

TITLE 19: ENVIRONMENTAL PROTECTION

ROSEBUD SIOUX TRIBE

LAW AND ORDER CODE

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 TITLE 19: ENVIRONMENTAL PROTECTION
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ROSEBUD SIOUX LAW AND ORDER CODE

TITLE 19: ENVIRONMENTAL PROTECTION

CHAPTER ONE
LEGISLATIVE FINDINGS AND PURPOSE

§19-1-101. Sovereign Power to Regulate the Reservation Environment.

The power to regulate the Reservation environment is an inherent and essential part of the authority of any reservation tribal government. This power is therefore an aspect of the retained sovereignty of Indian tribes except where it has been limited or withdrawn by federal law. The Rosebud Sioux Tribe is a sovereign Indian tribe organized pursuant to the Act of June 18, 1934, 48 Stat. 984, as amended, and governed pursuant to a Constitution and Bylaws ratified on November 23, 1935, and approved by the Secretary of the Interior, Harold L. Ickes, on December 16, 1935, as amended from time to time thereafter. Pursuant to the Constitution and Bylaws, as amended, the Rosebud Sioux Tribal Council is the governing body of the Rosebud Sioux Tribe. This Title is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Tribal Council in Article IV, Section 1(c), (h), (i), (k), (m), (t) and (u) of the Tribal Constitution, which authorize the Tribal Council to manage and otherwise deal with tribal lands and property, to exclude by ordinance from the restricted lands of the Reservation persons not legally entitled to reside therein, to promulgate and enforce ordinances providing for the maintenance of law and order and the administration of justice on the Reservation, to regulate the conduct of trade and the use and disposition of property upon the Reservation, to regulate tribal agencies and tribal officials, and to delegate to subordinate boards or tribal officials the foregoing powers, subject to review by the Tribal Council.

§19-1-102. Lack of Adequate Environmental Regulations.

The Rosebud Reservation, tribally owned trust lands and allotted trust lands owned by enrolled tribal members lie within Todd, Tripp, Mellette, Gregory and Lyman Counties, South Dakota. Todd County, in which the majority of the Reservation lies, is unorganized under South Dakota state law and consequently has no environmental regulations of any kind. The remaining four counties, although organized under South Dakota state law, are similarly without environmental regulations of any kind.

§19-1-103. Demonstrably Serious Impact of Lack of Adequate Environmental Controls Upon the Economic Security, Health and Welfare of the Tribe and Tribal Members.

The Reservation is checkerboarded with both trust land and nontrust land and within the historical boundaries of the Rosebud Reservation are substantial populations of both Indians and non-Indians. The Reservation was established as an agricultural reservation for farming and ranching purposes to provide a permanent homeland for the Tribe. Since establishment of the Reservation by the Treaty, the Tribe has maintained the essential character of the entire Reservation; however, as additional residential, commercial, governmental and agricultural activities multiply, the need for adequate environmental controls grows ever more serious. Tribal land and tribal members are the most precious assets of the Tribe. The Reservation is too valuable a tribal resource to permit the uncontrolled use and alteration of the Reservation environment, and its attendant pollution and destruction.

The Council finds that such uncontrolled use of the Reservation environment has a demonstrably serious impact that imperils the economic security, health, welfare and general well-being of the Tribe, its members, and all residents of the Reservation, resulting in:

- (1) gradual loss of the essential character of the Reservation,
- (2) destruction of the historical and cultural values and traditions of the Tribe,
- (3) deterioration of the aesthetics of the Reservation,
- (4) increased air, water and solid waste disposal pollution,
- (5) increased contamination of drinking water from the Ogallala Aquifer and surface water supplies, and
- (6) deterioration of the standards of living, quality of life, welfare and well-being of all Reservation residents, whether tribal members or not.

§19-1-104. Consensual Relations Among Nonmembers, the Tribe, and Tribal Members.

The Council finds that every person who uses land, whether trust land or nontrust land, within the Reservation, enters into consensual relations, commercial dealings and contracts with residents of the Reservation, Indian and non-Indian, and with the Tribe and that all such uses of land have a demonstrably serious impact which imperils the economic security, health, welfare and general well-being of the Tribe, its members, and all residents of the Reservation.

§19-1-105. Tribal Environmental Responsibilities.

The Rosebud Sioux Tribe is subject to certain responsibilities under certain federal laws, including the Solid Waste Disposal Act codified at 42 U.S.C. §§ 6901-6992k, and the Resource Conservation and Recovery Act (RCRA), codified at 42 U.S.C. §§ 6901-6991i, and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), codified at 42 U.S.C. §§ 9601-9675, any discarded materials on the Reservation, including solid wastes; liquid and contained gaseous wastes; semi-solid wastes; sludges; and toxic, lethal and hazardous wastes.

Because the five counties within which the Reservation and tribally owned and individually owned trust lands lie do not have adequate environmental laws, it is imperative that, within its jurisdiction, the Tribe regulate all discarded materials and uses and substances that are potentially harmful to the Reservation environment.

§19-1-106. Benefits of Tribal Government.

Among the benefits provided by the tribal government to tribal members and to nonmembers residing or conducting business within the Rosebud Reservation are the following:

- (1) The provision of a civilized form of government and civilized environment within which to reside and do business;
- (2) The provision of governmental services, including sewer and water systems, police and fire protection, and a Tribal Court system of general jurisdiction;
- (3) The promotion and regulation of economic activities within the Tribe's sovereign jurisdiction; and
- (4) The orderly development and protection of the Reservation lands, resources and communities.

§19-1-107. Territory, Persons and Property Affected.

To the extent not prohibited by federal law, this Title shall apply to the following.

(1) The Rosebud Sioux Reservation within the historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, and bridges, or any interests therein, whether in trust or nontrust status and notwithstanding the issuance of any patent or right-of-way, and such other lands, islands, waters or any interest therein thereafter added to the Reservation;

(2) All trust or restricted land of the Tribe or any enrolled member of the Tribe situate within the historical boundaries of the Reservation established in Section Two of the

Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, or any interests therein, including Tripp, Mellette, Gregory and Lyman Counties, South Dakota;

(3) All persons and property within any geographical area referred to in subsections (1) and (2), above, that are subject to the jurisdiction and governmental power of the Tribe.

§19-1-108. Purpose.

The Council hereby declares it to be in the public interest that all uses of land, whether trust land or nontrust land, by enrolled tribal members and nonmembers be regulated as provided by this Chapter in order to:

- (1) encourage only environmentally sound use of Reservation land and resources;
- (2) protect the sacred, cultural, social and economic stability of residential, agricultural, commercial, industrial, forest, wildlife, and environmentally sensitive lands, water resources, and other areas within the Rosebud Reservation, and to assure the orderly use of such areas;
- (3) prevent the menace to the public safety resulting from the improper location of buildings and land uses; and
- (4) otherwise promote the public health, safety, morals, and general welfare in accordance with the treaty rights reserved by the Rosebud Sioux Tribe.

§19-1-109. Sovereign Immunity.

The Rosebud Sioux Tribe, and all its constituent parts, including the Land Use and Environment Commission established pursuant to this Chapter, are immune from suit in any jurisdiction, except to the extent that such immunity has been expressly and unequivocally waived by the Tribe in this Title or elsewhere. Nothing in this Chapter shall be construed as waiving the sovereign immunity of the Tribe or any of its constituent parts, including the Land Use and Environment Commission, its members, the Director of Land Use and Environment, or the Director of Water Resources; except that the Commission, its members, and the Directors shall be subject to suit for prospective, equitable relief (including declaratory and injunctive relief) only in proceedings before the Commission and the Tribal Court. Nothing in this Title, nor any appeal to the Tribal Court, nor any enforcement action taken pursuant to this Chapter, shall constitute a waiver of such sovereign immunity as to any claim for damages, attorneys fees or costs, regardless of whether any such claim arises out of the same transaction or occurrence, or in any other respect. Nothing in this Title shall be construed as a legislative declaration of tribal liability under federal, tribal or state environmental laws or as a waiver of tribal sovereign immunity with respect thereto.

CHAPTER TWO
GENERAL PROVISIONS

§19-2-101. Definitions.

In this Title, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

(1) "Business" means any regular or temporary business engaged in by any person for the purpose of conducting a trade, profession or commercial activity involving the sale of any property or services. An isolated sale of property or services shall not be considered to be a business under this Chapter.

(2) "Commission" means the Land Use and Environment Commission created and established by Title 18 of this Code to administer Titles 18 and 19 of this Code.

(3) "Commissioner" means one of the members of the Commission.

(4) "Council" or "Tribal Council" means the Rosebud Sioux Tribal Council established as the governing body of the Rosebud Sioux Tribe in the Tribal Constitution.

(5) "Director" means Director of the Land Use and Environment Department established by Title 18 of this Code, except that in Chapters 6 and 8 of this Title, "Director" means the Director of Water Resources unless otherwise specifically indicated.

(6) "Director of Water Resources" means the Director of Water Resources established by Chapter 6 of this Title.

(7) "Immediate family" means brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half brother, half sister, or brother, sister, son, daughter, mother or father by adoption.

(8) "Notice," as used in this section, means publication in any newspapers of general circulation on the Reservation.

(9) "Reservation" means

(a) The Rosebud Sioux Reservation within the historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, and bridges, or any interests therein, whether in trust or nontrust status and notwithstanding the issuance of any patent or right-of-way, and such other lands, islands, waters or any interest therein thereafter added to the Reservation;

(b) All trust or restricted land of the Tribe or any enrolled member of the Tribe situate within the historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, or any interests therein, including Tripp, Mellette, Gregory and Lyman Counties;

(c) All persons and property within any geographical area referred to in subsections (1) and (2), above, that are subject to the jurisdiction and governmental power of the Tribe.

(10) "State" means the State of South Dakota.

(11) "Tribal member" or "member" means an individual Indian who is enrolled in the Rosebud Sioux Tribe.

CHAPTER THREE
LAND USE AND ENVIRONMENT COMMISSION

§19-3-101. Land Use and Environment Commission to Administer this Title.

The Land Use and Environment Commission, a governmental agency and subordinate subdivision of the Tribe created and established pursuant to Title 18 of this Code, shall administer this Title 19 pursuant to all powers and duties delegated to it by Title 18 of this Code. All references in Title 18 with respect to powers and duties of the Commission, whether general or specific, and whether referring to Title 18 only, shall refer to this Title as well.

§19-3-102. Power of Land Use and Environment Commission to Conduct Hearings.

In addition to other powers conferred upon it by this Title and Title 18, the Land Use and Environment Commission shall have power to hold hearings relating to any aspect of the administration of this Title.

§19-3-103. Power of the Land Use and Environment Commission to Issue and Enforce Orders and Permits.

In addition to other powers conferred upon it by this Title and Title 18, the Land Use and Environment Commission shall have power to issue such permits and orders as may be necessary to effectuate the purposes of this Title and enforce the same by all appropriate administrative and judicial proceedings.

§19-3-104. Land Use and Environment Commission is State Agency for Purposes of Federal Law.

The Land Use and Environment Commission shall be designated as a state agency for all state purposes of the Clean Water Act, codified at 33 U.S.C. §§ 1251-1387; the Solid Waste Disposal Act, codified at 42 U.S.C. §§ 6901-6992k; and the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616, as amended to January 1, 1992.

CHAPTER FOUR
LAND USE AND ENVIRONMENT DEPARTMENT

§19-4-101. Land Use and Environment Department to Administer This Title.

The Land Use and Environment Department, a governmental agency and subordinate subdivision of the Tribe created and established pursuant to Title 18 of this Code, shall administer this Title 19 pursuant to all powers and duties delegated to it or to the Director by Title 18 of this Code. All references in Title 18 with respect to the duties of the Department or the Director, whether general or specific, and whether referring to Title 18 only, shall refer to this Title as well.

§19-4-102. Power of the Land Use and Environment Department to Inspect Sites of Possible Pollution.

Upon complaint by any person or upon its own motion, the Department may investigate the activities of any permittee under this Title. In conducting an investigation under this provision, the Department shall have the right, without notice, to enter into the permittee's place of business or operation, to inspect any books or records of the permittee, and to inspect any of the permittee's equipment. Such power may be exercised by authorized agents, representatives, and employees of the Department, including the Directors of Land Use and Environment and of Water Resources.

CHAPTER FIVE
GENERAL PROCEDURES

§19-5-101. Definition: "Director."

For purposes of this Chapter, except where otherwise specifically provided or the context otherwise requires, the term "Director" shall mean the Director of Water Resources for purposes of actions taken pursuant to Chapters 6 and 8 of this Title; for purposes of actions taken pursuant to all other Chapters of this Title, the term "Director" shall mean the Director of Land Use and Environment.

§19-5-102. Governing Procedures.

Except as specifically modified in this Chapter, proceedings before the Directors and the Commission shall be governed by Title 18, Chapter 21, of this Code.

CHAPTER SIX CLEAN WATER

§19-6-101. Findings and Purposes.

The Tribal Council finds that pollution of the waters of the Reservation constitutes a menace to public health and welfare, is harmful to fish, wildlife, and aquatic life, and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of water.

The purpose of this Chapter is to:

- (1) Conserve the waters of the Reservation;
- (2) Protect, maintain, and improve the quality of the waters of the Reservation for the propagation of fish and wildlife, and for domestic, industrial, agricultural, municipal, recreational, and other beneficial uses;
- (3) Provide for the prevention, abatement, and control of new or existing water pollution;
- (4) Provide a basis for cooperation as necessary and appropriate with other sovereign governments, including other Indian tribes, states and the federal government, to achieve these purposes.

§19-6-102. Definitions.

In this Chapter, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

- (1) "Chemigation" means any process whereby fertilizers or pesticides are added to irrigation water applied to land or crops or both through an irrigation system;
- (2) "Discharge of a pollutant" means any addition of any pollutant to the waters of the Rosebud Reservation from a point source.
- (3) "Nonpoint source" means any source of the discharge of a pollutant other than a point source.
- (4) "Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, investment trust, municipal corporation, corporation, association, syndicate, pool, organization, society, political entity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

(5) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, from which any pollutant is or may be discharged.

(6) "Pollutant" means any material that when added to water causes pollution, including but not limited to, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical, biological, or radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, soil, industrial, municipal and agricultural products or waste.

(7) "Pollution" means the human-made or human-induced alteration of the chemical, physical, biological, or radiological integrity of water.

§19-6-103. Prevention of Pollution.

(1) Pollution of the waters of the Reservation is declared not to be a reasonable, beneficial or natural use of such waters and to be contrary to the public policy of the Tribe.

(2) In order to carry out the Tribe's public policy as set forth in this Chapter, the Director of Water Resources and the Department of Land Use and Environment shall implement this Chapter and work cooperatively with other governmental entities to prevent, abate and control pollution of the waters of the Reservation.

§19-6-104. Prohibited Activities.

(1) Except as may be permitted under this Title, no person shall cause or allow the discharge of any pollutant from a point source or nonpoint source that reduces the quality of the waters of the Reservation to below the standards established pursuant to §19-6-105 of this Chapter.

(2) No person shall violate the terms or conditions of any pollution discharge or activity permit or regulation issued pursuant to this Chapter.

§19-6-105. Director to Issue Regulations Governing Point and Nonpoint Sources of Pollution.

(1) Point Source Regulations.

Within 360 days of passage of this Title, the Director of Water Resources shall promulgate final regulations, in accordance with the informal hearing procedure set forth in title 18, Chapter 21, setting forth management practices to control all point sources of pollution within the boundaries of the Rosebud Reservation.

(2) **Nonpoint Source Regulations.**

(a) Within 360 days of passage of this Title, the Director of Water Resources shall promulgate final regulations, in accordance with the informal hearing procedures set forth in Title 18, Chapter 21, setting forth management practices to control nonpoint source pollution from livestock grazing and agricultural activities.

(b) From time to time after he has issued the final regulations required by §§ 19-6-105(1) and 19-6-105(2)(a), the Director may promulgate or amend in the same manner other regulations setting forth management practices to control point and nonpoint source pollution from agricultural practices, grazing, or other activities.

(3) **Effect of Regulations.**

(a) Upon promulgation of regulations pursuant to §§ 19-6-105(1) and 19-6-105(2)(a), no person who complies with those regulations may be found liable for illegal pollution as the result of an activity conducted consistent with such regulations.

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

§19-6-106. **Contingency Plan to Deal with Imminent Threats to Health and Welfare.**

Within 90 days of the passage of this Title and pursuant to the informal hearing procedures set forth in Title 18, Chapter 21, the Director shall issue a final contingency plan to implement the emergency authority granted him by Title 18, Chapter 21.

§19-6-107. **Water Quality Standards.**

(1) **Standards for Identified Waters.** The Director shall establish regulations for beneficial uses and water quality standards for specific surface waters located within the Reservation. Such regulations shall be issued within 180 days of enactment of this Title.

(2) **Antidegradation Standards.** Notwithstanding the water quality criteria established for streams, rivers, lakes, or other bodies of water in §19-6-107(1), it is the policy of the Tribe to prevent the unnecessary degradation of any waters of the Reservation, which policy shall be implemented as follows:

(a) Existing beneficial uses shall in all cases be maintained and protected and no water quality degradation shall be allowed that would interfere with or become injurious to existing beneficial uses;

(b) Under no circumstances may the degradation of the water quality of unique Reservation waters be allowed. Such unique Reservation waters shall be identified by the Director in regulations within 180 days of enactment of this Title.

(c) Whenever surface waters other than those unique waters listed in §19-6-107(2)(b) are of higher quality than provided for by the applicable Water Quality Standards, the existing higher water quality shall be protected, and no degradation shall be allowed unless the Commission waives the requirement that the higher water quality be maintained. The Commission may grant such a waiver only after a public hearing according to the informal hearing procedures set forth in title 18, Chapter 21.

§19-6-108. Permits Required to Degrade or Discharge Pollutants Into Reservation Waters.

Except as specifically provided for or modified in this Chapter, the procedures set forth in title 18, Chapter 21, shall govern the consideration and issuance of any permit under this Chapter.

§19-6-109. Permit to Degrade Reservation Waters.

(1) Upon petition in accordance with Title 18, Chapter 21, and § 19-6-108, the Commission shall, in accordance with the informal hearing procedures in Title 18, Chapter 21, decide whether to issue a permit to conduct an activity that will cause or allow the discharge of a pollutant into any body of Reservation water for which water quality standards are established (including those waters listed in §19-6-107(1) and (2)(b)). If an applicant seeks a point source discharge permit, he shall include the request for water quality degradation in the permit petition.

(2) Upon application to and upon a determination by the Director of Water Resources that an emergency exists, the Director may authorize short-term degradation of water quality (not to exceed 30 days) in any body of water for which water quality standards are established (including those waters listed in §19-6-107(1) and (2)(b)). If the applicant seeks a point source discharge permit, he shall include the request for short-term water quality degradation in the petition.

(a) For purposes of §19-6-109(2), an "emergency" is defined as circumstances that threaten the public health or welfare or prevents essential activities from proceeding.

(b) The Director may permit such short-term degradation only if he determines that clear and convincing evidence demonstrates that the degradation will not cause long-term injury or interference with water quality and the designated beneficial use is for the affected water body.

(c) In all cases involving emergencies as defined in §19-6-109(2)(a), the Director of Water Resources shall, at a minimum, provide notice of his action to the Tribal Council and post notice on the Tribal Agency Action Bulletin Board. In addition, the Director shall provide the closest approximation to the informal hearing procedures set forth in Title 18, Chapter 21, taking into account the nature of the emergency.

(d) In circumstances in which the Director of Water Resources determines to be emergencies, he may shorten the time within which the permit becomes effective unless the Commission acts to stay the decision upon appeal.

§19-6-110. Permit for Point Source Discharge.

(1) Federal and Tribal Permits Required.

(a) Any point source discharge of pollutants into the waters of the Reservation requires a permit from the federal Environmental Protection Agency. No person may discharge any pollutant from a point source into waters of the Reservation without having first obtained a permit from the EPA.

(b) Further, no person may discharge any pollutant from a point source into waters of the Reservation without first having obtained a permit from the Commission pursuant to this Chapter.

(2) Tribal Permit for Point Source Discharge.

(a) In lieu of a petition for permit as required by § 19-6-109(1) and (2), the applicant shall provide to the Director of Water Resources a complete and full copy of his petition to the federal Environmental Protection Agency at the same time as it is supplied to the EPA.

(b) Upon receipt of a complete petition the Director of Water Resources shall immediately contact the appropriate federal Environmental Protection Agency office and advise it of the Director's intent to review and provide public participation on the permit petition. The Director shall request that EPA not act prior to conclusion of the tribal process.

(c) Within two weeks of having first received a petition, the Director may request the applicant to supply within a reasonable time such additional information as he deems necessary to permit a thorough review of the petition. If the applicant fails to submit the requested information within the reasonable time established in the Director's request, the Director may reject the petition for such failure.

(d) Upon receipt of a complete petition pursuant to § 19-6-109 or 19-6-110(2)(a), the Land Use and Environment Commission shall, in accordance with

informal hearing procedures established in Title 18, Chapter 21, determine whether to issue the requested permit. The Commission shall grant the permit only if it finds, by clear and convincing evidence, that: Commission shall not grant a permit unless it finds on the record that:

(i) the discharge will not result to a violation of the water quality standards set forth in this Chapter or subsequently adopted, except as allowed by § 19-6-107(2)(c) or § 19-6-107(2)(d) of this Chapter; and

(ii) the discharge will not interfere with or injure existing beneficial uses.

(e) If the federal Environmental Protection Agency has not yet issued a permit, the Director shall urge EPA to act consistent with the decision on the tribal permit. If EPA has issued a permit, the Director shall insure that the Commission's permit conditions are at least as stringent as those in the EPA permit.

§19-6-111. Term of Permits Issued Under This Chapter; Relationship of Tribal Permits to EPA Permits.

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

§19-6-112. Compliance with Standards and Requirements of Land Use and Environment Commission to Use Irrigation System for Chemigation.

Any person who utilizes an irrigation system for chemigation shall comply with any standards and requirements that are established by the Land Use and Environment Commission pursuant to §§ 19-6-105(1) and 19-6-113.

§19-6-113. Land Use and Environment Commission to Promulgate Rules and Standards Regarding Chemigation.

Within 360 days of passage of this Title, the Land Use and Environment Commission, with the assistance of the Director of Water Resources, shall establish, by rules made in accordance with informal hearing procedures established in Title 18, Chapter 21:

(1) Chemigation equipment standards, performance standards and installation requirements; and

(2) Requirements regarding the use and location of antipollution devices.

The requirements and standards established pursuant to this section shall provide for additional protection if chemigation involves the application of a pesticide, rather than a fertilizer.

CHAPTER SEVEN
SOLID WASTE CODE

§19-7-101. Findings and Purposes.

The Tribal Council finds that:

- (1) The health and welfare of the Rosebud Sioux tribal members and other persons who reside on the Rosebud Reservation and the opportunities for economic development on the Reservation are at risk from the indiscriminate and uncontrolled disposal of solid waste on the Reservation;
- (2) Solid waste is generated by Indians and non-Indians on the Rosebud Reservation and Indians and non-Indians alike suffer from improper disposal;
- (3) The improper disposal of solid waste on the Reservation is contrary to the historic close relationship between the people of the Rosebud Sioux Tribe and their land;
- (4) The continued growth of population and economic activity on the Reservation will generate greater amounts of solid waste;
- (5) Federal law requires extensive management of solid waste;
- (6) There is a need for an organized effort to manage properly the disposal of solid waste on the Rosebud Reservation; and
- (7) The Rosebud Sioux Tribe, as the properly constituted sovereign government of the Rosebud Reservation should undertake to regulate and manage the disposal of solid waste.

The purposes of this Chapter are to:

- (1) Provide environmental and health standards for the collection and disposal of solid waste;
- (2) Prohibit future open dumping and littering of waste on the Reservation and eliminate unhealthy, unsightly and indiscriminate disposal or placement of solid waste; and
- (3) Inform and educate persons living on the Reservation of the need to participate fully in efforts to manage solid waste generation, transportation, and disposal on the Reservation.

§19-7-102. Definitions.

(1) "Beverage" means beer or other malt beverages and mineral waters, soda water and similar carbonated soft drinks in liquid form and intended for human consumption;

(2) "Beverage container" means the individual, separate, sealed glass, metal or plastic bottle, can, jar or carton designed to contain a beverage;

(3) "Biodegradable" means degradable through a process by which fungi or bacteria secrete enzymes to convert a complex molecular structure to simple gasses and organic compounds;

(4) "Contaminate" means to introduce a substance into water that would cause:

(a) The concentration of that substance to exceed the maximum concentration or contaminant levels established pursuant to federal law and regulations; or

(b) An increase in the concentration of such substance where the concentration in the ground water already exceeds the levels established by federal law and regulations.

(5) "Degradable" means capable of decomposing by biodegradation, photodegradation or chemical process into harmless component parts after exposure to natural elements for not more than 365 days;

(6) "Demolition waste" means any solid waste, largely inert waste, resulting from the demolition of or razing of buildings, roads, and other man-made structures, and any other material defined as "demolition waste" pursuant to federal law;

(7) "Hazardous waste" means solid waste that is flammable, corrosive, radioactive, explosive, toxic or reactive or that otherwise meets the criteria established for hazardous waste in federal law.

(8) "Hospital or medical wastes" includes laboratory or surgical wastes and implements, such as tissues, specimens of blood elements, excreta, and secretions obtained from patients or laboratory animals, or clothing, rags, needles, or paper goods contaminated with such waste.

(9) "Landfill" means a disposal facility or part of a facility at which solid waste is permanently placed in or on the land;

(10) "Litter" means any used or unconsumed substance or waste, including but not limited to any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned motor vehicle, motor vehicle parts, furniture, oil, carcass

of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure a person or create a traffic hazard, or anything else of an unsightly or unsanitary nature that has been discarded, abandoned or otherwise disposed of;

(11) "Person" means an individual, firm, association, co-partnership, political subdivision, government agency, municipality, public or private corporation, or any other entity whatsoever, except for the Rosebud Sioux Tribe as a sovereign entity;

(12) "Photodegradable" means degradable through a process in which ultraviolet radiation in sunlight causes a chemical change in a material;

(13) "Putrescible waste" means solid waste that contains material capable of being decomposed by microorganisms;

(14) "Solid waste" means all putrescible and nonputrescible solid and semi-solid wastes including, but not limited to, abandoned vehicles or parts thereof, ashes, demolition and construction wastes, discarded commodities, garbage, industrial wastes, rubbish, swill, and all other materials defined as "solid waste" pursuant to federal law. "Solid waste" also means all liquid, solid and semisolid materials that are not the primary products of public, private, industrial, commercial, mining, and agricultural operations. Solid waste includes but is not limited to sludge from waste water treatment plants and septage from septic tanks and wood waste;

(15) "Solid waste disposal site" means the location where any final treatment, utilization, processing or deposition of solid waste occurs;

(16) "Vector" means a living animal, insect, or other anthropoid which transmits or can transmit an infectious disease from an organism to another.

§19-7-103. Unlawful Practices

(1) **Dumping of Solid Wastes or Litter Anywhere Other Than at Authorized Sites.** No person shall dump, place, abandon, or deposit any solid wastes or litter on land except at disposal sites authorized by the Department of Land Use and Environment.

(2) **Dumping of Solid Wastes or Litter into Reservation Waters.** No person shall dump, place, abandon or deposit any solid wastes or litter into Reservation waters except in a manner approved by the Land Use and Environment Commission.

(3) **Accumulation of Solid Wastes or Litter.** It shall be unlawful for any person, firm, corporation, or government entity to place, leave, dump, or permit the accumulation of any solid waste or litter in any building or upon any premises or on property within the boundaries of the Rosebud Reservation, except in garbage cans or other containers for purposes of collection by an authorized collection agent or at an approved disposal site.

(4) **Bulky Items.** It shall be unlawful for any person to place, leave, dump, or permit the accumulation of unused, large bulky items, such as white goods (refrigerators, stoves, etc.) or inoperable cars or trucks or parts thereof in any open and visible location on the Rosebud Reservation.

(5) **Landfills and Collection Systems.** No person may operate a landfill or solid waste disposal site or operate a solid waste collection system unless he has obtained a permit for such operation pursuant to this Title.

§19-7-104. **Exemption for Farming Operations.**

No provision of this Chapter shall be construed so as to prohibit a farmer or rancher from disposing solid waste resulting from normal farming operations upon his own land where such disposal does not create a nuisance or a public health hazard, does not include substances defined as hazardous or toxic wastes under this Title, or does not otherwise violate tribal law.

§19-7-105. **Powers of Commission Under this Chapter.**

For purposes of this Chapter, the Land Use and Environment Commission has the authority to:

- (1) Adopt a solid waste management plan for the Rosebud Reservation;
- (2) Locate, design, build, and operate solid waste disposal sites;
- (3) Operate a solid waste collection system;
- (4) Contract on behalf of the Rosebud Sioux Tribe with other persons or entities to operate solid waste disposal sites or a solid waste collection system, to dispose otherwise of solid waste, or to perform such other actions as are useful to accomplish the objectives of this Chapter and the duties of the Commission;
- (5) Issue permits as provided in this Chapter for the operation of solid waste sites or solid waste collection systems;
- (6) Employ and consult with such advisors regarding its duties as it may deem necessary;
- (7) Make recommendations to the Tribal Council on issues related to solid waste;
- (8) Levy such fees as may be required to fund its operation and recommend to the Tribal Council the levy of taxes as may be required or useful to fund solid waste regulation and disposal;

(9) Accept and use monies from whatever sources as are legally available to them to fund its operations;

(10) Promulgate and enforce regulations consistent with this Title, and promulgate regulations and procedures governing the work and operations of the Commission not inconsistent with the provision of this Code.

(11) Do everything necessary or proper not otherwise forbidden by law for the accomplishment of the obligations and duties imposed by this Title.

(12) The Commission may delegate to the Director of Land Use and Environment such of its duties as it deems appropriate, except that it may not delegate its duties under §19-7-105 and §19-7-119(2) of this Title. Further, in all cases, the Commission must:

(a) Approve the expenditure of funds by the Department either through approval of a Department budget or by approval of specific expenditures;

(b) Approve any contracts entered into by the Department in the name of the Rosebud Sioux Tribe;

(c) Approve any levy of fees by the Department; and

(d) Approve all regulations proposed by the Department to regulate solid waste on the Reservation.

§19-7-106. Development of Solid Waste Disposal Plan.

(1) Within 180 days of the passage of this Title, the Director of Land Use and Environment shall present to the Commission for its approval a comprehensive Solid Waste Management Plan for the Reservation. In designing the Plan, the Director may propose to use, in a combination that he deems most appropriate, any of the mechanisms authorized by this Title, including operation of parts or all of the system by Land Use and Environment Department staff, federal agency staff, contractors, or permittees. Such Plan shall include, at a minimum:

(a) a solid waste collection system and disposal plan, the goal of which shall be the collection and proper disposal of all solid waste on the Reservation;

(b) a mechanism to fund continued operation of the system, which shall include, at a minimum, fees for Department-operated collection system and deposit of waste in any Department-operated disposal site, including special fees levied against deposit of large or bulky debris, large volume demolition debris, or large volume construction debris;

(c) an education and public involvement program to encourage proper disposal of waste;

(d) a recycling program to require or encourage recycling if the Director deems it feasible; and

(e) a plan to investigate the options for establishing comprehensive system of hazardous waste control, including controls on household hazardous waste.

(2) Within 15 days of presentation of the Solid Waste Management Plan by the Director, the Commission shall publicize the existence of the Plan and make widely available on the Reservation a Plan summary. Within 45 days, the Commission shall hold two public hearings at locations of its choice, to permit Reservation residents to comment on the proposed Plan.

(3) The Plan as proposed by the Director shall go into effect, and the Director shall commence its implementation, 100 days after the Director submits it to the Land Use and Environment Commission, unless the Commission acts to promulgate an amended Plan within the same 100 days.

§19-7-107. General Solid Waste Disposal Site Standards.

It is the intent of this Chapter that any solid waste disposal site, whether operated by the Land Use and Environment Department or by others under permit from the Land Use and Environment Commission shall, to the greatest extent practical, taking into account the needs and capabilities of the Tribe and the Reservation community and the environmental quality of the Reservation, meet or exceed the environmental and health-related performance standards established by applicable federal law.

§19-7-108. Landfill Location Standards.

(1) No landfill shall be located closer than 10,000 feet from any airport runway.

(2) No landfill shall be located within 1,000 feet of a lake, pond, slough, river, stream, or wetland. To the greatest extent possible, landfills will be located at substantially greater distances from any surface water of significance.

(3) No landfill shall be visible from, nor shall it be closer than 1,000 feet to, a public park or principle Reservation roadway or in a location where the facility would constitute a potential safety hazard to the public.

(4) No landfill shall be located in an unstable area subject to significant erosion, mass soil movement, or other geologic or soil conditions which could adversely affect the safety and environmental integrity of the landfill.

(5) No landfill shall be located in a manner that will cause significant adverse impact to recreational opportunities, wildlife habitat or populations, or Reservation aesthetics.

(6) To the greatest extent possible, taking into account the other requirements of this Title, no landfill shall be located within 3,000 feet [measured from its exterior boundary as established in §19-7-109] of a dwelling inhabited at the time of landfill location.

(7) No landfill will be located within 2,000 feet of a domestic water well, unless the Director determines that the well will not be contaminated by the solid waste site and establishes a water monitoring program for the well, or the Director provides substitute water source of equal or better convenience and quality.

§19-7-109. Landfill Design.

(1) All landfills shall be designed and certified by an experienced engineer to meet the location, performance and operating standards established by this code to protect health and environmental quality.

(2) All landfill designs shall establish a "landfill boundary" which shall encompass an area judged sufficient to accept all solid waste planned or anticipated to be deposited at the site during the planned site life, plus a 100 yard perimeter buffer.

(3) All landfills will be designed using drainage or control or diversion systems or other methods so as to limit, to the greatest extent possible, erosion, infiltration, and surface pondage.

§19-7-110. Landfill Performance Standards.

(1) **Air.** No landfill shall violate any federal or tribal air quality standard or requirement applicable on the Rosebud Reservation.

(2) **Surface Water.** No landfill shall cause a discharge of pollutants into waters of the United States in violation of the federal Clean Water Act or any applicable tribal requirements.

(3) **Ground Water.**

(a) No landfill shall cause contamination beyond the landfill boundary of ground water of quality sufficient to be used for domestic drinking water purposes unless the Director extends the area of contamination beyond the normal boundary by no more than an additional 100 yards beyond the Title established landfill boundary upon a determination (i) that the ground water is not currently used for drinking water purposes and (ii) the ground water will not be needed in the future for drinking water purposes, taking in to account the rate and expected increase or

decrease of groundwater use, the availability of alternative drinking water supplies, and the overall effect on the health of Reservation residents.

(b) In no case shall a landfill cause the contamination of ground water used for drinking water at the time of site location, unless the Director determines at the time of disposal site location that it is in the public interest to permit contamination of the groundwater and users of that drinking water are provided an alternative supply of water of equal or greater quality, and convenience as their original source.

(4) **Disease.** All landfills shall minimize the population of on-site disease vectors, such as insects and rodents.

(5) **Methane.** All landfills must assure that the concentration of methane gas at the project boundary or in project structures not exceed the limits established by federal regulations.

§19-7-111. Landfill Site Operating Criteria.

(1) **Separation of Materials.** Solid waste disposal sites shall provide separate locations for the placement of certain materials not to be placed in the landfill pit, including trees or tree branches, car bodies, and large bulky metal goods (including "white goods" such as refrigerators, stoves, etc.), or other items identified in this Title or by the Land Use and Environment Commission in its Plan or regulations as hazardous or otherwise unsuited for landfilling. Persons seeking to deposit such materials at landfills shall be required to separate such materials and place them in the identified locations.

(2) **Physical Operation at Disposal Sites.** All landfills must utilize procedures to meet these operating standards:

(a) Refuse shall be unloaded at the bottom of the open working face of the fills. This may be accomplished either by direction of supervisory personnel or by the placement of stationary or portable fencing.

(b) Deposited refuse shall be uniformly distributed and compacted in layers. A working face with a slope sufficient to permit thorough compaction shall be maintained.

(c) At the end of each working day, unless extreme weather conditions make operations infeasible, the open face of the landfill shall be covered with sufficient earth to control disease vectors and fire.

(d) At least two days worth of cover material shall be stockpiled at all times.

(e) When each portion of the landfill site has been completed, it shall be covered by at least twenty-four inches of compacted earth, which will support

nonweedy plant growth and is free from cracks and extrusions of refuse. This final cover shall be leveled and shaped to provide proper runoff and drainage, and to prevent erosion or poundage and meet the design performance requirements of this Title.

(f) All landfills shall be operated to control litter at the unloading area and throughout the area within the site boundary through the use of fences, other litter control devices, and regular, at least bi-weekly, pickup. Disposal site operators shall also pick up site-generated litter beyond the site boundary if such occurs.

(g) All landfills must be operated to control dust, using sprayers or similar devices as necessary.

(3) **Burning.** Except as provided by this Title, no open burning may occur at a solid waste disposal site. Infrequent burning of trees or tree branches, agricultural wastes, or land clearing debris may occur if conducted away from the working fills in an area specially designated for that purpose and in a manner to prevent the spread of fire to any other area or materials.

(4) **Access.**

(a) All landfills must be provided with an all weather access road, suitable for travel by loaded vehicles.

(b) All landfills must be fenced and access must be provided only through one control entry point.

(5) **Monitoring Programs.** Each landfill shall operate a monitoring program designed and approved at the time the landfill is first approved for operation. The plan may, depending upon the circumstances as determined by the Director, include monitoring of ground water, surface water, methane gas and air quality. In all cases, ground water monitoring shall be required unless a qualified engineer or geologist certifies, based on reliable site-specific information, that there is no potential for contamination of a drinking water source outside the landfill boundary as designated by the code or extended by the Director. Test wells for ground water monitoring, where required, shall be cased, capped, and shall be at least four inches in diameter.

(6) **Correction of Contamination.** If surface or ground water contamination is discovered, the operator of the site, if not the Department, shall immediately notify the Director of Land Use and Environment. In all cases of discovery of surface or ground water contamination, whether the operator is the Land Use and Environment Department or another, the Director shall:

(a) Within 90 days, determine the cause and extent of the contamination, and

(b) Take steps necessary to correct the cause of the contamination and eliminate, insofar as practical, the contamination itself. If contamination of a drinking water source cannot practically be eliminated in the judgment of the Director, the operator shall provide an alternative drinking water supply to any person or persons then using the contaminated source. If no person is using the groundwater, the Director may specify such other remedial steps, and may take such other enforcement action, as he deems appropriate in the circumstances.

(7) **Control of Liquids.** Bulk or noncontainerized liquids, or containers containing liquids, may not be disposed of at any landfill unless the liquids are household wastes or the containers are no larger than those commonly found in household use.

(8) **Control of Hazardous Waste.** All disposal site operators shall be trained to identify hazardous waste prohibited from disposal in any landfill. Each disposal site shall establish procedures, including periodic inspection procedures, to identify and exclude hazardous waste from the landfill.

(9) **Safety.** Landfills shall be designed and operated to insure the safety of persons depositing solid waste and landfill operation staff.

§19-7-112. Closure of Landfills.

(1) As each unit or cell of a designated landfill is filled, it shall be permanently closed covering the cell or unit with a final cover system, including at least two feet of earth which is re-vegetated with nonweedy vegetation and which is designed and placed in a manner to prevent erosion, poundage, and the infiltration of liquid through the cover and into the waste.

(2) When a landfill site is no longer able to accept waste, it shall be closed. The operator, if not the Land Use and Environment Department, shall inform the Director of its intent to close the site no sooner than six months prior to closure. Any operator, including the Department, shall prepare a closure plan which shall be submitted to the Director at the same time as the notice of intent to close is required. The Plan shall be reviewed by the Land Use and Environment Commission and approved if it contains the following components:

(a) Rodent control measures to ensure that rodents do not leave the site.

(b) Marking the site to indicate that the site is closed to further dumping and to indicate where an alternative site is located.

(c) Covering the site with two feet of earth, capable of maintaining nonweedy vegetation in a manner described in subsection (1).

(d) Access control mechanisms to ensure no additional waste is disposed at the facility.

(e) Filling, grading, and draining the site to eliminate slumping, settling, or pondage of water on the surface of the site.

(f) Maintaining the site until it has settled and no further filling, or drainage problems exist; and

(g) Revegetation and maintenance, as required, to provide adequate cover of nonweedy vegetation to prevent excessive erosion or runoff.

(h) Continued monitoring of ground and surface water contamination levels, if the Director determines necessary.

(3) If the operator of a site is other than the Land Use and Environment Department, the Land Use and Environment Commission shall require the operator to post a bond sufficient to insure continued compliance of the Plan with these requirements.

§19-7-113. Special Wastes.

(1) **Prohibited Materials.** The following materials may not be deposited in a landfill in a refuse can or in a receptacle the contents of which are to be deposited in a landfill: dead animals weighing over 15 pounds; sewage; human or animal excrement; hot ashes; infectious wastes; hospital or medical waste; hazardous wastes, except for household hazardous wastes exempt from federal regulation; radioactive wastes; explosives; containers previously containing pesticides or herbicides unless the containers have been cleaned as required to eliminate substance residue.

(2) **Hospital or Medical Waste.** Hospital, medical or other infectious waste must be incinerated at the point of generation or transferred to another medical facility for incineration. During transfer, the waste must be carried in specially marked red plastic bags bearing the words "hospital waste."

§19-7-114. Dumping Fees.

(1) The Director, subject to Land Use and Environment Commission approval, may establish or amend and thereafter may collect and enforce rates or charges for the dumping any material in a landfill operated by the Department, either directly or through contractors.

(2) Any person who operates a landfill under permit may establish rates or charges for the service performed. Such rates or charges shall be subject to review by the Land Use and Environment Commission upon petition by any person served by the permitted landfill. Upon such review, the Commission may only alter the rates charged after hearing, if it finds

that they are grossly unfair and excessive or provide the collector an unnecessarily high rate of return.

§19-7-115. **Collection Systems Practices.**

(1) **General.** No person shall collect, transfer, store or process solid waste, including hazardous waste in a manner that poses a direct or indirect threat to the public health or to the quality of the environment. Solid waste collection shall not:

- (a) cause disease;
- (b) cause air and water pollution; or
- (c) otherwise cause pollution of the environment.

(2) **Collection Periods.** Any waste collection system must provide for regular, periodic collection of waste on a schedule made well known to waste generators. Waste collection must occur at least once weekly and may occur more frequently by agreement between the collector and the waste generator.

(3) **Collection Vehicles.** Solid waste shall be collected by vehicles that are constructed to be readily cleanable and which will prevent the spillage or leakage of refuse during loading and transportation to the disposal site.

(4) **Preparation of Garbage and Refuse for Collection.**

(a) Any collection system shall provide written instructions to waste generators of the limits and requirements for preparation of garbage for collection. Minimum requirements shall include:

- (i) All garbage must be placed in garbage containers of no more than 10 gallons, with lids capable of resisting entry by rodents and other animals;
- (ii) Newspaper and magazines must be made up into bundles and tied with a strong cord or wire;
- (iii) Cardboard boxes and like materials must be flattened or tied in bundles; all commercial or government establishments shall keep waste paper and boxes separate from regular garbage;
- (iv) All aluminum must be separated and placed in a separate bag or other container;
- (v) Items prohibited by § 19-7-113, above, shall not be placed in garbage containers.

(b) No collection shall be made of:

- (i) Burning or smoldering materials;
- (ii) Stumps and tree limbs that are more than four feet in length,
- (iii) Large-volume construction and demolition debris that will not fit in approved containers;
- (iv) Bulky items such as car bodies or parts and white goods, (washers, dryers, refrigerators and the like).

(5) Charges for Collection.

(a) The Director, subject to approval of the Land Use and Environment Commission, may establish or amend and thereafter may collect and enforce rates or charges for any refuse collection system operated by the Department, either directly or through contractors.

(b) Any person who operates a collection system under permit may establish rates or charges for the services performed. Such rates or charges shall be subject to review by the Land Use and Environment Commission upon petition by any person served by the permitted collection agency. Upon such review, the Commission may alter the rates charged only, if after hearing, it finds that such rates are grossly unfair and excessive or provide the collector an unnecessarily high rate of return.

§19-7-116. Drop Box Standards.

Collection and disposal systems may include the use of drop boxes. In all cases, drop boxes shall be designed, located, constructed and operated so as to:

- (1) Be sturdy and constructed of durable, water tight, easily cleanable material;
- (2) Provide effective means to control vectors, such rodents, insects, birds and other vermin;
- (3) Be adequately screened, fenced, or otherwise arranged so as to prevent blowing of litter and provide effective means to control litter;
- (4) Be in readily accessible locations with access provided by all-weather roads and vehicular areas;
- (5) Be adequately signed to advise those using the facility of the standards for preparation and/or separation of deposited materials (which shall be the same as the requirements in § 19-7-115(4)(a)) of the materials which are prohibited from deposit (which

shall be the same as the requirements in § 19-7-115(4)(a)) and advise the public that all materials must be placed in the drop-box;

(6) Be designed, sized, and serviced as often as necessary to ensure adequate dumping capacity at all times;

(7) Include a separate location and drop-box for aluminum and any other materials which the Plan calls for recycling.

§19-7-117. Permits Required to Operate Disposal Sites and Collection Systems.

(1) The Land Use and Environment Department may operate landfills and solid waste collection systems pursuant to the standards and requirements of this Chapter. No other person may operate a landfill or collection system (except for collection of his own wastes) without first obtaining a permit.

(2) Except as specifically provided for or modified in this Chapter, the procedures set forth in Title 18, Chapter 21, shall govern the consideration and issuance of any permit under this Chapter.

§19-7-118. Permit to Operate Solid Waste Disposal Sites.

(1) Petition for Permit to Operate Solid Waste Disposal Site. If the Solid Waste Management Plan includes provisions for landfill sites not operated by the Land Use and Environment Department, any person may petition for a permit to operate a disposal site in accordance with the procedures set forth in Title 18, Chapter 21. In addition to the information required by Title 18, Chapter 21, an application for a permit to construct and operate or alter a landfill site shall include the following:

(a) A general description of the facility;

(b) A map and aerial photograph of the area to be used for the fill showing land use and, where applicable, zoning within 2,000 feet of the solid waste disposal site. The map and aerial photograph shall be of sufficient scale to show all homes, wells, water ways, topography, roads, and other objects that may be affected.

(c) A report indicating the following:

(i) The population and area to be served by the proposed site and life expectancy of the facility;

(ii) Kind, quantity and source of solid waste to be disposed at the site;

(iii) The geological formation and groundwater elevations to a depth of at least twice the height of the proposed landfill below the lowest elevation of the site. Such data will be obtained by soil boring and other appropriate means;

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

(v) Reliable data on existing ground water quality within 2,000 feet of the site;

(vi) Topography of the site and drainage patterns.

(d) A design and plan of operations for the facility, certified by a professional engineer, which identifies how each landfill location, design, performance and operating standard in this Title shall be met through design, construction, and operation of the disposal site. The design shall include, as well, one or more topographic maps at a scale of not over two hundred feet to the inch. Contour intervals shall not exceed ten feet. The maps should show proposed fill area, borrow areas, access roads, drainage areas, fencing, equipment and buildings.

(e) A plan for closure of the facility, certified by a professional engineer, explaining how each closure standard in this Title shall be met and how post-closure activities will be performed.

(f) A financial statement, estimating the cost of construction, operation and closure of the site, explaining the applicant's financial condition and the applicants' ability to fund the continued operation and closure of the site.

(2) **Issuance of Permit to Operate Solid Waste Disposal Site.** Within 180 days of submission of a complete application for a permit and in accordance with the procedures identified in Title 18, Chapter 21, the Land Use and Environment Commission shall issue or deny a permit. The Commission may issue a permit only if it finds, on the basis of information contained in the application and otherwise available to it, that the proposed landfill will comply with the standards contained in this Chapter and that the applicant has the financial and technical ability of the applicant to construct, operate, and close the landfill in a manner consistent with this Chapter. The burden of proof shall rest on the applicant to demonstrate compliance with these requirements. In issuing any permit, the Commission may design or condition the permit to accomplish the goals of this Title.

(3) **Term of Permit to Operate Solid Waste Disposal Site.** Permit terms shall be established by the Commission based on the expected useful life of the solid waste disposal site but in no case shall the permit term exceed 15 years. If the disposal site can, within the terms of this Chapter, continue to operate after the permit term, a permittee may apply for a new permit six months before the term ends. The basis and procedures for grant of an additional permit shall be the same as for the original permit.

§19-7-119. Permits Required to Operate Collection System.

(1) **Application for Permit to Operate Collection System.** If the Solid Waste Management Plan approved by the Commission allows private collection systems any person may apply to operate a solid waste collection system on part or all of the Reservation. An application for a collection system permit must include:

(a) A description of the collection territory proposed to be served, including the number of household, business, or other generators of solid waste within that territory;

(b) A list of those households, businesses, or other generators of solid waste that have already requested or agreed to be served by the applicant, and the price for service they agreed to pay;

(c) A financial description of the applicant, together with an analysis of the cost of the proposed collection service, the expected revenue from billings for the service, and expected rate of return for the activity.

(d) A description of the collection routes, timing, methods and equipment to be used and how the proposed system will comply with all the standards set forth in this Title.

(e) Designation of the disposal site proposed to be used for waste collected.

(2) **Issuance of Permit to Operate Collection System.** Within 30 days of receiving a complete permit application, the Land Use and Environment Commission shall either grant or deny a collection system permit. The Commission shall grant a permit only if it finds, on the basis of information contained in the application and otherwise available to it, that the proposed collection system will comply with the standards of this Title and that the applicant has demonstrated that the proposed system likely can sustain its operations financially. In issuing any permit, the Commission may design or condition the permit to accomplish the goals of this Title.

(3) **Term of Permit to Operate Collection System.** Permit terms shall be for not less than one nor more than three years. A collection system permit shall grant the permittee an exclusive right to collect waste within the territory or from the waste generators identified in the permit terms. No other permits shall be issued for similar territory or generators during the term of the first permit issued for that territory or those generators unless and until the permit expires or is revoked.

§19-7-120. Reusable, Recyclable or Biodegradable Containers Required.

After enactment of this Title, no beverage container may be sold or offered for sale within the historical boundaries of the Rosebud Reservation, as defined in § 19-2-101(8),

unless it is reusable, recyclable, or biodegradable. After enactment of this Title, no beverage container may be sold or offered for sale within the historical boundaries of the Rosebud Reservation, as defined in § 19-2-101(8), if the beverage container is connected to another beverage container by a device constructed of a material that is not biodegradable or photodegradable.

§19-7-121. Recyclable or Degradable Plastic Garbage Bags or Garbage Can Liners Required.

After enactment of this Title, no plastic garbage bag or plastic garbage can liner may be offered for sale within the historical boundaries of the Rosebud Reservation, as defined in § 19-2-101(8), if the bag or can liner is not recyclable, biodegradable, photodegradable or otherwise degradable.

§19-7-122. Starch-Based or Degradable Plastic Garbage Bags or Garbage Can Liners Required.

After enactment of this Title, no plastic garbage bag or plastic garbage can liner may be offered for sale within the historical boundaries of the Rosebud Reservation, as defined by § 19-2-101(8), if the bag or can liner is not constructed from starch-based plastic or is not biodegradable, photodegradable or otherwise degradable.

CHAPTER EIGHT
WELLHEAD PROTECTION CODE

§19-8-101. Findings.

The Tribal Council finds that:

- (1) The people of the Rosebud Reservation rely almost exclusively on sources of underground water for their domestic water supplies;
- (2) The Reservation community water systems currently rely on 13 major water wells to supply domestic water needs;
- (3) Further water needs may require development of additional community wells;
- (4) Without proper regulation and control, certain activities threaten to contaminate the Reservation's underground water supplies;
- (5) The Rosebud Sioux Tribe has inherent sovereign authority over activities that threaten the health and welfare of its people and the quality of the Reservation environment;
- (6) This "Wellhead Protection Chapter" is enacted to preserve the health and welfare of members of the Rosebud Sioux Tribe and other persons living on the Reservation and to protect the environment of the Reservation.

§19-8-102. Definitions.

- (1) "Aquifer" means a ground water-bearing geologic formation or formations that contain enough saturated permeable material to yield significant quantities of water to wells.
- (2) "Contaminate" means to degrade the quality of ground or well water for human consumption by the addition or contribution of substances potentially harmful to health or offensive to the senses.
- (3) "Community Wellhead Protection Area" or "CWPA" means the portion of an aquifer within the zone of capture and recharge area for a well or well field used to serve community water systems on the Rosebud Reservation designated for protection pursuant to this Title.
- (4) "Community water systems" means water wells and distribution systems that are operated by the Rosebud Water and Sewer Commission or such other community or tribal water districts or entities as may hereafter be established;
- (5) "Director" means the Director of Water Resources.

(6) "Facility" means contiguous area of land and such structures, appurtenances or improvements as have been placed thereon for a particular purpose.

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

(8) "Hazardous wastes" means any material designated pursuant to federal law and that generally exhibit the characteristics of ignitability, corrosivity, reactivity, or toxicity.

(9) "Hazardous substance" means:

(a) any substance designated as such pursuant to federal law

(10) "Operator" means any person in control or having responsibility for daily operation of any facility or activity.

(11) "Person" means any human person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency (including an agency of the Rosebud Sioux Tribe), political subdivision, public officer, owner, lessee, tenant, or any other entity whatsoever or any combination of such entity, but not the sovereign Rosebud Sioux Tribe or the Tribal Council.

(12) "Pesticide" means:

(a) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and

(b) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. The term 'pesticide' shall not include any article (1) that is a 'new animal drug' within the meaning of 21 U.S.C. § 321(w); (2) that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article; or (3) that is an animal feed within the meaning of 21 U.S.C. § 321(x) and bearing or containing an article covered by clause (1) of this subsection.

(13) "Well" means a pit or hole dug or drilled into the earth to reach an aquifer in order to supply water.

§19-8-103. Initial Designation of Community Wellhead Protection Areas.

The following land areas are hereby designated Community Wellhead Protection Areas under this Title.

(1) An area surrounding the Horse Creek Community well, located in Township 41N, Range 29W, Section 11, with a radius from the well of _____.

- (2) An area surrounding the Swift Bear Community well, located in Township 47N, Range 29W, Section 31, with a radius from the well of _____.
- (3) An area surrounding the Two Strike Community well, located in Township 37N, Range 31 W, Section 8, with a radius from the well of _____.
- (4) An area surrounding the Milk's Camp Community well, located in Township 95N, Range 69W, Section 4, with a radius from the well of _____.
- (5) An area surrounding the Rosebud Rural Water System Community well, located in Township 36 N, Range 29 W, Section 6, with a radius of the well of _____.
- (6) An area surrounding the Rosebud Rural Water System Community well, located in Township 36N, Range 29W, Section 6, with a radius from the well of _____.
- (7) An area surrounding the Rosebud Rural Water System Community well, located in Township 36N, Range 29 W, Section 20, with a radius of the well of _____.
- (8) An area surrounding the Mission Rural Water Community well, located in Township 37W, Range 28 W, Section 17, with a radius of the well of _____.

§19-8-104. Official Community Wellhead Protection Area Map.

(1) There is hereby adopted an official Rosebud Reservation Community Wellhead Protection Area Map which, together with all explanatory matter thereon, is declared to be a part of this Title.

(2) The Community Wellhead Protection Area Map shall be retained in the office of the Department of Land Use and Environment. The Director of Water Resources shall be responsible for custody, maintenance, and, as appropriate, revision of the map. The Director shall provide copies of the current map to the Bureau of Indian Affairs and to the Indian Health Service.

(3) The Community Wellhead Protection Area Map or an identical copy shall be at all times available for inspection by the public during normal business hours of the Department.

§19-8-105. Designation of Additional or Amended Community Wellhead Protection Areas.

(1) **General.** The Commission may, subsequent to passage of this Title, designate additional or enlarged CWPAs under the terms of this section.

(2) **Basis for Designation.** The Commission may designate new or amended CWPAs if it determines:

(a) current areas are inadequately sized or located to protect fully the water quality of the wells they were meant to protect;

(b) new community wells are planned to come into production or have come into production around which there is no adequate wellhead protection area;

(c) the Commission determines that an aquifer or part of aquifer contains water of such quality and quantity that it is likely to be needed, used, or useful for community water well purposes in the future and should be protected.

(3) Procedure for Designation of New or Amendment of Existing Community Wellhead Protection Area.

(a) The Commission shall make widely known to the Reservation community any proposal to designate or amend a CWPA by, at a minimum,

(i) sending notice of the proposed designation or amendment to each owner or occupant of land within the proposed area whose name can be identified with the exercise of reasonable diligence;

(ii) sending notice of the proposed designation or amendment to the Bureau of Indian Affairs and the Indian Health Service;

(iii) sending notice of its proposed designation or amendment to each member of the Tribal Council; and

(iv) publishing a notice of its proposed designation at least twice in a newspaper of general circulation on the Reservation.

(b) The notice shall describe the land area encompassed in the proposed addition or amendment and the restrictions upon activities in CWPAs required by this Title. Not sooner than 10 days nor later than 30 days after the notices required by subsection (a) above are last published, the Commission shall convene a public meeting in the community nearest the proposed CWPA to explain the proposal and to take comments. The comments shall be taken and the meeting otherwise conducted in accordance with the informal hearing procedures set forth in Title 18, Chapter 21. The public shall be permitted to file written comments with the Commission on the proposal up to 14 days after the public meeting is held.

(4) Announcement of Commission's Designations.

(a) If, after the close of the public comment period, the Commission determines to proceed with a new or amended CWPA designation, it shall announce that decision to the Tribal Council in a "Wellhead Protection Area Designation Report."

(b) The Report shall describe the area to be protected, provide an accurate map of its extent, and explain the purpose of and grounds for the designation, which shall include an analysis of the quality, quantity and use of the water to be protected, the threats or potential threats to its continued quality, and the effects of designation of the area.

(c) The Commission shall make its final designation widely known to the Reservation community by, at a minimum,

(i) sending a notice of the final designation to each owner or occupant of land within the area whose names can be identified with reasonable diligence,

(ii) posting a notice of the final designation at the Tribal Administration Building, and

(iii) publishing a notice of the final designation at least once in a newspaper of general circulation on the Reservation.

(5) **Effective Date of Final Designations or Amendments to Community Wellhead Protection Areas.** The Commission's designation of any additional or amended CWPA shall be final and become part of this Title within 30 days of the date of last publication of the final designation.

(6) **Amendment of Community Wellhead Protection Area Map.** Upon final designation of an additional or amended CWPA by the Commission, the Director shall amend the official Community Wellhead Protection Area Map to reflect the additional or amended designation.

(7) **Enforceability of Additional or Amended Community Wellhead Protection Areas.** Unless specified otherwise by the Commission, a new or enlarged CWPA shall become binding and enforceable only upon its addition to the official Community Wellhead Protection Area Map.

§19-8-106. **Community Wellhead Protection Area Regulation.**

(1) **Activities Prohibited in Community Wellhead Protection Areas.** With the exception of activities defined as *de minimis* pursuant to subsection (2) of this section or for which the Commission has issued a general permit, no person may engage in the following activities or construct or operate the following facilities in any CWPA: solid waste disposal sites, waste piles, hazardous waste treatment or storage, septic systems, waste water lagoons or other waste water treatment facilities, petroleum products storage or disposal or petroleum product pipelines, use or storage of hazardous materials, excluding materials sold in small containers for household use, the raising or keeping of farm animals (not including household pets), the use or application of pesticides or crop fertilizer.

(2) *De Minimis* Activities or Facilities Not Prohibited. *De minimis* activities or facilities not prohibited by this Title include:

(a) fuel tanks attached to private or commercial vehicles and used directly in the propulsion of that vehicle;

(b) use or storage, but not the disposal or leakage, of hazardous waste or hazardous materials when the materials are sold or stored in small containers for household use;

(c) retail sales establishments that store or handle petroleum products or hazardous materials for resale in their original unopened containers of 5 gallons or 40 pounds or less. Such establishments must apply for and obtain a CWPA permit prior to engaging in such sales.

§19-8-107. General Permits.

The Commission may, by regulations issued pursuant to § 19-8-105(3), grant a general permit for actions or categories of actions in one or more CWPA. If the Commission issues a general permit, no person need thereafter seek a specific permit to conduct the generally permitted activity within the CWPA.

§19-8-108. Specific Permits.

(1) Unless an activity is defined as *de minimis* under § 19-8-106(2), above, or for which the Commission has issued a general permit under § 19-8-107, above, any person wishing to conduct activities or build or operate facilities in a CWPA shall file a petition seeking a specific permit with the Director. In addition to the requirements set forth in Title 18, Chapter 21, the petition shall include a description of the activity or facility proposed, its location, the distance from any water wells, and the actions proposed by the applicant to prevent contamination or damage to the ground water.

(2) Within five days of filing his petition with the Director, the petitioner must notify, either by United States mail, first-class postage prepaid or by personal service, all persons living within the CWPA or owning land within the CWPA whose names can be determined by reasonable diligence of the application and the nature of the activity or facility.

(3) Upon receipt of a complete petition for a specific permit, the Commission shall determine whether to grant the requested permit in accordance with the informal hearing procedures set forth in Title 18, Chapter 21. The Commission shall issue such a permit only if it finds, by clear and convincing evidence, that the activity will not contaminate the ground water within the CWPA. The burden of proof on this issue rests with the petitioner.

(4) If the Commission denies the permit, the person shall cease the activity or remove or replace the facility within 30 days of the date of the Commission's denial or 365 days after the designation of the CWPA, whichever is later.

§19-8-109. Nonconforming Activities.

(1) **Prohibited Activities or Facilities Shall Cease Within One Year of Designation of a Community Wellhead Protection Area.** Within one year of the designation of a CWPA, any person engaged in an activity or owning or operating a facility prohibited by this Title shall cease the activity or remove or replace the facility. If the facility is a private septic system for one home or business, the deadline for compliance shall be two years or whenever a sewer collection system is made accessible to the facility, whichever is longer.

(2) **Permits to be Sought Within One Year of Designation of a Community Wellhead Protection Area.** Within one year of the designation of a CWPA, any person engaged in an activity or owning or operating a facility requiring a permit under this Title shall apply for a permit.

CHAPTER NINE
AIR QUALITY CODE
(RESERVED)

CHAPTER TEN ENFORCEMENT

§19-10-101. Action by Director for Immediate Restraint of Pollution.

As an alternative to issuing an emergency order pursuant to Title 18, Chapter 21, upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health or welfare of members of the Reservation community, the Director may bring suit on behalf of the Tribe in the Tribal Court to restrain immediately any person from causing or contributing to such pollution or to take such other action as may be necessary.

§19-10-102. Action by Land Use and Environment Commission to Enjoin Violations.

The Land Use and Environment Commission may bring an action in Tribal Court, without furnishing bond, for an injunction against the continuation of any alleged violation which has been the basis for suspension or revocation of a permit by the Commission against any person who fails to comply with an emergency order issued by the Director or any final order of the Commission.

§19-10-103. Abatement Actions by Director.

If five days after the date set for compliance by a Notice of Violation passes without action on the part of the party required by the notice to correct illegal conditions, the Director may take action to correct the conditions and bring them into compliance with the requirements of this Title. The Director may thereafter serve by (i) personal service or (ii) United States mail, first-class postage prepaid, upon the party named in the Notice of Violation a request for payment of the cost of the corrective action, plus up to 20 percent. The notice shall establish a deadline for payment in the same manner as provided for civil penalties. If payment is not made within the scheduled time, the Director may seek payment through an action in Tribal Court. In any successful action to recover payment, the court shall additionally assess court costs against the delinquent party and may levy against the party's assets to collect any judgment entered.

§19-10-104. Criminal Penalty

Anyone violating or failing to comply with the provisions of this Title shall, upon conviction in Tribal Court, be punished by a fine of not more than \$250.00 or imprisonment in the tribal jail for not more than 30 days or both. However, in no event shall such penalty or imprisonment exceed the maximum established by federal law. In lieu of fine or imprisonment, a person found guilty of violating this Title may be required by the Tribal Court to provide not more than 30 days of community service assisting in the collection and

disposal of litter or solid waste. Each day of violation shall be considered a separate violation of this Title.

§19-10-105. Civil Penalty.

(1) In addition to any other sanction or remedy available under this Title, the Land Use and Environment Commission may assess against any person, after a hearing pursuant to §19-5-106 or waiver thereof a civil penalty for the violation. The penalty shall not exceed \$50 for each day the violation existed prior to the service of a Notice of Violation and \$75 per day for each day thereafter. When the violation occurs in connection with a venture entered into for profit, the respective penalty limits shall be \$100 and \$150 per day. If the Director himself remedies the conditions causing the violation after the deadline for corrective action contained in the Notice of Violation has passed and the violator has not corrected the conditions, the civil penalty may also include the actual cost of the remedy to the Director plus 20 percent.

(2) The Director shall serve the Notice of Civil Penalty by (i) personal service or (ii) United States mail, first-class postage prepaid, addressed to the last known address of the violator. The notice shall explain the nature of the violation and the basis of the amount of civil penalty assessed and provide a time for payment. The Director may, in his discretion, require payment be made either in one lump sum within no less than 30 days from the date of service of the notice or may be paid in installments over not more than 12 months.

(3) If the violator fails to make payment within the specified time, or, if an installment payment program is directed, the violator fails to meet any of the scheduled payments, the Director may commence an action to recover the unpaid penalty amounts in Tribal Court.

§19-10-106. Other Actions.

The Director may also seek other relief from the Tribal Court to enjoin any action or practices or abate any condition that constitutes or will constitute a violation of this Title.