Department may, upon finding that the
8 Director of the Solid Waste Department or other officers or employees of Solid Waste
9 Department are not adequately fulfilling their duties under this Code, recommend to the
10 President that the President order the Director of the Solid Waste Department to fully
11 implement such duties.

12 (n) The Director of the Environmental Protection Department shall oversee and manage the
13 activities of the Compliance Officer.

14 (o) Without diminishing the responsibilities or authorities of the Director of the
15 Environmental Protection Department, he or she may in writing delegate duties and
16 responsibilities assigned to the Director of the Environmental Protection Department in
17 this Code to any employee, agent, or representative of the Tribe.

18 **Section 2-2: The Environmental Protection Department's Compliance Officer.**

19 (a) There is hereby established within the Environmental Protection Department the position
20 of "Compliance Officer," who shall be hired by the Director of the Environmental
21 Protection Department with approval of the President. The Compliance Officer shall be a
22 qualified person with professional experience relating to the management and disposal of
23 solid waste. The Compliance Officer shall be an official and employee of the Tribe, and

1 shall be paid a salary established by the President. The Compliance Officer shall have the
2 powers, duties, and responsibilities set forth below and otherwise established in this Code,
3 subject to the supervision and oversight of the Director of the Environmental Protection
4 Department.

5 (b) The Compliance Officer shall implement, administer, and enforce the Code and the
6 Tribe's solid waste program pursuant to all of the powers and duties delegated to him or
7 her therein. Unless expressly and explicitly authorized by the Tribal Council and the
8 President, the Compliance Officer is not authorized to consent to or otherwise subject the
9 Tribe or any of its instrumentalities, officials, employees, or agents to non-Tribal
10 jurisdiction or to in any respect waive Tribal sovereign immunity.

11 (c) The Compliance Officer shall, in compliance with the SWDA and subject to available
12 funding, identify all open dumps on the Reservation and prohibit the disposal of any solid
13 waste at any open dump on the Reservation. The Compliance Officer shall, subject to
14 available resources, take action to close in a timely manner all open dumps on the
15 Reservation.

16 (d) The Compliance Officer shall investigate, upon his or her own motion or receipt of a
17 credible complaint submitted pursuant to Section 10-1 of this Code, any suspected
18 violation of a permit issued pursuant to this Code, or any suspected violation of any part
19 of this Code or any rule, regulation, or guidance document adopted under the Code.

20 (e) The Compliance Officer shall conduct monitoring, inspections, and other investigations to
21 ensure that all entities and persons subject to the Tribe's jurisdiction comply with the
22 requirements of this Code. In conducting such investigations, the Compliance Officer is
23 authorized to:

- 1 (1) Obtain any information, including records and reports, from any owner or operator
2 necessary to determine whether the owner or operator is in compliance with this
3 Code;
- 4 (2) Conduct any independent monitoring or testing necessary to ensure that owners or
5 operators are in compliance with this Code;
- 6 (3) Enter any site or premises subject to the tribal permit programs or at which records
7 relevant to regulated activity or solid waste facility are kept;
- 8 (4) Review and reproduce any records relevant to the regulated activity or solid waste
9 facility;
- 10 (5) Make video or photographic records of any regulated activity or solid waste
11 facility;
- 12 (6) Inspect at any time any site or premises at which regulated activities are conducted
13 and make photographic, video, or other records of information obtained during the
14 inspection;
- 15 (7) Investigate the activities of any solid waste disposal, transfer, storage, or
16 collection and transportation service in order to determine compliance with this
17 Code or to verify information obtained from the owner or operator;
- 18 (8) Conduct any and all independent tests or samplings necessary to verify the
19 adequacy of methods (including sampling) used by owners or operators or
20 responsible party to provide information to the Tribe or determine compliance
21 with this Code, including, but not limited to, testing and inspecting any equipment
22 used by the owner or operator or responsible party to test, sample, or obtain
23 information;

1 (9) Interview persons employed in the operation of any solid waste facility or service
2 subject to the requirements of this Code; and

3 (10) Receive and record information submitted by any persons concerning any
4 regulated activity or solid waste facility.

5 (f) In addition to the duties described above, the Compliance Officer shall be responsible for:

6 (1) Ensuring that facilities are designed, constructed, operated, and monitored
7 (including monitoring after closure) in compliance with this Code;

8 (2) Ensuring compliance with permits and orders issued under this Code and
9 developing procedures for carrying out a permit compliance and inspection
10 program, including but not limited to requiring operators file reports with the
11 Compliance Officer in order to monitor solid waste handling, treatment, storage,
12 transfer and disposal within the Reservation;

13 (3) Ensuring, in the event of an accidental release or spill of a hazardous substance,
14 pollutant or contaminant to the air, land or waters or groundwater of the
15 Reservation resulting in a potential threat to the public health, welfare or the
16 environment within the boundaries of the Reservation, compliance with the
17 notification and response requirements of this Code and ensuring the appropriate
18 entity addresses the immediate and long term impacts of the release or spill
19 including containment, remediation, assessment of impacts and long term
20 monitoring;

21 (4) Ensuring compliance with the remediation requirements of this Code by owners,
22 operators, and other parties responsible for releases of hazardous substances,
23 pollutants, or contaminants on or from a property or site resulting in contamination

1 to include Remedial Assessment Agreements, Remediation Agreements,
2 Remediation Orders, No Further Action letters or Certifications of Completion;

3 (5) Ensuring compliance with Tribal institutional controls and other land use
4 restrictions designed to address solid waste issues; and

5 (6) Recommending to the President such contracts as deemed necessary for the
6 accomplishment of the Compliance Officer's duties as specified in this Code.

7 **Section 2-3: The Tribe's Solid Waste Department.**

8 (a) The Tribe's Solid Waste Department is hereby established as an administrative agency of
9 the Tribe. The Solid Waste Department shall have the powers, duties, and responsibilities
10 provided for in this Code.

11 (b) The Solid Waste Department shall be managed by a Director appointed by the President.
12 The Director of the Solid Waste Department shall be a qualified person with professional
13 experience relating to the management and disposal of solid waste. The Director of the
14 Solid Waste Department shall be an official and employee of the Tribe, and shall be paid
15 a salary established by the President. The Director of Solid Waste Department shall
16 manage the Solid Waste Department on day-to-day basis acting within the scope of his or
17 her duties and powers as set forth in the Code. The Director of the Solid Waste
18 Department may hire or retain Department staff and consultants, and acquire Department
19 equipment and facilities, to the extent of available resources and if necessary for the
20 proper discharge of the Solid Waste Department's responsibilities under this Code.

21 (c) The Solid Waste Department and its Director shall comply with all orders issued by the
22 President relating to implementation of this Code. The President may remove any
23 employee or officer of the Solid Waste Department, including the Director of the Solid

1 Waste Department, upon finding that such employee or officer has failed to comply with
2 an order issued by the President regarding implementation of this Code or has otherwise
3 failed to adequately implement this Code.

4 (d) In addition to the duties described above, the Director of the Solid Waste Department
5 shall be responsible for:

- 6 (1) Ensuring the provision of adequate solid waste handling services on the
7 Reservation, including but not limited to solid waste collection, transportation,
8 processing, and transfer services;
- 9 (2) Ensuring proper off-Reservation disposal of solid waste under a plan approved by
10 the Tribal Council and the President;
- 11 (3) Preparing and implementing Tribal policies for solid waste collection, transport,
12 disposal, reuse, and recycling;
- 13 (4) Conducting studies and investigations regarding new or improved methods of
14 solid waste handling, treatment, and disposal and prepare and implement a solid
15 waste management information storage and retrieval system coordinated with
16 other information systems;
- 17 (5) Conducting community outreach and education on the requirements and goals of
18 this Code; and
- 19 (6) Recommending to the President such contracts as deemed necessary, for the
20 accomplishment of essential solid waste services and for the planning, design and
21 construction of solid waste projects, provided that the Solid Waste Director
22 monitors all such contracts for the Tribe.

1 **CHAPTER THREE—THE TRIBE'S INTEGRATED SOLID WASTE MANAGEMENT**

2 **PLAN**

3 **Section 3-1: Integrated Solid Waste Management Plan.**

4 (a) The Director of the Environmental Protection Department, in consultation with the
5 Director of the Solid Waste Department, shall develop and periodically review and revise
6 the Tribe's Integrated Solid Waste Management Plan, which shall:

- 7 (1) Identify and plan for the closing of all open dumps within the Reservation, subject
8 to available funding, in accordance with the SWDA and the criteria at 40 C.F.R.
9 Parts 257 and 258 as applicable.
- 10 (2) Formulate Tribal policies for the collection, transportation, handling, treatment,
11 and disposal of solid waste on the Reservation. To the extent feasible, the Plan
12 shall include a program for Reservation curbside solid waste pickup, a program for
13 recycling of solid wastes, and a program for the disposal of household hazardous
14 wastes other than in an MSWLF on the Reservation.
- 15 (3) Estimate the volume and composition of all solid waste which is generated on the
16 Reservation and the volume and composition of solid waste from sources outside
17 the Reservation that may be disposed of in any solid waste facility on the
18 Reservation pursuant to any intergovernmental agreement that the Tribal Council
19 or the President may authorize.
- 20 (4) Identify the responsibilities of any other Tribal agencies and entities involved in
21 the implementation of the Tribe's solid disposal waste program and the
22 distribution of Federal or State funds to the Tribal authorities responsible for
23 development and implementation of the Tribe's solid waste disposal program.

- 1 (5) Review and advise the Council and the President on Tribal regulatory systems
2 necessary to fully implement the Tribe's solid waste disposal program and enforce
3 the Code and rules or regulations promulgated thereunder.
- 4 (6) Review any contracts or other arrangements for the closing of open dumps on the
5 Reservation and the removal of solid waste disposed of at open dumps on the
6 Reservation and assess the costs of fulfilling such contracts or arrangements.
- 7 (7) Identify preferred locations on the Reservation for the establishment of new solid
8 waste facilities.
- 9 (8) Assess the need for and the estimated costs of constructing and operating solid
10 waste facilities on the Reservation and collection and transportation of solid waste
11 on or off the Reservation.
- 12 (9) The ISWMP may also include any other matters which are relevant to the Tribe's
13 solid waste disposal program.

14 (b) The Director of the Environmental Protection Department shall periodically present
15 completed Integrated Solid Waste Plans to the Council and the President. Within thirty
16 (30) days of such presentation to the Council and the President, the Director of the
17 Environmental Protection Department shall publicize the existence of the Plan and make
18 it widely available to all interested persons. Within forty-five (45) days of such
19 presentation, the Director of the Environmental Protection Department shall hold one or
20 more public hearings to permit interested parties to comment on the proposed Plan. The
21 Plan, as revised following such public hearings, shall go into effect upon approval by the
22 Tribal Council and the President.

23

1 **CHAPTER FOUR—PROHIBITIONS AND REQUIREMENTS**

2 **Section 4-1: Responsibilities of Property Owners, Residents, and Other Individuals.**

- 3 (a) The owner, agent, and occupant of every dwelling, residence, premises, business
4 establishment, and solid waste facility on the Northern Cheyenne Reservation shall be
5 responsible for maintaining the sanitary condition of said dwelling, residence, premises,
6 business establishment, or solid waste facility.
- 7 (b) No person shall place, deposit, or allow to be placed or deposited on his or her dwelling,
8 residence, premises, business establishment, or solid waste facility, or on any public
9 street, road, alley, stream, spring, or other surface water or groundwater, any solid waste
10 or other objectionable waste, except in a manner authorized by this Code.
- 11 (c) It is the responsibility of each owner or occupant of every dwelling, residence, premises
12 business establishment, and solid waste facility to properly store hazardous waste and
13 solid waste, and to transport and dispose of such wastes in a manner authorized by this
14 Code.

15 **Section 4-2: Prohibition on Dumping of Solid Waste.**

- 16 (a) It is unlawful for any person to dispose of any solid waste or hazardous waste anywhere
17 on the Reservation except as expressly permitted in this Code, or regulations promulgated
18 by the Director of the Environmental Protection Department and approved by the Council
19 and the President pursuant to this Code.
- 20 (b) Upon of adoption of this Code, any landfill or site where solid waste may have previously
21 been disposed at anywhere within the Reservation is deemed to be permanently closed
22 unless before then the site is specifically determined by the Compliance Officer to be in
23

1 compliance with this Code and 40 C.F.R. Parts 258 and 257 as applicable and is permitted
2 as a facility for the disposal of solid waste pursuant to Section 6-2 of this Code.

3 (c) Upon adoption of this Code, any landfill site on the Reservation which has not been
4 determined by the Compliance Officer to be an MSWLF or other landfill authorized to
5 accept waste under this Code and in conformance with 40 C.F.R. Parts 257 and 258, as
6 applicable, is an open dump site.

7 (d) It shall be unlawful for any person(s) to throw or discharge solid waste into any creek,
8 river, tributary, ditch, other water conveyance system, lake, pond, or other Reservation
9 water except as expressly permitted by this Code. Any person who is responsible for
10 illegal dumping or littering on the Reservation shall be required to remove all solid waste
11 disposed of illegally including any releases or leakage, to restore the site to a condition
12 acceptable to the Compliance Officer, dispose of the solid waste at an approved disposal
13 site or drop box location, and may be subject to further enforcement action under this
14 Code.

15 **Section 4-3: Prohibition on Disposal of Regulated and Conditionally Exempt Small**
16 **Quantity Generator Hazardous Waste.**

17 (a) The dumping or disposal of regulated hazardous waste, as defined under the Code,
18 anywhere within the exterior boundaries of the Reservation, is expressly prohibited and
19 unlawful.

20 (b) The collection, storage, transfer, transportation of any regulated hazardous waste within
21 the exterior boundaries of the Reservation must be conducted in full compliance with this
22 Code and Federal law.
23

1 (c) The collection, storage, transfer, transportation, and disposal off the Reservation of
2 conditionally exempt small quantity generator hazardous waste generated on the
3 Reservation is subject to such regulations as the Director of the Environmental Protection
4 Department may issue in compliance with Federal law.

5 (d) These prohibitions do not apply to household hazardous waste that is not a regulated
6 hazardous waste and may lawfully be disposed of at a solid waste facility on the
7 Reservation.

8 **Section 4-4: Open Burning Prohibited.**

9 Upon adoption of this Code, it is a violation of this Code for any person to burn any solid or
10 hazardous waste at a solid waste facility or anywhere within the Reservation, except as the
11 Director of the Environmental Protection Department specifically authorizes by permit issued
12 pursuant to Section 6-4 of this Code. However, the Director of the Environmental Protection
13 Department may not authorize open burning that is specifically prohibited by the Code or Federal
14 law.

15 **Section 4-5: Solid Waste Facility Construction, Operation, Maintenance, and Closure.**

16 All solid waste facilities within the Reservation must be constructed, operated, maintained, and
17 closed in accordance with all applicable federal and Tribal laws and regulations, including the
18 regulations found in 40 C.F.R. Parts 257 and 258 as applicable, and any permit issued for such
19 facility pursuant to this Code. The Director of the Environmental Protection Department, in
20 consultation with the Director of the Solid Waste Department, may promulgate regulations,
21 subject to approval by the Council and the President, imposing requirements for the construction,
22 operation, maintenance, and/or closure of solid waste facilities that are more stringent than the
23 requirements of federal law.

1 **Section 4-6: Other Prohibitions on Disposal at Solid Waste Facilities.**

2 (a) Except as expressly authorized in this Code or by regulation promulgated by the Director
3 of the Environmental Protection Department pursuant to the requirements of this Code,
4 the following solid waste materials shall not be disposed of or accepted at any solid waste
5 facility on the Reservation under any conditions:

- 6 (1) Radioactive wastes emitting over 5 picocuries/gram (pCi/gm).
- 7 (2) Regulated hazardous wastes.
- 8 (3) Infectious biomedical wastes which includes human tissue or human anatomical
9 remains.
- 10 (4) Animals or bedding exposed to infective agents.
- 11 (5) Sharps, needles and lancets which have not been contained for disposal in leak-
12 proof, rigid, puncture-resistant containers such as cartons or metal cans which are
13 taped closed or tightly lidded to preclude loss of contents under sever compaction
14 conditions.
- 15 (6) Bulk quantities of infectious-type wastes including blood, blood products, and
16 body fluids.
- 17 (7) Any materials containing asbestos.
- 18 (8) Human waste, sewage, or sewage sludge.
- 19 (9) Bulk liquids of any kind.
- 20 (10) Polychlorinated biphenyls (PCBs).
- 21 (11) Car batteries and other lead-acid batteries.
- 22 (12) Used oil.
- 23 (13) Metal drums or containers over 5 gallons.

1 (14) Explosives.

2 (15) Tires.

3 (16) Oil or gas exploration or production wastes.

4 (b) The Director of the Environmental Protection Department may prohibit the disposal of
5 other solid wastes at solid waste facilities on the Reservation as her or she deems
6 necessary in its discretion pursuant to rules and regulations adopted by the Director of the
7 Environmental Protection Department and approved by the Council and the President.

8 **Section 4-7: Scavenging.**

9 Scavenging at solid waste facilities or collection vehicles on the Reservation is prohibited.

10 **Section 4-8: Maintaining a Public Nuisance.**

11 No person shall permit his or her property or residence to become dangerous or hazardous, or to
12 impair the safety, health or comfort of the public as the result of his or her handling, storage,
13 treatment, or disposal of solid waste.

14 **Section 4-9: Misleading Representations.**

15 It shall be a violation of this Code for any person to knowingly omit material information or
16 make any false statement or representation in any label, record, report, or other document
17 submitted pursuant to this Code or regulations promulgated thereunder.

18 **CHAPTER FIVE—SPECIAL WASTES**

19 **Section 5-1: Management of Special Wastes.**

20 All substances designated as a “special waste” in this Chapter or by regulation promulgated by
21 the Director of the Environmental Protection Department pursuant to the requirements of this
22 Code, must be managed, stored, treated, and disposed of in accordance with the applicable
23

1 provisions of this Chapter and applicable regulations promulgated by the Director of the
2 Environmental Protection Department.

3 **Section 5-2: Construction and Demolition Debris.**

4 (a) Every construction, demolition, and renovation project within the Reservation that is
5 1,000 square feet or greater ("Covered Projects") shall comply with this Section.
6 Compliance with the provisions of this Article shall be listed as a condition of approval on
7 building or demolition permits issued for a Covered Project, if any such permits are
8 required.

9 (b) The proponent of any Covered Project ("Applicant") shall not dispose of any construction
10 and demolition debris on the Reservation except pursuant to a permit issued by the
11 Director of the Environmental Protection Department pursuant to Section 6-4 of this
12 Code. Any application for a permit to dispose of construction and demolition debris on
13 the Reservation shall include a Waste Management Plan ("WMP"), which shall describe
14 all of the following:

- 15 (1) the estimated volume or weight of project C&D debris, by materials type, to be
16 generated;
- 17 (2) the estimated maximum volume or weight of such materials that can feasibly be
18 diverted via reuse;
- 19 (3) the estimated maximum volume or weight of such materials that can feasibly be
20 diverted via recycling;
- 21 (4) the vendor and/or facility that the Applicant proposes to use to collect or receive
22 said materials; and
- 23 (5) the estimated volume or weight of C&D materials that will be land filled.

1 (c) The Director of the Environmental Protection Department shall only approve a permit to
2 dispose of C&D debris on the Reservation if he or she determines that the application
3 provides all of the information set forth in paragraph (b) of this Section.

4 **Section 5-3: Pesticide Wastes.**

5 (a) Every person, commercial facility, and industrial facility that handles surplus agricultural
6 pesticides, materials containing pesticide residues, and pesticide or herbicide containers
7 shall comply with this Code and 40 C.F.R. Parts 261 and 262.

8 (b) Surplus pesticides may not be discarded within the boundaries of the Reservation in any
9 manner which endangers humans, animals, and/or the environment.

10 (c) Pesticide containers must be drained or emptied according to label directions and power
11 or triple-rinsed before processing or disposal in accordance with 40 C.F.R. § 261.7.

12 **Section 5-4: Septic Tank Waste.**

13 Septic tank waste shall only be disposed of at approved facilities in accordance with 40 C.F.R. §
14 503 and in coordination with the Northern Cheyenne Tribal Utilities Commission, which accepts
15 septic waste from septic tank trucks and or portable toilets.

16 **Section 5-5: Liquids.**

17 No person may dispose of any liquid at any solid waste facility, roll-off site, or transfer site on
18 the Reservation unless such liquid is contained in an approved container of 1 gallon or less.

19 However, any liquid that constitutes a hazardous waste or special waste pursuant to this Code or
20 federal law must be managed, treated, transported, and disposed of pursuant to more specific
21 applicable requirements for such liquid under this Code and/or federal law.

22 **Section 5-6: Carcasses and Dead Animals.**

23 (a) No animal carcass or part of an animal carcass shall be disposed of at any solid waste

1 facility within the Reservation. Pets and livestock carcasses may be buried on private
2 property with authorization of the owner.

3 (b) The Tribe's Solid Waste Department, in coordination with the Director of the
4 Environmental Protection Department, is responsible for control of animal carcasses
5 found on the Reservation and shall promulgate regulations, subject to approval by the
6 Council and the President, to dispose of animal carcasses on the Reservation in a sanitary
7 and safe manner. The Director of the Solid Waste Department may establish reasonable
8 fees to cover the costs of pickup and disposal of animal carcasses pursuant to this Section.

9 (c) During an emergency, potentially large numbers of livestock may need to be managed as
10 rapidly and as efficiently as possible. The Director of the Environmental Protection
11 Department may, pursuant to Section 6-5 of this Code, issue an emergency permit for
12 one-time disposal events based on various practical factors during emergency conditions.

13 **Section 5-7: Wrecked, Junked, or Unserviceable Vehicles.**

14 (a) It is unlawful to store, collect, or dispose of junked, wrecked, or unserviceable vehicles or
15 farm implements (collectively "junked vehicles") on the Reservation in a manner that
16 causes or creates a public nuisance.

17 (b) No person shall store or keep any junked vehicle within any Reservation town or village
18 except pursuant to a permit issued by the Director of the Environmental Protection
19 Department pursuant to Section 6-4 of this Code. Junked vehicles shall not be disposed
20 of at any solid waste facility on the Reservation.

21 (c) Any wrecked, junked, or unserviceable vehicles accumulated in a quantity of more than
22 four (4) on a single Reservation property shall be considered to be a junkyard and shall
23 subject to all applicable requirements and fees for junkyards;

1 (d) Any vehicle abandoned on Tribal and/or public facilities such as roads, streets, alleys,
2 highways, or public parking areas for more than 48 hours may be impounded and towed
3 away at the direction of the Compliance Officer or Tribal or BIA law enforcement to an
4 impoundment area. Any person claiming such vehicle shall give proof of ownership and
5 pay any towing and storage charges. Vehicles not claimed within 30 days of
6 impoundment may be declared abandoned, and may be sold at auction by the impounding
7 authority to pay for towing and storage charges. All remaining income from the sale of
8 the vehicle shall be remitted to the Tribe's general fund.

9 **Section 5-8: Abandoned Buildings, Mobile Homes, and Trailers.**

10 (a) Any building, mobile home, or trailer on the Reservation that is not-inhabited for more
11 than 120 days and is unsafe, unfit for habitation, junked, partially disassembled, wrecked,
12 non-operative, may be declared a solid waste by the Compliance Officer and must be
13 managed as such in full compliance with this Code.

14 (b) Before any action is taken pursuant to paragraph (a) of this Section, the Compliance
15 Officer shall, pursuant to Section 8-2 of the Code, serve on the landowner where the
16 abandoned or uninhabited building, mobile home, or trailer is located, and the owner (if
17 known and applicable) of the abandoned or uninhabited mobile home or trailer, an order
18 directing the repair, removal, and/or disposal of the building, mobile home, or trailer in
19 accordance with this Code and any other applicable Tribal and federal laws within thirty
20 (30) days or such other period as the Compliance Officer may authorize in writing. A
21 failure to comply with such an order may result in enforcement action as provided for in
22 this Code. The recipient of such an order may request a hearing on the order and avail
23 himself or herself of the other applicable procedural rights provided for in this Code.

1 **Section 5-9: Scrap Tires.**

2 (a) No person may store more than 20 scrap tires or more than one-thousand (1,000) pounds
3 of scrap tires, whether whole or shredded, on private or Tribal property on the
4 Reservation except pursuant to a permit issued pursuant to Section 6-4 of this Code,
5 which shall be granted only if the applicant demonstrates that:

- 6 (1) storage will be temporary;
7 (2) storage will not create a nuisance;
8 (3) access to the storage area will be controlled;
9 (4) the storage area will be accessible to fire control equipment; and
10 (5) storage will comply with the Code and all other applicable Tribal and federal laws.

11 (b) No person may collect or transport scrap tires except pursuant to a solid waste
12 transportation permit issued under Section 6-3 of the Code. However, no permit shall be
13 required under this Code for the occasional collection or transporting of less than five-
14 hundred (500) pounds of scrap tires if such activity is not in furtherance of a continuing
15 commercial enterprise.

16 (c) All scrap tires collected or transported on the Reservation must be promptly delivered to
17 an end-user who will process, recycle, and/or dispose the materials in a manner that
18 complies with any permit required under this Section, the Code, and any other applicable
19 Tribal, state, and federal laws.

20 (d) For purposes of this Section, a "scrap tire" is a tire that is no longer suitable for its
21 originally intended purpose due to wear, damage, or defect.

22 **Section 5-10: Asbestos.**

23 (a) No asbestos or asbestos-containing materials or items may be disposed of within the

1 Reservation.

- 2 (b) Removal, storage, treatment, or transportation of asbestos and asbestos-containing
3 materials or items must be conducted pursuant to a permit issued under Sections 6-3 and
4 6-4 of this Code, as applicable, and must be conducted in compliance with the applicable
5 requirements of this Code, the Clean Air Act (42 U.S. C. §§ 7401-7671q), the SWDA,
6 and EPA regulations and guidelines.
- 7 (c) Prior to transportation of friable asbestos-containing materials or items, such materials or
8 items must be wetted, placed in leak-tight containers, and properly labeled. Containers
9 containing friable asbestos-containing materials or items shall be carefully handled.
- 10 (d) Handling of asbestos or asbestos-containing materials or items must be performed by
11 certified asbestos personnel.

12 **Section 5-11: Medical Wastes.**

- 13 (a) Waste from medical and dental clinics, including infectious wastes, on the Reservation
14 shall be stored in containers with the disposable plastic liners with special identification
15 and stored in a manner not accessible to the public and in an area not harmful to the
16 environment.
- 17 (b) Medical waste that has edges or projections capable of cutting or piercing the skin (i.e.,
18 “sharps”) may not be disposed of on the Reservation unless they are contained in leak-
19 proof, rigid, puncture-resistant containers such as cartons or metal cans which are taped
20 closed or tightly lidded to preclude loss of contents under sever compaction conditions.
- 21 (c) Disposal of medical wastes shall be conducted in compliance with the applicable
22 requirements of this Code and all other applicable Tribal and federal laws.
23

1 **Section 5-12: Used Oil and Lead-Acid Batteries.**

- 2 (a) No used oil or lead-acid batteries may be disposed of within the Reservation.
- 3 (b) Storage, removal and/or transportation on the Reservation of used oil or lead-acid
4 batteries on the Reservation must be conducted pursuant to a permit issued under Sections
5 6-3 and 6-4 of this Code, as applicable, and must be in compliance with the applicable
6 requirements of this Code and federal law. However, no permit shall be required under
7 this Code for the occasional collection or transport of less than forty (40) quarts of used
8 oil or less than four (4) lead-acid batteries if such activity is not in furtherance of a
9 continuing commercial enterprise.

10 **Section 5-13: Oil and Gas Production Wastes and Petroleum Contaminated Soil.**

11 Waste from crude oil and natural gas exploration or production, including petroleum or crude-oil
12 contaminated soils, contaminated drilling cuttings, produced water, or other fluids from an oil or
13 gas exploration or production wells may not be treated, disposed of, or stored on the Reservation
14 except pursuant to a permit issued by the Director of the Environmental Protection Department
15 pursuant to Section 6-4 of this Code.

16 **Section 5-14: White Goods.**

- 17 (a) No white goods may be disposed of within the Reservation except pursuant to a permit
18 issued by the Director of the Environmental Protection Department pursuant to Section 6-
19 4 of this Code.
- 20 (b) No permit shall be required under this Code for the collection or transport of white goods
21 on the Reservation.
- 22
- 23

1 (c) For purposes of this Section, "white goods" are major household appliances such as
2 refrigerators, stoves, ovens, freezers, dishwashers, clothes washers and dryers, and
3 microwave ovens.

4 **Section 5-15: Household Wastes.**

5 (a) No permit shall be required under this Code for the collection or transport of household
6 waste if such activity is not in furtherance of a commercial enterprise and is not collected
7 or transported pursuant to a contract with the Tribe for waste collection services.

8 (b) If economically feasible, the Director of the Environmental Protection Department may
9 propose rules and regulations not inconsistent with this Code to the Tribal Council and the
10 President for the collection and lawful disposal of household hazardous wastes generated
11 on the Reservation other than at a solid waste facility on the Reservation and, upon
12 approval thereof by the Tribal Council and the President, promulgate such rules and
13 regulations, which shall be enforceable as Tribal law.

14 **Section 5-16: Hazardous Wastes.**

15 (a) All hazardous wastes, except those excluded from regulation under 40 C.F.R. § 261.4(b),
16 shall be generated, managed, stored, treated or transported in compliance with this Code
17 and the following requirements:

18 (1) A generator who treats or stores hazardous waste on-site must comply with 40
19 C.F.R. Part 262 with respect to that waste.

20 (2) Persons transporting regulated quantities of hazardous waste within the
21 Reservation must comply with the standards and requirements of 40 C.F.R. Part
22 263 if the transportation requires a manifest under 40 C.F.R. Part 262.

23 (3) The standards of 40 C.F.R. Part 264 apply to owners and operators of all facilities

1 which treat or store hazardous waste, except as specifically provided otherwise in
2 this Code or 40 C.F.R. Part 261.

3 (4) The disposal of hazardous waste is prohibited on the Northern Cheyenne
4 Reservation.

5 (b) Any person seeking to recycle or reuse hazardous wastes on the Reservation shall comply
6 with 40 C.F.R. Part 266 and this Code.

7 (c) Universal wastes, including batteries, pesticides, mercury containing equipment or lamps
8 as described in 40 C.F.R. Part 273, must be managed in compliance with 40 C.F.R. Part
9 273 and this Code.

10 (d) The Director of the Environmental Protection Department is authorized to promulgate
11 regulations, subject to approval by the Council and the President, establishing
12 requirements for the treatment, storage, transport, or disposal of hazardous waste that are
13 more stringent than the requirements in this Code or in 40 C.F.R. Parts 261 through 273.

14 **Section 5-17: Other Special Wastes.**

15 The Director of the Environmental Protection Department, in consultation with the Director of
16 the Solid Waste Department, is authorized to promulgate regulations, subject to approval by the
17 Council and the President, designating additional substances as special wastes and prescribing
18 rules for the and management, transport, treatment, storage, and/or disposal of any substance
19 designated as a special waste.

20 **CHAPTER SIX—PERMITS**

21 **Section 6-1: Permits Required.**

22 Except as otherwise provided in this Code, no person may (1) construct or operate any solid
23 waste facility on the Reservation, (2) engage in the commercial collection or transportation of

1 solid waste, or (3) engage in other solid waste related activities (such as open burning or waste
2 storage) except pursuant to a permit issued by the Director of the Environmental Protection
3 Department authorizing such activity.

4 **Section 6-2: Solid Waste Facility Permits.**

5 (a) Any person authorized to conduct business on the Reservation may submit an application
6 to the Director of the Environmental Protection Department for a permit to construct
7 and/or operate a solid waste facility on the Reservation, which must demonstrate that the
8 applicant will comply with the Code, the rules and regulations promulgated under the
9 Code, other applicable Tribal and federal environmental standards and criteria, relevant
10 guidance documents, permit conditions, and applicable orders issued by the Director of
11 the Environmental Protection Department under authority of the Code. The burden of
12 proof shall rest on the applicant to demonstrate compliance with all such Tribal and
13 federal solid waste criteria and requirements.

14 (b) A permit application submitted pursuant to this Section shall contain all of the following
15 minimum information:

16 (1) A legal description and area map of the site of the proposed solid waste facility.

17 (2) A title report showing ownership of the site of the proposed solid waste facility
18 and all encumbrances, covenants, conditions, restrictions, reservations to title,
19 easements, and rights of way on or across the site.

20 (3) Proof that: (A) the applicant is the owner or otherwise holds a sufficient leasehold
21 or other interest in the proposed site or other lawful authorization from the owner
22 of the site authorizing use of the site for purposes set forth in the application; (B)
23 any taxes, fees, lease, and other payments with respect to the site are current; (C)

1 the applicant has received approval of the proposed use of the site from the Tribal
2 Council and President; and (D) if the site is trust or restricted land, the applicant
3 has received all legally-required approvals of any leasehold or other use rights in
4 the site from the Secretary of Interior or his authorized delegate. The applicant
5 shall include in the application a certified copy of such lease or other use
6 authorization with all exhibits and attachments.

7 (4) A map and aerial photograph showing the proposed facility site and all land use
8 and political jurisdictions within five miles of the proposed site. The map and
9 aerial photograph shall be of sufficient scale and resolution to show all homes,
10 airports, wells, water ways, topography, roads, and other objects that may be
11 affected.

12 (5) A report describing the following:

13 (A) The population and area to be served by the proposed site;

14 (B) The life expectancy of the facility;

15 (C) The geological formation, aquifer characteristics, and groundwater
16 elevations below the site and reliable data on existing groundwater quality
17 within 2,000 feet of the site;

18 (D) The source and characteristics of cover material to be used;

19 (E) Topography of the site and drainage patterns; and

20 (F) Location of the 100-year flood plain as approved by the Compliance
21 Officer in relation to the site.

22 (6) A general design and operations plan for the facility certified by a professional
23 engineer, that identifies how the proposed solid waste facility will meet the

1 applicable requirements of the Code and 40 C.F.R. Parts 257 and 258. The design
2 and operations plan shall include one or more topographic maps with contour
3 intervals that show the proposed fill area, borrow areas, access roads, drainage
4 areas, fencing, equipment, buildings, and groundwater monitoring systems.

5 (7) A financial statement estimating the cost of construction, operation, closure, and
6 post-closure of the proposed solid waste facility, as applicable. The financial
7 statement shall also explain the applicant's financial condition, the applicant's net
8 worth, and the ability of the applicant to fund the continued operation, closure, and
9 post-closure maintenance of the site in compliance with the Code and the
10 applicable requirements of 40 C.F.R. Parts 257 and 258.

11 (8) An identification statement certified as to its truth and accuracy signed by the
12 applicant and notarized containing the following information:

13 (A) The name, address, social security number, and phone number of all
14 persons owning or holding an interest in the applicant company of 5% or
15 more;

16 (B) The name, address, social security number, and phone number of all
17 officers, directors, or partners of the applicant company;

18 (C) A statement that no officer, director, partner, or holder of an interest of 5%
19 or more of the applicant company has ever been convicted of a felony and
20 that no felony charges are currently pending;

21 (D) A statement that discloses in detail any charge, complaint, fine, order,
22 decree, statement, or finding of "no contest" for violation of any tribal,
23 federal, state, county or municipal environmental or health laws,

1 regulations, permits, or conditions against any officer, director, partner or
2 holder of an interest of 5% or more within the past five (5) years.

3 (E) A description of any judgments rendered against any officer, director,
4 partner, or holder of an interest of 5% or more in the applicant in the five
5 (5) years preceding the date of the application.

6 (F) A description of any bankruptcy or insolvency proceedings instituted by
7 any officer, director, partner, or holder of an interest of 5% or more in the
8 applicant occurring in the five (5) years preceding the date of the
9 application.

10 (c) Within 30 days of receipt of an application submitted pursuant to this Section, the
11 Director of the Environmental Protection Department shall determine whether such
12 application is complete. Upon determining that such application is complete, the Director
13 of the Environmental Protection Department shall make the permit application and all
14 required documentation available for public review and inspection for at least sixty (60)
15 days.

16 (d) No sooner than sixty (60) days and no later than one hundred twenty (120) days following
17 determination that an application submitted pursuant to this Section is complete, the
18 Director of the Environmental Protection Department shall hold a public proceeding on
19 the application, which shall be conducted in accordance with Section 10-2 of this Code.
20 The Director of the Environmental Protection Department shall publish weekly notice of
21 such public hearing on each application beginning at least thirty (30) days in advance of
22 the hearing in the most widely circulated newspaper on the Reservation, for three
23 consecutive weeks. The Director of the Environmental Protection Department shall also

1 post in each Reservation District notice of the public hearing on a solid waste facility
2 construction and/or operation permit application at least thirty (30) days in advance of the
3 hearing.

4 (e) The Director of the Environmental Protection Department shall make a final decision on
5 any permit application submitted pursuant to this Section following the public hearing
6 required by this Section and within one hundred eighty (180) days of the Director's
7 determination that the application is complete, unless the Director determines in writing
8 that additional time is necessary to gather additional information on the application, to
9 conduct environmental studies related to the application, or to require further analysis
10 related to the application.

11 (f) The Director of the Environmental Protection Department shall not issue a solid waste
12 facility construction and/or operation permit under this Section unless the Tribe and any
13 other owner or trustee of the site has leased or otherwise made available the site to the
14 proposed facility operator for the proposed operation in accordance with Tribal and
15 federal law.

16 (g) The Director of the Environmental Protection Department shall not issue a solid waste
17 facility construction and/or operation permit under this Section unless he or she finds, on
18 the basis of information contained in the application and otherwise available to the
19 Director of the Environmental Protection Department, and only after conducting a public
20 proceeding as specified in Section 10-2 of the Code, that the applicant will comply with
21 the Code; the requirements at 40 C.F.R. Parts 257 and 258 as applicable; and all
22 applicable Tribal and federal law, rules, regulations, technical standards, criteria,
23 guidance documents, and permit conditions.

1 (h) The Director of the Environmental Protection Department may issue a solid waste facility
2 construction and/or operation permit under this Section only if he or she finds that the
3 applicant has the financial and technical ability to construct and/or operate, close, and
4 post-close the solid waste facility as required by the Code and federal law.

5 (i) In issuing any permit under this Section, the Director of the Environmental Protection
6 Department may impose permit conditions that are more stringent than those required in
7 the Code or federal criteria or law if reasonably necessary. The Director of the
8 Environmental Protection Department shall not issue a solid waste facility construction
9 and/or operation permit unless he or she is convinced that the permittee will ensure long-
10 term protection of the Tribe's public health, environment, and natural resources.

11 (j) A solid waste facility operation permit shall be valid for the operation, closure, and post-
12 closure period designated and required for such facility, but such permit is subject to
13 revocation, suspension, or modification as provided in this Chapter.

14 **Section 6-3: Permits for the Collection and/or Transportation of Solid Waste.**

15 (a) Any person authorized to conduct business on the Reservation may submit an application
16 to the Director of the Environmental Protection Department for a permit to collect and
17 transport solid waste on the Reservation, which must demonstrate that the applicant will
18 comply with the Code, the rules and regulations promulgated thereunder, applicable
19 Tribal and federal environmental standards and criteria, relevant guidance documents,
20 permit conditions, and applicable orders issued under authority of the Code. The burden
21 of proof shall rest on the applicant to demonstrate compliance with all Tribal solid waste
22 criteria and requirements.

23 (b) An application for a permit under this Section shall include:

- 1 (1) A description of the number and type of the vehicles and related mechanical and
2 other equipment to be used by the applicant;
 - 3 (2) A site evaluation report describing the location and physical characteristics of the
4 place or places, including uses of adjoining properties, where the applicant will
5 store or maintain any vehicles used to transport solid waste and related equipment,
6 if located on the Reservation;
 - 7 (3) A description of the practices, technologies, and procedures that will be employed
8 to ensure adequate protection of the environment, public health and welfare to
9 include prevention of leakage, excessive noise, odors, and other releases or
10 spillage and the capability to respond to any such releases;
 - 11 (4) A description of the manner in which the applicant will meet the financial
12 assurance requirements established pursuant to this Code and the permit;
 - 13 (5) A description of the training program for employees in environmental concerns in
14 managing solid waste, addressing any releases, recognizing hazardous or improper
15 wastes and to provide such employees with needed skills for the safe operation of
16 the transportation equipment and related facilities; and
 - 17 (6) Such other information as the Director of the Environmental Protection
18 Department necessary.
- 19 (c) As condition for the issuance of a permit under this Section, the Director of the
20 Environmental Protection Department shall require:
- 21 (1) that every vehicle operated by permittee and his or her employees/contractors to
22 collect or transport solid waste be conspicuously marked to identify the solid
23 waste transported and its principal hazard, the trade name of the

1 collector/transporter, and the number of the solid waste transportation permit
2 issued pursuant to this Section;

3 (2) that all vehicles and drivers permitted to collect and/or transport solid waste be
4 licensed by the State of Montana and comply with all safety and insurance
5 requirements of the State of Montana; and

6 (3) that the permittee make an annual report to the Director of the Environmental
7 Protection Department describing the number and type containers collected during
8 the previous year, the volume (and weight if available) and nature of solid waste
9 collected and/or transported of, the place and manner in which such solid waste
10 was finally disposed, the number and nature of any releases or spillage and
11 responses taken, and such other information as the permit may require..

12 (d) Within thirty (30) days of receipt of an application submitted pursuant to this Section, the
13 Director of the Environmental Protection Department shall determine whether such
14 application is complete. The Director of the Environmental Protection Department shall
15 make a final decision on any permit application submitted pursuant to this Section within
16 forty five (45) days of the Director's determination that the application is complete unless
17 the Director determines in writing that additional time is necessary to gather additional
18 information on the application, to conduct environmental studies related to the
19 application, or to require further analysis related to the application.

20 (e) A permit issued pursuant to this Section shall have a term of one (1) year. The Director of
21 the Environmental Protection Department may renew permits for additional one (1) year
22 terms upon determining that permittee has complied with all requirements of his or her
23 permit and this Code. The Director of the Environmental Protection Department may

1 deny a permit renewal if the permittee fails to properly and timely file the annual report
2 required by his or her permit or otherwise fails to comply with all requirements of his or
3 her permit and this Code.

4 (f) In issuing permits under this Section, the Director of the Environmental Protection
5 Department shall impose any additional conditions on the permittee that he or she deems
6 reasonably necessary to protect the environment, and the health, safety, and welfare of the
7 Tribe and its members. The Director of the Environmental Protection Department may
8 impose permit conditions that are more stringent than required in the Code and federal
9 law if reasonably necessary. The Director of the Environmental Protection Department
10 shall not issue a solid waste collection or transportation permit unless he or she is
11 convinced that the permittee will ensure long-term protection of the Tribe's public health,
12 environment, and natural resources.

13 (g) Reservation residents are not required to obtain a permit under this Code for the non-
14 commercial transport of personally generated solid waste to a solid waste facility on or off
15 the Reservation. However, any vehicle used for non-commercial personal transport of
16 solid waste must be loaded and moved in such a manner that the contents, including
17 ashes, will not fall, leak or spill from the vehicle. Open top vehicles or vehicles with
18 attached or towed open top containers shall be covered with a tarp or other material while
19 in transit to ensure load security and prevent the release any debris or liquids. Any
20 releases, littering or spillage from such vehicles are the responsibility of the vehicle owner
21 and operator and must be cleaned up within 24 hours of such release or spillage.

1 **Section 6-4: Minor Permits.**

2 (a) The Director of the Environmental Protection Department may issue a minor permit
3 authorizing any person on the Reservation to engage in the open burning of solid waste;
4 the temporary storage of limited quantities of non-hazardous solid waste for a period of
5 not more than 90 days, storage of junked vehicles, disposal of construction and demolition
6 debris, storage of scrap tires, storage of materials containing asbestos, storage of oil and
7 lead-acid batteries, temporary storage of oil and gas production wastes or petroleum
8 contaminated soil, disposal of white goods, and other solid waste related activities not
9 expressly prohibited by this Code or subject to permitting requirements under Sections 6-
10 2 and 6-3 of this Code.

11 (b) The Director of the Environmental Protection Department shall develop a minor permit
12 application form to facilitate the prompt review and issuance of minor permits. The
13 minor permit application form shall detail with specificity the information required to be
14 submitted by the applicant to the Director of the Environmental Protection Department as
15 part of the permit application.

16 (c) Within fourteen (14) days of receipt of a minor permit application form, the Director of
17 the Environmental Protection Department shall determine whether such application is
18 complete. The Director of the Environmental Protection Department shall make a final
19 decision on any minor permit application submitted pursuant to this Section within thirty
20 (30) five days of the Director's determination that the application is complete unless the
21 Director determines in writing that additional time is necessary to gather additional
22 information on the application, to conduct environmental studies related to the
23 application, or to require further analysis related to the application.

1 **Section 6-5: Emergencies.**

2 Notwithstanding the permitting requirements in this Chapter, the Director of the Environmental
3 Protection Department may issue a temporary permit authorizing solid waste related activities on
4 the Reservation upon making a determination in writing that an emergency condition exists, such
5 as immediate threat to public safety or the Reservation environment, necessitating prompt action.

6 An emergency permit issued pursuant to this Section is only valid for the period in which the
7 emergency condition justifying issuance of such permit continues to exist. An emergency permit
8 shall be valid for a term of no more than 90 days, and may only be renewed if the Director of the
9 Environmental Protection Department determines in writing that renewal is necessary to address
10 a continuing emergency condition on the Reservation.

11 **Section 6-6: Application Filing Fees.**

12 Each application submitted to the Director of the Environmental Protection Department pursuant
13 to this Chapter shall be accompanied by a reasonable filing fee established by the Director of the
14 Environmental Protection Department to reflect the Tribe's costs of processing the application,
15 preparing an environmental assessment, publishing and distributing the public notice, conducting
16 the hearing, retaining technical and legal consultants to review the application and the
17 environmental assessment, preparation of the permit and its attachments, and other costs
18 reasonably related to permitting required under this Code.

19 **Section 6-7: Other Fees.**

20 In order to recover Environmental Protection Department operating costs, the Director of the
21 Environmental Protection Department may impose reasonable fees in addition to those authorized
22 in Section 6-6 of this Chapter on each permittee who constructs or operates a solid waste facility,
23 collects and transports solid waste, or engages in other permitted activities under this Chapter.

1 Any such fees shall be specifically referred to in each permit. The payment of such fees shall be
2 a condition of maintaining any permit issued pursuant to this Chapter. Nonpayment of fees
3 established pursuant to this Section shall be a violation of the Code.

4 **Section 6-8: Denial, Revocation, Suspension, and Modification of Permits.**

5 (a) The Director of the Environmental Protection Department may issue an order denying a
6 permit application submitted pursuant to Section 6-2, Section 6-3, Section 6-4, or Section
7 6-5 of this Code for cause including the following:

- 8 (1) A determination that the applicable requirements for the permit application are not
9 satisfied;
- 10 (2) A determination that the permit application contains misrepresentations or fails to
11 was fully disclose relevant facts; or
- 12 (3) A determination that the proposed activity or operation for which permitting is
13 sought will, in the judgment of the Director of the Environmental Protection
14 Department, pose unacceptable risks to the Reservation environment or the health,
15 safety, and welfare of the Tribe and its members.

16 (b) The Director of the Environmental Protection Department may issue an order revoking,
17 suspending, or modifying any permit issued pursuant to this Chapter for cause including
18 the following:

- 19 (1) A determination that the permittee has violated or is in violation of a condition or
20 requirement contained in his or her permit; the Code; rules, regulations, orders, or
21 guidance documents issued pursuant to the Code; or other applicable Tribal or
22 Federal law;

1 (2) A determination that the permit was obtained by misrepresentation or that the
2 permit application failed to fully disclose relevant facts; or

3 (3) A determination that the permittee's activities under the permit are endangering
4 the Tribe's environment or natural resources or pose a risk to the health and
5 welfare of residents of the Reservation.

6 (c) An order issued pursuant to paragraph (a) or paragraph (b) of this Section shall become
7 final and unreviewable unless the permittee or permit applicant submits to the Director of
8 the Environment Protection Department a written request for an administrative hearing
9 within thirty (30) days of service of the order. An administrative hearing requested under
10 this paragraph shall be conducted in accordance with Section 9-1 of the Code.

11 **Section 6-9: Inspections and Compliance Monitoring.**

12 (a) The Compliance Officer shall be responsible for periodically monitoring compliance with
13 conditions and terms included in permits issued pursuant to this Chapter. In conducting
14 such compliance monitoring, the Compliance Officer is authorized to:

15 (1) obtain information from a permittee, including but not limited to records and
16 technical reports or studies contained in the permittee's operating record, that may
17 be relevant to determine whether a permittee is in compliance with the Code,
18 conditions contained in a permit, rules or regulations promulgated under the Code,
19 guidance documents, any orders issued pursuant to the Code, or other applicable
20 federal or Tribal laws; and

21 (2) enter and inspect records and conduct sampling and monitoring at any site or
22 premise subject to any permit issued under this Chapter and any other site where
23 evidence relevant to the operation of permitted facilities are located to determine

1 whether a permittee is in compliance with all Tribal solid waste requirements,
2 including but not limited to the Code, conditions contained in a permit, rules or
3 regulations promulgated under the Code, guidance documents, orders issued
4 pursuant to the Code, or other applicable federal or Tribal laws.

5 (b) All sampling, monitoring, and testing conducted by the Compliance Officer pursuant to
6 this Section shall incorporate chain of custody and quality assurance procedures to ensure
7 that the results of any sampling, monitoring, and testing is admissible as evidence in any
8 proceeding before the Compliance Officer, Director of the Environmental Protection
9 Department, or Tribal Court.

10 (c) Upon the Director of the Environmental Protection Department's approval of the written
11 request of any person furnishing any report, notice, application, or other document
12 required hereby, the Tribe shall not make available for inspection by the public those
13 portions of such report, notice, applications, or other document that contains information
14 declared proprietary or confidential information. However, such report, notice,
15 application, or other document or portions thereof, shall be made available to the Tribe or
16 its agencies and to any other government agency or agencies, provided that, the
17 information is at all times kept confidential, and/or used for enforcement or investigative
18 purposes. Such declaration of proprietary or confidentially is subject to review by the
19 Tribal Court.

20 **CHAPTER SEVEN—SOLID WASTE STORAGE AND COLLECTION**

21 **Section 7-1: Tribal Solid Waste Storage Containers.**

22 (a) The Director of the Solid Waste Department shall arrange for the placement of a
23 sufficient number of approved containers for receiving and storing solid waste at transfer

1 stations and other locations on the Reservation where solid waste is likely to be disposed.
2 Approved containers shall be placed at locations that minimize negative traffic and
3 aesthetic impacts to the Reservation and its residents. All approved containers shall be of
4 sound construction, resistant to animal entry, equipped with tight-fitting covers, durable,
5 leak-resistant, non-absorbent, water tight, corrosion resistant, rodent and insect resistant,
6 easily cleanable, equipped with adequate handles to facilitate handling, and in good
7 condition. The Director of the Solid Waste Department and persons responsible for
8 generating solid waste are jointly responsible for maintaining Tribal solid waste storage
9 containers in a neat, clean, safe, and sanitary condition. Approved containers shall be of
10 sufficient size and adequate number to fully contain solid waste that is generated on the
11 Reservation during a seven-day period.

12 (b) Except as otherwise allowed by this Code, the Director of the Solid Waste Department
13 and persons responsible for generating solid waste shall be jointly responsible for
14 maintaining approved container sites free of improperly stored solid waste accumulations.

15 (c) It shall be unlawful for any person to:

16 (1) cause approved containers to exceed any weight and capacity limits established by
17 the Director of the Solid Waste Department;

18 (2) place yard and tree trimmings of greater than 4 feet of length in an approved
19 container; or

20 (3) tamper with, modify, remove, or destroy any approved container.

21 (d) The Director of the Solid Waste Department shall condemn any approved container by
22 affixing a condemnation notice thereto if the Director of the Solid Waste Department
23 determines the approved container is unsafe or a public nuisance. It shall be unlawful for

1 any person, except as expressly authorized by the Director of the Solid Waste
2 Department, to use an approved container if a condemnation notice is affixed to the
3 container, or to remove or tamper with a notice of condemnation that the Director of the
4 Solid Waste Department has affixed to an approved container.

5 **Section 7-2: Storage of Solid Waste on Private Property.**

6 The owner, agent, and occupant of every on-Reservation dwelling, business establishment, and
7 other premises where solid waste accumulates shall be responsible for the safe and sanitary
8 storage of bulk solid waste accumulated at that premises until it is removed. No person shall
9 store solid waste on the Reservation in such a manner as to cause a public nuisance, a human
10 health or safety hazard, or harm to the environment or natural resources of the Reservation.

11 **Section 7-3: Solid Waste Collection, Transfer, and Disposal.**

12 (a) Subject to available funding, the Director of the Solid Waste Department shall establish a
13 schedule and arrange for the collection of solid waste from approved containers as needed
14 but not less than once every seven days.

15 (b) Subject to available funding, the Director of the Solid Waste Department shall arrange for
16 curbside solid waste collection service that provides for curbside solid waste collection as
17 needed but not less than once every seven days from every dwelling, business
18 establishment, and other premises on the Reservation where solid waste accumulates.

19 Any person responsible for such curbside solid waste collection service must be
20 authorized to do so by a permit issued by the Director of the Environmental Protection
21 Department pursuant to Section 6-3 of the Code.

22 (c) Solid waste shall be collected and transported in a manner that prevents spillage and
23 littering. Should spillage and/or littering occur, the solid waste shall be immediately

1 picked up by the person who caused the spillage and returned to the vehicle or appropriate
2 solid waste facility.

3 (d) Once curbside solid waste collection services are available at a location on the
4 Reservation, all persons residing at such location shall subscribe to the Tribal curbside
5 solid waste collection service established by the Director of the Solid Waste Department
6 pursuant to this Section.

7 (e) Solid waste collected pursuant to this Section shall be handled in a manner that prevents
8 spillage and littering. If spillage or littering occurs, the spilled or littered waste shall be
9 cleaned up by the responsible person within twenty four (24) hours and returned to the
10 vehicle or appropriate facility or container. Property owners, residents, and home owners
11 are the responsible person for releases, littering, or spillage of solid waste from their
12 residence or property until such wastes are collected by the authorized collection service.

13 (f) Pets and animals shall be controlled by property owners, residents and home owners to
14 provide for the safety of the collector and prevent interference with collection service or
15 littering of solid wastes.

16 (g) Animal carcasses or parts of animal carcasses may not be disposed of through curbside
17 collection, but must rather be disposed of pursuant to Section 5-6 of this Code.

18 (h) Access to curbside collection containers should be kept clear and accessible to prevent
19 interference with collection services.

20 **Section 7-4: Recycling.**

21 To the extent economically feasible, the Director of the Solid Waste Department shall establish a
22 system for the reuse and recycling of on-Reservation solid wastes including curbside pickup of
23 recyclable materials.

1 **Section 7-5: Solid Waste Collection Vehicles.**

2 Only vehicles approved by the Director of the Solid Waste Department shall be used for the
3 commercial collection and/or transportation of solid waste pursuant to this Chapter. Such
4 vehicles shall:

- 5 (a) be kept cleaned and maintained;
- 6 (b) have covered, watertight, metal bodies of easily cleanable construction, be cleaned
7 frequently to prevent a nuisance, and be maintained in good repair; and
- 8 (c) be loaded and moved in such a manner that the contents will not fall, leak, or spill from
9 the vehicles.

10 **Section 7-6: Load Rejection.**

11 The Director of the Solid Waste Department may refuse to allow the deposit or disposal of any or
12 all materials at a solid waste facility on the Reservation. If materials are refused at solid waste
13 facility, then it shall be the sole responsibility of the owner to dispose of waste properly.

14 **Section 7-7: Material Separation.**

15 The Director of the Solid Waste Director, the Compliance Officer, and any entity responsible for
16 providing solid waste collection services to the Tribe are authorized to require separation of
17 materials prior to collection or acceptance at a solid waste management or transfer facility.

18 **Section 7-8: Service Fees for Solid Waste Services.**

- 19 (a) The Director of the Solid Waste Department, with the prior approval of the Tribal Council
20 and the President, shall establish reasonable fees for transfer, disposal, reuse and
21 recycling, and other solid waste services performed under this Chapter. Any person who
22 benefits from the solid waste services provided pursuant to this Chapter shall be subject to
23 such fees.

1 (b) Non-payment of solid waste fees established under this Section is a violation of this Code
2 and may result in action being taken by the Compliance Officer pursuant to this Code. In
3 addition, non-payment of fees established pursuant to this Section may result in action
4 being taken by the Northern Cheyenne Utilities Commission, including the
5 discontinuation of other utilities provided by the Northern Cheyenne Utilities
6 Commission.

7 **Section 7-9: Contracts for Solid Waste Services.**

8 The Director of the Solid Waste Department is authorized, with the approval of the President, to
9 enter contracts with private solid waste collectors to discharge any duties assigned to the Director
10 of the Solid Waste Department in this Chapter. Such contracts shall obligate each such private
11 solid waste collector to adhere to all relevant requirements of this Code and federal law.

12 Contracts entered into pursuant to this Section shall be terminable by the Director of the Solid
13 Waste Department or the Director of the Environmental Protection Department, with approval of
14 the President, upon 30-days written notice.

15 **CHAPTER EIGHT—INVESTIGATIONS AND ENFORCEMENT**

16 **Section 8-1: Investigations and Warrants.**

17 (a) Subject to paragraph (b) of this Section, the Compliance Officer, Tribal law enforcement
18 officers, and BIA law enforcement officers are authorized to enter at reasonable times
19 upon any private or public property on the Reservation for the purpose of inspecting and
20 investigating conditions relating to solid and/or hazardous waste. It shall be a violation of
21 this Code for any person to interfere with such inspections or investigations.

22 (b) Unless an emergency exists as defined in paragraph (e) of this Section, or the Compliance
23 Officer or Tribal law enforcement officers have reason to believe that any unlawful

1 activity is being conducted or is imminent, the Compliance Officer or Tribal law
2 enforcement officers shall provide the owner, operator, or occupant of the property to be
3 inspected or investigated under paragraph (a) of this Section prior notification and request
4 from the owner, operator, or occupant authorization to enter the property for the
5 inspection or investigation during normal business hours. If such authorization is denied,
6 the Compliance Officer or Tribal law enforcement officers shall obtain an administrative
7 warrant from the Tribal Court to enter the property and conduct an inspection or
8 investigation.

9 (c) The Tribal Court shall issue an administrative warrant requested pursuant to paragraph (b)
10 of this Section upon a showing by the Compliance Officer, Tribal law enforcement
11 officers, or BIA law enforcement officers that there is probable cause to believe that an
12 inspection or investigation on the subject property will uncover evidence of a violation of
13 any provision of this Code; any rule, regulation, or guidance document adopted under this
14 Code; any condition of any permit issued under this Code.

15 (d) If samples or other property are taken in an inspection or investigation pursuant to this
16 Chapter, the owner of the taken property is entitled to a receipt for the property.

17 (e) In the event of an emergency that presents an immediate and substantial threat to the
18 public health and safety or the environment, the Compliance Officer shall have the
19 authority to issue an order granting emergency authorization for an inspection or
20 investigation of private property. Any person against whom an emergency order is issued
21 shall be entitled to a hearing before the Compliance Officer within twenty-four (24)
22 hours, in which the Compliance Officer shall affirm, modify, or set aside the order
23 authorizing the emergency inspection or investigation. Any decision issued pursuant to

1 this Section shall be reviewable by the Tribal Court pursuant to the judicial review
2 procedures established in Section 9-3 of the Code.

3 **Section 8-2: Enforcement Orders.**

4 (a) Any person who violates any condition of a permit issued under the Code, any part of this
5 Code, or any rule, regulation, or guidance document adopted under this Code, shall, upon
6 order of the Compliance Officer: cease and desist from any improper action or
7 violation(s); clean up any solid waste; abate any hazard, pollution, or nuisance; and
8 otherwise comply with any corrective or remedial order issued by the Compliance
9 Officer. The Compliance Officer's order may require compliance immediately or within a
10 specified period of time, and may assess civil damages and penalties pursuant to Section
11 8-3 of this Code.

12 (b) An order issued pursuant to paragraph (a) of this Section shall state with reasonable
13 specificity the nature of the violation, the time for compliance if applicable, the basis for
14 any assessed civil damages and penalties, the right to a hearing before the Compliance
15 Officer, and instructions for how the alleged violator may obtain such a hearing. Such
16 order shall be served on the alleged violator in the same manner that a complaint is served
17 under Rule 3 of the Tribe's Rules of Civil Procedure.

18 (c) An order issued pursuant to paragraph (a) of this Section shall become final and
19 unreviewable unless the suspected violator submits to the Director of the Environment
20 Protection Department a written request for an administrative hearing within thirty (30)
21 days of service of the order. An administrative hearing requested under this paragraph
22 shall be conducted in accordance with Section 9-1 of the Code.
23

1 (d) The Compliance Officer through the Tribe's Attorneys may file a petition in Tribal Court
2 for enforcement of a final order issued under paragraph (b) of this Section, which the
3 Tribal Court shall grant unless it determines that the final order was issued in violation of
4 Tribal or federal law.

5 **Section 8-3: Civil Damages and Penalties.**

6 (a) The Compliance Officer may include in an order issued pursuant to Section 8-2 of this
7 Code an assessment of civil damages to recompense: damages to any affected land or
8 natural resources; the reasonable costs actually incurred or reasonably expected to be
9 incurred by the Tribe for cleaning up any solid or hazardous waste or abating the effects
10 thereof; and the costs of any enforcement actions including reasonable attorney fees.
11 Civil damages assessed under this Section shall be remitted to the Tribe.

12 (b) The Compliance Officer may also include in an order issued pursuant to Section 8-2 of
13 this Chapter an assessment of civil penalties, which shall not be more than Five Thousand
14 Dollars (\$5,000.00) for each separate violation, and for each day on which such separate
15 violation occurs, plus reasonable attorney fees and costs. In determining the appropriate
16 civil penalty, the Compliance Officer shall consider the severity of the suspected violation
17 and whether the suspected violator has been subjected to other enforcement action under
18 this Chapter. Civil penalties assessed pursuant to this paragraph shall be paid to the
19 Tribe's Environmental Protection Department, and be retained in a trust fund designated
20 solely for paying costs of remedial responses to environmental emergencies occurring on
21 the Reservation. The Compliance Officer shall develop and submit to the Director of the
22 Environmental Protection Department for approval a civil penalty policy to ensure the
23 consistent and uniform assessment of civil penalties pursuant to this Section. In addition

1 to or as an alternative to civil penalties imposed pursuant to this paragraph, the
2 Compliance Officer may order a violator to engage in community service activities on the
3 Reservation.

4 (c) Any penalties or damages imposed under this Section are in addition to, and do not
5 supersede or limit any other remedies which may be available to the Tribe or any other
6 Reservation property owner or user, including the filing of an action for injunctive relief
7 in Tribal Court, the filing of a civil action for civil damages or any other relief, or the
8 termination of business licenses or contract.

9 **Section 8-4: Compliance Schedules.**

10 The Compliance Officer may include in an order issued pursuant to Section 8-2 of this Code a
11 compliance schedule for any person determined to be in violation of: a permit condition issued
12 under the Code; the solid waste criteria required under this Code; or any rule, regulation, or
13 guidance document adopted under this Code. The compliance schedule shall require that the
14 violator make diligent effort to remedy the violation within a specified period of time.

15 **Section 8-5: Enforcement Against Non-Members.**

16 If the Compliance Officer has probable cause to believe that a non-member has violated: any
17 material condition in a permit issued under the Code; any material provision of the Code; or any
18 material rule, regulation, or guidance document adopted under this Code, the Compliance
19 Officer, in addition to any other remedy lawfully available, may initiate proceedings in
20 accordance with Tribal law and this Code for the exclusion of the non-member from the
21 Reservation and suspension or termination of the non-member's rights to engage in activities on
22 the Reservation.

1 **Section 8-6: Other Law Enforcement Services.**

2 Officers of the Northern Cheyenne Police Department, the Northern Cheyenne Game and Fish
3 Department, and the United States Bureau of Indian Affairs are authorized to issue for violations
4 of this Code or permits issued pursuant to this Code. It shall be the duty of these officers to
5 enforce the provisions of this Code fairly as to all persons within the Reservation. If any action is
6 taken pursuant to this paragraph, the acting officer shall notify the Compliance Officer shall be
7 within 72 hours of such action.

8 **Section 8-7: Oversight of Enforcement Activities.**

9 The Director of the Environmental Protection Department shall periodically review the
10 Compliance Officer's activities taken pursuant to this Code. This review may include the
11 inspection by Director of the Environmental Protection Department of all books, records,
12 accounts and other documents of the Compliance Officer. If the Director of the Environmental
13 Protection Department finds that the Compliance Officer has failed to adequately fulfill his or her
14 responsibilities under this Code, the Director shall notify the Compliance Officer in writing of
15 such failures, actions of the Compliance Officer necessary to rectify such failures, and
16 consequences (including termination) if the Compliance Officer does not rectify such failures in a
17 timely manner.

18 **CHAPTER NINE—ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW**

19 **Section 9-1: Administrative Hearings.**

20 (a) Upon receipt of a written request for an administrative hearing pursuant to Section 6-8(c)
21 or Section 8-2(c) of the Code, the Director of the Environmental Protection Department
22 shall initiate a hearing for administrative review of an order issued pursuant to Section 6-
23 8(a), Section 6-8(b), or Section 8-2(a) of this Code. The Director of the Environmental

1 Protection Department shall initiate a hearing required by this paragraph by serving a
2 written complaint on the party requesting such hearing that specifically sets forth the basis
3 for the order subject to review, and also specifies the provisions of the Code and any
4 orders, permit conditions, rules or regulations, guidance documents, or other laws that are
5 alleged to have been violated. The complaint shall be accompanied by a summons
6 advising the party requesting administrative review of a date for a hearing before the
7 Director of the Environmental Protection Department which shall not be earlier than
8 ninety (90) days after service of the complaint.

9 (b) The party requesting administrative review pursuant to paragraph (a) of this Section shall
10 file an answer to the complaint with the Director of the Environmental Protection
11 Department within thirty (30) days after receiving service of the complaint, in which the
12 alleged violator shall admit or deny all charges in the complaint and allege any defenses,
13 mitigating circumstances, or objections.

14 (c) Prior to any hearing held before the Director of the Environmental Protection Department
15 under this Section, any party to the hearing, upon written request made to any other party
16 to the hearing prior to the hearing, is entitled to: (1) obtain the names and addresses of
17 witnesses, to the extent known by such other party to the hearing, including but not
18 limited to those intended to be called to testify at the hearing; and (2) inspect and copy
19 any relevant documents in the possession or under the control of such other party
20 including but not limited to statements made by s person pertaining to the subject matter
21 of the hearing and investigative or expert reports pertaining to the subject matter of the
22 hearing. Nothing in this Section shall authorize the inspection or copying of any writing
23

1 that is privileged from disclosure by law or otherwise made confidential or protected as
2 attorney work product.

3 (d) Before a hearing has commenced pursuant to this Section, the Director of the
4 Environmental Protection Department may issue and have served subpoenas and
5 subpoenas *duces tecum* at the request of any party to the hearing for the attendance of
6 witness or production of documents at the hearing. Any subpoenas issued by the Director
7 of the Environmental Protection Department shall be enforceable in Tribal Court or other
8 court of competent jurisdiction.

9 (e) In a hearing held before the Director of the Environmental Protection Department under
10 this Section, oral evidence shall be taken only on oath. Each party to the hearing shall
11 have the rights to: call and examine witnesses; introduce exhibits; cross-examine
12 opposing witnesses on any matter relevant to the issues even though that matter was not
13 covered in the direct examination; impeach any witness regardless of who called the
14 witness to testify; and rebut any evidence. Any party to the hearing who does not testify
15 on his or her own behalf may be called and examined as if under cross-examination. All
16 proceedings under this Section shall be on the record and preserved.

17 (f) A hearing held before the Director of the Environmental Protection Department under this
18 Section need not be conducted according to the technical rules relating to evidence and
19 witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which
20 responsible persons may rely in the conduct of serious affairs, regardless of the existence
21 of any common law or statutory rule that might make improper the admission of such
22 evidence over objection in civil actions. Hearsay evidence may be used solely for the
23

1 purpose of supplementing or explaining other evidence, but shall not be sufficient in it to
2 support a finding, unless it would be admissible over objection in civil actions.

3 (g) In a hearing held before the Director of the Environmental Protection Department under
4 this Section, the Director may take notice of any generally accepted technical or scientific
5 matters. Parties present at the hearing shall be informed of any matters to be noticed and
6 those matters shall be noted in the record. Any party shall be given a reasonable
7 opportunity on request to refute such noticed matters by additional evidence.

8 **Section 9-2: Final Decision.**

9 Within sixty (60) days after a hearing pursuant to Section 9-1, the Director of the Environmental
10 Protection Department shall issue his or her Final Decision on the matter. The Final Decision
11 shall be in writing and shall contain: findings of fact; a determination of the legal issues
12 presented; an assessment of any civil damages and penalties; if applicable, a determination of
13 whether a permit shall be denied, revoked, suspended, or modified; and an assessment of costs
14 and reasonable attorney fees. A copy of the Final Decision shall be served on the party
15 requesting administrative review and the Compliance Officer, with a copy transmitted to the
16 Tribal Council and the President. A Final Decision issued pursuant to this Section is enforceable
17 by filing a civil action in Tribal Court by the Director of the Environmental Protection
18 Department through the Tribal Attorneys.

19 **Section 9-3: Judicial Review.**

20 (a) An adverse party aggrieved by a Final Decision of the Director of the Environmental
21 Protection Department issued pursuant to Section 9-2 of this Chapter is entitled to judicial
22 review of the Final Decision by the Tribal Court. A petition for review shall be filed in
23 the Tribal Court within thirty (30) days after the Director of the Environmental Protection

1 Department's Final Decision is served on the violator. Failure to timely file a petition for
2 review shall be deemed a waiver of all rights to appeal the Final Decision.

3 (b) In any appeal brought under paragraph (a) of this Section, the Tribal Court shall conduct a
4 review of the record of the proceedings of the Director of the Environmental Protection
5 Department but shall not take new evidence. The Tribal Court may then modify or
6 reverse a Final Decision of the Director of the Environmental Protection Department only
7 if the Final Decision is contrary to law, not supported by the evidence, or arbitrary and
8 capricious. The Director of the Environmental Protection Department, upon request of
9 the Tribal Court, shall provide to the Tribal Court a certified copy of all pleadings,
10 documents, records, transcripts, and other evidence that formed the basis for the Final
11 Decision. The filing of a petition for review shall not operate as a stay of the Director's
12 Final Decision, but the Tribal Court shall have the authority to issue a stay upon such
13 terms as it deems appropriate.

14 (c) The Tribal Council hereby expressly waives the sovereign immunity of the Director of the
15 Environmental Protection Department and the Tribe's Environmental Protection
16 Department in their official and not in their personal capacities for the explicit, limited,
17 and sole purpose of enabling the Tribal Court to review of the Director's Final Decision
18 under Section 9-2 of this Chapter, and for no other purpose. The sovereign immunity of
19 the Director of the Environmental Protection Department and the Environmental
20 Protection Department is not waived in any other respect, including without limitation
21 suits for monetary damages or otherwise. Except as expressly provided for in this
22 paragraph, the sovereign immunity of the Tribe, the Tribal Council, the President, or any
23 other Tribal instrumentalities, employees, or agents is hereby fully preserved.

1 (d) The rights of the Tribe with respect to an alleged violator under this Chapter, including
2 the right to issue compliance orders; recover civil penalties; recover civil damages; order
3 clean up, abatement, corrective actions, or remediation; or revoke, suspend, or modify a
4 permit, are not intended to be exclusive, and the Tribe reserves all other legal rights which
5 it otherwise has against any alleged violator, including the right to seek injunctive relief or
6 other relief in Tribal Court or any other court of competent jurisdiction.

7 **Section 9-4: Intervention.**

8 In any hearing before the Director of the Environmental Protection Department or civil action
9 filed in the Tribal Court under this Chapter, any person shall be allowed to intervene under the
10 same conditions as allowed under Rule 24(a)(2) of the Federal Rules of Civil Procedure, which
11 provides for intervention as a matter of right only when the applicant for intervention claims an
12 interest relating to the subject of the action and is so situated that the disposition of the action
13 may, as a practical matter, impair or impede his ability to protect that interest. The Tribe may not
14 defeat such right of intervention on the basis that the applicant's interest is adequately represented
15 by existing parties.

16 **CHAPTER TEN—PUBLIC PARTICIPATION**

17 **Section 10-1: Public Complaints.**

18 (a) Any person may submit a complaint to the Compliance Officer alleging a violation of any
19 of the conditions in a permit issued under this Code; any provision of this Code; any rule,
20 regulation, or guidance document adopted under this Code; or any other applicable Tribal
21 or federal law relating to the management, storage, transport, or disposal of solid waste or
22 hazardous waste.
23

1 (b) If the Compliance Officer determines that a complaint received under paragraph (a) of
2 this Section is credible, the Compliance Officer shall initiate an inspection or
3 investigation of the alleged violation pursuant to Section 8-1 of the Code. The
4 Compliance Officer shall thereafter take such enforcement action pursuant to this Code if
5 he or she determines that there is a reasonable basis to suspect a violation of the Code,
6 any permit, regulation, or order issued pursuant to the Code, or any other applicable
7 Tribal or federal law relating to the management, storage, transport, or disposal of solid
8 waste or hazardous waste.

9 **Section 10-2: Public Proceedings.**

10 (a) The Director of the Environmental Protection Department shall hold one or more informal
11 public proceeding prior to taking the following actions:

- 12 (1) Any significant updates to the Tribe's Integrated Solid Waste Management Plan;
- 13 (2) The issuance of any rules or regulations under the Tribe's Solid Waste
14 Management Code, including any guidance documents, as proposed by the
15 Director of the Environmental Protection Department;
- 16 (3) The approval of any site location for a solid waste facility on the Reservation;
- 17 (4) The issuance of any permits for the construction and/or operation of a solid waste
18 facility on the Reservation;
- 19 (5) The suspension of any groundwater monitoring requirements under 40 C.F.R. §
20 258.50;
- 21 (6) The assessment of any corrective measures and selection of remedies which may
22 be necessary under 40 C.F.R. §§ 258.56 and 258.57;

1 (7) The approval of any covenant not to sue or any settlement of any claim against
2 any permittee under the Code; and

3 (8) Any other matters which the Director of the Environmental Protection Department
4 deems appropriate for public participation and review.

5 (b) In a public proceeding held pursuant to paragraph (a) of this Section, the Director of the
6 Environmental Protection Department shall allow the public to submit both written and
7 oral comments, which shall be placed in an administrative record for the relevant action
8 maintained by the Environmental Protection Department.

9 (c) The Director of the Environmental Protection Department shall schedule public
10 proceedings held pursuant to paragraph (a) of this Section at a convenient location on the
11 Reservation and give reasonable advance notice of the date, time, and subject matter of
12 such proceedings by publication in the newspaper most widely circulated on the
13 Reservation. Sixty (60) days advance notice is required for the issuance of any solid
14 waste facility permits.