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SOLID WASTE MANAGEMENT
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TITLE 40
SOLID AND HAZARDOUS WASTE CODE

CHAPTER 40.01
General

- 40.0101** Short title.
This Act shall be known as the Turtle Mountain Band of Chippewa Solid and Hazardous Waste Management Act (SHWMA).
- 40.0102** Purpose.
To provide for the establishment of a comprehensive solid and hazardous waste collection and disposal system to protect the health, safety, and well being of residents within the jurisdiction of the Turtle Mountain Band of Chippewa, (Tribe) to regulate the storage, collection, disposal, treatment, and management of solid and hazardous waste, and the remediation of any releases of a hazardous substance pollutant or contaminant to protect the human health and environment of the Turtle Mountain Indian Reservation.
- 40.0103** Findings.
The Turtle Mountain Tribal Council finds and declares as follows: (a) the governing body of the Tribe, known as the Turtle Mountain Tribal Council, (Tribal Council) has the authority to pass resolutions and Acts to protect the general welfare of the Reservation residents and the Reservation environment; (b) the increasing volume and variety of solid and hazardous waste being generated on the reservation and often inadequate existing methods of managing solid waste and hazardous waste are creating conditions that threaten the public health, safety and well-being by contributing to land, air and water pollution; (c) the enactment of a Solid Waste Management Act by the Tribe is in the best interest of ensuring, promoting, and protecting the character of the Reservation and is consistent with previous policy and Acts enacted for the protection of the Reservation natural environment.
- 40.0104** Effective date.
This Act shall be in full force and effect on the date of formal approval and adoption by the Turtle Mountain Tribal Council and shall remain in effect until repealed or amended by the Tribal Council.
- 40.0105** Authority.
This Act is adopted pursuant to authority vested in the Tribal Council under the Constitution and By-laws of the Turtle Mountain Band of Chippewa Indians, Article IX (c) to manage lands or assets under Tribal Jurisdiction and Article (a) to regulate and license activities on the Reservation The Tribe shall have full authority over enforcement of this Act and may delegate authority to Tribal Solid Waste Management Program - (SWMP) to implement provisions of this Act and to the Tribal Environmental Protection Agency Compliance Officer to enforce provisions of this Act. No part of this Act constitutes a waiver of the sovereign immunity of the Tribe.
- 40.0106** Scope.
This Act shall apply to all persons and households, commercial businesses, schools, governmental facilities, and all other facilities regarding the storage, collection, transfer, recycling, disposal, and treatment of solid waste within the Reservation.
- 40.0107** Jurisdiction.
The Tribal Court of the Turtle Mountain Band of Chippewa Indians has civil jurisdiction under this Act over the conduct of Tribal members and all other persons on all lands within the Reservation and on tribal lands and Tribal

Indian Service Areas outside of the Reservation boundaries to maintain the environment, natural resources, public health, safety, welfare, political integrity and economic well-being of the Tribe. This shall include:

1. Any person or company that has entered into a consensual agreement with the tribe or its members; or
2. Any non-member where the conduct of the non-member threatens or has some direct effect on the political integrity, economic security, health or welfare of the Tribe.

40.0108 **Repeal.**

Any Act, provision of law, rule or regulation of the Tribe in conflict with this Act, is hereby superseded.

40.0109 **Severability.**

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

40.0110 **Federal Law and Regulations.**

Where there is a gap in the Tribal law, the federal law and regulations shall be incorporated.

40.0111 **Citation or Use of Language from Other Laws.**

Citation to statutory or administrative language, definitions, procedure, or provisions of Federal law in this Act does not establish jurisdiction, which otherwise does not exist, in such Federal government. Nothing in this Act may be deemed a waiver of the Turtle Mountain Band of Chippewa Indians sovereign immunity, and if any Court of competent jurisdiction construes this provision as conflicting with any other provision in this Act, then this express retention of sovereign immunity shall control and prevail.

CHAPTER 40.02
Definitions

40.0201 **Definitions.**

As used in this Act and any regulations, the words and terms below shall have the following meanings:

1. "AGRICULTURAL PROCESSING OPERATION" means a facility that processes crops, livestock, or other agricultural products in preparation for wholesale or retail sale to the public such as meat packing, the milling of grain, the selling of livestock by licensed livestock auction facilities, or other similar activities.
2. "AGRICULTURAL WASTE" means solid waste derived from the production and processing of crops and livestock such as manure, spoiled grain, grain screenings, undigested rumen material, livestock carcasses, fertilizer, and fertilizer containers, but does not include pesticide waste or pesticide containers.
3. "APPROVED CONTAINER" Any receptacle intended for the temporary storage of waste, that is durable, leakproof, nonabsorbent, water tight, corrosion resistant, rodent and insect resistant, easily cleanable, has close-fitting covers and adequate handles to facilitate handling, and is in good condition. Containers are further limited to the following:
 - a. "INDIVIDUAL HOUSEHOLD CONTAINERS" must be at least 95 gallon capacity.
 - b. "BUSINESS AND DROP BOX CONTAINERS" must be compatible with the collection vehicle used by the Solid Waste Program or its agents or contractors.
4. "APPROVED SITE" means a solid waste management, storage, transfer or disposal site or facility which has met all the requirements of this Act

- and any other applicable federal or Tribal regulations and is approved by the Tribal Council as the place for such management or disposal of solid waste.
5. "AQUIFER" means a geological formation , group of formations, or portion of formation capable of yielding significant quantities of ground water to wells or springs.
 6. "BULKY WASTES" means large bulky items of refuse, such as car bodies, appliances, furniture, trees and stumps and other oversized wastes not suitable for disposal in waste collection containers.
 7. "CARCASS" Any dead animal or portion of any dead animal.
 8. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S. C. 9601), as amended by the Superfund Amendments and Reauthorization Act of 1986 and the Small Business Liability Relief and Brownfields Revitalization Act of 2002 .
 9. "CERTIFICATION" means a written statement of professional opinion based upon knowledge and belief.
 10. "CFR" means the U.S. Code of Federal Regulations.
 11. "CLOSED UNIT" means a landfill or surface impoundment or a portion thereof that has received solid waste in the past for which closure is complete.
 12. "CLOSURE" The termination of the receiving, handling, recycling, treatment, or disposal of solid waste at an approved site, and includes all operations necessary to close and reclaim a solid waste management unit or facility and prepare the facility for post-closure maintenance. Closure actions may include, but are not limited to, sloping filled areas to provide adequate drainage, applying final cover, providing erosion control measures, grading and seeding, installing monitoring devices, constructing surface water control structures, installing gas control systems, and measures necessary to secure the site.
 13. "COLLECTION" means the gathering of solid or hazardous waste at the place of generation by an approved collection agent, and transfer to a transfer station or the place of final utilization, reuse or disposal.
 14. "COMMERCIAL FACILITY" Shall mean, any business, stores, offices, restaurants, warehouses, and other non-manufacturing activities no matter what the ownership structure, which operates to package, store, distribute, or market any product or service on the Reservation, exclusive of household waste, industrial waste, and special waste.
 15. "COMMERCIAL WASTE" means solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, no matter what the ownership structure, exclusive of household waste, industrial waste, and special waste.
 16. "COMPLIANCE BOUNDARY" means the vertical planar surface that extends downward into the uppermost aquifer and that circumscribes the waste management units or remediation site at which water quality standards or maximum concentration limits apply.
 17. "COMPLIANCE OFFICER" means the Tribal Enforcement Agent responsible for the compliance and enforcement of this Act that is located in the Tribal EPA Office.
 18. "COMPOSTING" means the controlled biological decomposition of organic solid waste under aerobic conditions.
 19. "CONSTRUCTION AND DEMOLITION WASTE" means refuse, materials and rubble associated with the construction, remodeling, repair or dismantling of such objects as roads, buildings, or similar structures.
 20. "CONTROLLED SUBSTANCE" means any imminently hazardous chemical substance or mixture with respect to which the U. S. EPA Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

21. "DETACHABLE CONTAINER" means a reusable container for the collection, storage, or transportation of solid waste that is mechanically loaded or handled (for example, "dumpsters" and "roll offs").
22. "DISCHARGE" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.
23. "DISPOSAL" means the discharge, abandonment, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any soil, air or water, intentional or otherwise.
24. "DISPOSAL SITE" means a site, location, tract of land, landfill site, or premises used or intended to be used for partial and or total solid waste disposal.
25. "EMERGENCY RESPONSE" means immediate containment and/or removal of oil or hazardous substances, pollutants or contaminants from the land, air or water or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare of the Tribe (including, but not limited to, fish, shellfish, wildlife, tribal, public and private property) or to the environment.
26. "ENVIRONMENTAL DIRECTOR" means the TM-EPA Director of the Turtle Mountain Tribe Environmental Protection Agency (TMT EPA).
27. "FACILITY" means all contiguous land and structures, other appurtenances, and improvements on land which include one or more solid waste management units, such as a transfer station, solid waste storage building, a solid waste processing system, a resource recovery system, an incinerator, a surface impoundment, a surface waste pile, a land treatment area, or a landfill. A facility may or may not be used solely for solid waste management.
28. "FINAL COVER" means any combination of compacted or uncompacted earthen material, synthetic material, and suitable plant growth material which, after closure, will be permanently exposed to the weather and which is spread on the top and side slopes of a landfill or facility.
29. "FLOODPLAIN" means the lowland and relatively flat areas adjoining inland waters that are inundated by a one-hundred-year flood or below an elevation designated by the Tribe.
30. "FRANCHISED SERVICE" means any solid waste collection service permitted under this Act, operating within Tribal jurisdiction and with Tribal approval.
31. "FREE MOISTURE OR LIQUID" Shall mean the liquid which separates from the solid portion of a solid waste under ambient pressure and normal, above freezing temperature. The U. S. Environmental Protection Agency paint filter liquids test method or visual evidence must be used to determine if a waste contains free liquid.
32. "GARBAGE" means putrescible material including, but not limited to, rejected animal, fruit and vegetable wastes resulting from the use, handling, preparation, cooking and consumption of food or storing of meat, fish, fowl, fruit or vegetables, including wastes from markets, storage facilities, and processing plants.
33. "GROUNDWATER" means water occurring in the zone of saturation in an aquifer below the land surface in a geologic unit in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure.
34. "HAZARDOUS WASTES" Shall mean solid waste or combination of solid wastes which, because of its quantity, concentration or physical, chemical or infectious characteristics may:
 - a. Pose a substantial present or future hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise mismanaged; or

- b. Meet the specifications, description or listing as a hazardous waste in 40 CFR Part 261 pursuant to 3001 of the Solid Waste Disposal Act (U.S.C. 6901 et seq.)
35. "HAZARDOUS SUBSTANCE" means: Any substance designated pursuant to section 311(b)(2)(A) of the CWA; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); any toxic pollutant listed under section 307(a) of the CWA; any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. 7521 et seq.); and any imminently hazardous chemical substance or mixture with respect to which the U. S. EPA Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).
36. "HOUSEHOLD WASTE" means solid waste, such as trash and garbage, normally derived from households, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas.
37. "INCINERATION" Means to reduce to ashes through combustion using a containment or enclosed device which provides for control of combustion parameters.
38. "INCINERATOR" means any enclosed device that:
- Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or
 - Meets the definition of infrared incinerator or plasma arc incinerator.
39. "INDUSTRIAL WASTE" Such waste may include, but is not limited to, residues or spills of any industrial or manufacturing process and waste resulting from the following: fertilizer/agricultural chemicals; inorganic chemicals; leather and leather products; organic chemicals; plastics and resins manufacturing; plastic, resin, fiberglass, or carbon-fiber based products; textile, or textile product manufacturing; transportation equipment; petroleum refining; and the combustion of municipal waste or regulated infectious waste.
40. "INERT WASTE" means non-putrescible solid waste which will not generally contaminate water or generate a contaminated leachate. Inert waste does not serve as food for vectors. Inert waste includes, but is not limited to: construction and demolition material such as metal, wood, bricks, masonry and cement concrete; asphalt concrete; and tree branches.
41. "INTEGRATED SOLID WASTE MANAGEMENT PLAN (ISWMP)" A document prepared by the Solid Waste Management Program and approved by the Tribal Council which defines the objectives, goals, procedures, responsibilities and future management of the Solid Waste Management Program.
42. "INSTITUTIONAL CONTROLS" means long-term restrictions on the use of a site or property established by the Tribal Council and/or the appropriate responsible governmental entity or entities due to existing levels of hazardous substances, pollutants or contaminants in soils, water or groundwater above background.
43. "JUNK" means materials which will not be utilized if not collected and processed for reuse or recycling, including but not limited to mean lead scrap, copper, brass, iron, steel, rope, wire, glass, rags, paper, trash, rubber, debris, demolition waste, abandoned mobile homes or trailers, dismantled or wrecked vehicles, untaxed, untitled or unlicensed vehicles or parts thereof; and other old scrap ferrous or nonferrous materials.
44. "LANDFILL" shall mean an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land treatment unit, surface impoundment, injection well, or waste pile.

45. "LAND TREATMENT" means the controlled application of solid waste, excluding application of animal manure, into the surface soil to alter the physical, chemical, and biological properties of the waste.
46. "LATERAL EXPANSION" means a horizontal extension of the waste boundaries of an existing landfill disposal unit.
47. "LEACHATE" means liquid that has passed through waste or emanating from land disposal cell or solid waste and contains soluble, dissolved, suspended, miscible materials and/or microbial contaminants from the solid waste.
48. "LIQUID" Any material that when put into an ordinary paint filter, some part of which will pass through the filter.
49. "LITTER" means uncontained solid waste that is scattered intentionally or in a careless manner.
50. "LITTERING" means the improper disposal, depositing, release, leaking or placing of any solid waste or junk by any person, acting on his own or on behalf of a firm, corporation governmental subdivision or agency in any location, other than an approved solid waste collection, storage, treatment or disposal container or area within the boundaries of the Turtle Mountain Reservation.
51. "MINE-SCARRED LANDS" are defined as lands, associated waters, and surrounding watersheds where extraction, beneficiation, or processing of ores and minerals (including coal) has occurred.
52. "MOBILE HOME OR TRAILER" means a portable habitable structure that was originally fitted with wheels to facilitate movement or transportation on public roads. Such wheels may or may not still be present on the structure.
53. "NUISANCE" means any act or condition created by a person(s) which results in an inconvenience to or affects the health of the public.
54. "OPEN BURNING" means the burning of solid waste in an open area, field, pile, or in any other uncontrolled manner.
55. "OPEN DUMP" means any disposal site that is not in full compliance with this Act and 40 CFR Part 258.
56. "OPERATOR" means the person responsible for the overall operation of a facility or part of a facility.
57. "OWNER" means the person who owns a facility or part of a facility.
58. "PERSON" means any individual, firm, association, partnership, political subdivision, government agency, municipality or other governmental subdivision, or governing or managing body of any municipality, governmental subdivision or public agency, industry, public or private corporation, trustee, receiver, agent, assignee or any other legal entity whatsoever.
59. "PESTICIDE" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant.
60. "PILE" means any non-containerized accumulation of solid, non-flowing hazardous waste that is used for treatment or storage and that is not a containment building.
61. "POLLUTANT OR CONTAMINANT" shall include, but not be limited to:
 - a. Any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term pollutant or contaminant shall also include a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) and petroleum or petroleum product.

- b. Pollutant or contaminant also means any pollutant or contaminant that may present an imminent and substantial danger to public health or welfare of the Tribe or any person within the exterior boundaries of the Turtle Mountain Reservation.
62. "POLLUTION" MEANS:
- a. the condition caused by the presence in or on soil, air, or water of any solid waste, hazardous waste, or substance derived there from in such quantity, of such nature and duration, or under such condition that the quality, appearance or usefulness of the soil, air, or water is significantly degraded or adversely altered; or
 - b. contamination of the environment to a measurable degree and adverse nature, including but not limited to hazardous substances pollutants or contaminants (as defined in Section 101(14) and (33) of CERCLA, 42 U.S.C. 9601); hazardous waste (as defined in the Solid Waste Disposal Act, 42 U.S.C. 6901 and 40 CFR Part 261), a controlled substance (as defined in Section 102 of the Controlled Substances Act - 21 U.S.C. 802); petroleum or petroleum byproducts or other toxic organic waste or toxic chemicals.
63. "Post-closure period" means the period of time following closure of a solid waste management unit during which the owner or operator must perform post-closure activities.
64. "Premises" means a tract or parcel of land with or without habitable buildings.
65. "Putrescible" means organic matter that is capable of being decomposed by micro-organisms and that can result in the formation of foul smelling products.
66. "Public Facility" shall mean any facility used for public purposes such as schools, churches, gyms, activity and recreational facilities, offices, etc., generally used from time to time by the public.
67. "RCRA" means the Resource Conservation and Recovery Act of 1976, an amendment to the Solid Waste Disposal Act, 42 U.S.C. section 6901 et seq.
68. "RECYCLABLE MATERIAL" means a solid waste material that has been segregated for recycling or converted into a raw material, substitute for a raw material, or a commodity.
69. "RECYCLE OR REUSE PROCESSING" means an operation designed to separate, shred, compress, or otherwise modify a recyclable material to facilitate the transport or resource recovery of the material.
70. "RECYCLED AGRICULTURAL MATERIAL" means agricultural waste generated by a farming operation or agricultural processing operation that is recycled or applied to soils as a nutrient or as a fertilizer at appropriate agronomic rates, or that is left in place on soils during harvesting, grazing or other similar agricultural activities. Recycled agricultural materials also include:
- a. Material, including manure, generated by any concentrated or confined animal feeding that is stored in a feedlot or waste storage structure, provided that the material is stored in a manner that is not likely to pollute the waters of the Tribe, and recycled or applied to soils as nutrients or fertilizers; or
 - b. Material, including manure, generated by any agricultural processing operation that is stored in a manner that is not likely to pollute the waters of the Tribe, and recycled or applied to soils as nutrients or fertilizers. Recycled agricultural material does not include agricultural waste that is discarded as garbage, refuse, or other solid waste.
71. "RECYCLING" means collecting, sorting, or recovering material that would otherwise be solid waste and performing all or part of a method or technique, including processing, to create a recyclable material.
72. "REFUSE" See Solid Waste.

73. "RELEASE" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant). Release also means threat of release. The normal application of fertilizer is excluded.
74. "REMIEDIATION WASTE" means all solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing a site remediation or response.
75. "REMEDY OR REMEDIAL ACTION" means those actions consistent with the permanent remedy taken in the event of a release or threatened release of a hazardous substance, pollutant or contaminant into the environment, to prevent or minimize the release so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to:
- a. Such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment and, where appropriate, post-removal site control activities; and
 - b. Off-site transport and off-site storage, treatment, destruction, or secure disposition of hazardous substances, pollutants or contaminants and associated contaminated materials.
76. "RESERVATION" includes all land within the boundaries of the Turtle Mountain Reservation and any trust land within the Tribe's service area.
77. "RESPONSIBLE AUTHORITY" The Tribal Solid Waste Program, Solid Waste Team, Public Utility or the compliance officer, as defined and with authorities and responsibilities delineated in this Act.
78. "RUBBISH" Non-putrescible solid wastes, including ashes, consisting of both combustible and non combustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, tires, or litter of any kind.
79. "RUNOFF" means any snowmelt, rainwater, leachate, or other liquid that drains from any part of a facility over another part of the facility or over land adjoining the facility.
80. "RUN-ON" means any snowmelt, rainwater, or other liquid that drains from land adjoining a facility onto any part of the facility or that drains from one part of the facility onto another part of the facility.
81. "SANITARY LANDFILL" means a tribally approved, permitted, and 40 CFR Part 258 compliant, land disposal facility at which solid waste is disposed.
82. "SCAVENGING" means the uncontrolled and unsafe removal of solid waste materials from containers, vehicles, or any approved solid waste management facility or disposal site.
83. "SLUDGE" shall mean any solid, semi-solid or liquid waste consisting of a mixture of solids and water, oils, or other liquids generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.
84. "SOLID WASTE" shall mean any garbage, refuse, rubbish, sludge, ashes, incinerator residue, abandoned automobiles or parts thereof, street sweepings, demolition and construction wastes and discarded commodities, other than recyclable material that has been segregated for recycling, including solid, liquid, semi-solid or contained gaseous material

resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act.

85. "SOLID WASTE DIRECTOR" shall mean the TM-EPA Director of the Tribal Solid Waste Management Program.
86. "SOLID WASTE MANAGEMENT PROGRAM (SWMP)" means the designated authority of the Tribe, which is authorized to implement designated provisions of this Act.
87. "SOLID WASTE MANAGEMENT FACILITY" means a commercial, government, institutional or tribal facility which is authorized to accumulate, store, treat, transfer or otherwise manage solid waste other than in approved solid waste collection containers or boxes.
88. "SOLID WASTE MANAGEMENT TEAM (SWMT)" A six (6) member team appointed and authorized by the Tribal Council to implement the goals and objectives of the ISWMP and other activities designated by this Act.
89. "SOLID WASTE VEHICLE" A solid waste commercial compactor or other conveyance that is easily cleanable and capable of transporting solid waste without spillage and/or littering.
90. "SOURCE CONTROL" means the construction or installation and start-up of those actions necessary to prevent the continued release of hazardous substances or pollutants or contaminants (primarily from a source on top of or within the ground, or in buildings or other structures) into the environment.
91. "SPECIAL WASTE" means solid waste that is not a Hazardous Waste as defined herein and is
 - a. solid waste that causes corrosion or decay or otherwise reduces or impairs the integrity of containment structures or storage containers;
 - b. solid waste that, if mixed or commingled with other solid waste, produces violent reaction, heat, pressure, fire or explosion, toxic by-products, reaction products, or otherwise poses a threat to the health and safety of solid waste workers, handlers and/or transporters, that require a higher level of containment, is a hazardous material, or impairs the integrity of containment features;
 - c. a solid waste that otherwise requires specific storage, management, transportation or disposal requirements to protect public health or the environment; or (4) a solid waste that is prohibited from disposal at available solid waste disposal facilities. Such a waste can be designated by the Tribal EPA Director or the Solid Waste Director as a Special Waste and may require special storage, management, transportation or handling under this Act.
92. "STORAGE" means the confining, containing, holding or stockpiling of solid waste for a limited period of time prior to collection, treatment, transportation, utilization, processing, recovery or final disposal.
93. "SURFACE IMPOUNDMENT" means a human-made excavation, diked area, or natural topographic depression designed to hold an accumulation of solid waste which is liquid, liquid bearing, or sludge for containment, treatment, or disposal. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.
94. "TAPA" means Turtle Mountain Tribal Administrative Procedures Act.
95. "TANK" means a stationary device, designed to contain an accumulation of waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, or plastic) which provide structural support.
96. "TRANSFER STATION" means a temporary holding facility for solid waste for the purpose of interim collection and transfer to a landfill or other facility.

97. "TRANSPORTER" means any person, contractor, or facility operator who transports solid waste to solid waste facilities on or off the Reservation.
98. "TREATMENT" shall mean any method, technique, or process including neutralization designed to change the physical, chemical or biological character or composition of a solid or hazardous waste or leachate so as to neutralize or render such waste or leachate amendable for safe transport, amendable for safe recovery, amendable for safe storage or disposal or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it non-hazardous. The term does not include resource recovery.
99. "TRIBAL EPA DIRECTOR" means the Turtle Mountain Tribe Environmental Protection Agency Director (TM-EPA Director).
100. "TRIBAL RESPONSE PROGRAM" means the Tribal EPA program responsible for the investigation and remediation of a release, or threat of release, of a hazardous substance, pollutant or contaminant, including controlled substances, petroleum products and mining materials in Chapter 40.18 of this Act, in coordination with other Tribal programs and as provided for under Section 128(a) of 42 U.S. Code 9601(CERCLA).
101. "TRIBE" means the Turtle Mountain Band of Chippewa, including any department or agency thereof, or any business entity owned and operated by the Tribe.
102. "USED OIL" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.
103. "WASTE PILE" means any non-containerized accumulation of non-flowing solid waste.

CHAPTER 40.03
Resource Recovery and Reuse Program

40.0301 **Policy and programs for resource recovery and reuse.**

Tribal policy is to encourage resource recovery and reuse. The Solid Waste Director will work with the Tribal Infrastructure Action Team, the Tribal Department of Public Works, the Tribal EPA and other tribal entities to create an effective resource recovery system to conserve our resources and protect the quality of life at Turtle Mountain Reservation. The Resource Recovery System shall be tailored to the needs of the Turtle Mountain Community.

1. The Resource Recovery System will specifically address:
 - a. Effective methods to reuse, recycle, and reduce solid waste;
 - b. The extent to which revenue can be generated through recovery or reuse of recycled materials;
 - c. The removal of disabled vehicles from the Reservation;
 - d. The impact of improved solid waste practices on water and air quality;
 - e. The creation of sustainable employment opportunities for Tribal members;
 - f. The roles of existing and/or new organizations in implementing a Resource Recovery System.
2. The Solid Waste Director may seek grants or other sources of funding to support such efforts, and may cause to be undertaken analyses and studies regarding the feasibility of resource recovery and reuse. Such a program may be implemented to the extent that such recovery and reuse is technologically and economically feasible and may include private sector or federal government entities participation in this effort.

CHAPTER 40.04

Responsibilities of Property Owners and Residents

40.0401 Responsibilities.

The owner, agent, or occupant of every dwelling, residence, premises or business establishment on the Turtle Mountain Reservation shall be responsible for the sanitary condition of said dwelling, residence, premises, or business establishment. No person shall place, deposit, or allow to be placed or deposited on his premises or on any public street, road or alley, streams, springs, or bodies of surface or ground water, any refuse or other objectionable waste, except in a manner described in this Act.

1. The owner, agent, or occupant of any dwelling, residence, premises, or business establishment, shall be responsible for the storage and stockpiling of all refuse accumulated for proper collection and disposal.
2. It is the responsibility of each owner or occupant of every dwelling, residence, premises or business establishment, or agency to properly store hazardous wastes and to locate an approved certified hazardous waste site which accepts such waste and arrange for its disposal.
3. All dangerous materials and substances shall be rendered harmless prior to collection and disposal as solid waste or refuse.

CHAPTER 40.05

Solid Waste Programs: Duties and Responsibilities

40.0501 The Solid Waste Management Team (SWMT).

1. Composition.
The SWMT is a six (6) member team appointed and authorized by the Tribal Council. The team shall be composed of one (1) representative from the Indian Health Service Office of Environmental Health, one (1) representative from Turtle Mountain Community College, one (1) representative from the Bureau of Indian Affairs, one (1) representative from the Tribal Environmental Protection Agency, one (1) representative from the public at-large and one (1) non-voting representative acting as liaison with the Tribal Council. Three (3) voting members represent a quorum. The Solid Waste Director shall chair the meetings of the SWMT.
2. Responsibility.
The SWMT shall:
 - a. develop an updated Integrated Solid Waste Management Plan (ISWMP) for the Tribe;
 - b. implement the goals and objectives of the ISWMP;
 - c. seek grants or other sources of funding to support such efforts, and may cause to be undertaken analyses and studies regarding the feasibility of the ISWMP goals and objectives, to include resource recovery and reuse;
 - d. review and recommend for selection and development an appropriate site(s) to the Tribal Council for the management and final disposal of construction and demolition wastes; and
 - e. report annually to the Tribal Council on the progress of the implementation of the ISWMP and recommend any revisions needed in the ISWMP.

40.0502 The Solid Waste Director.

The Solid Waste Director of the Tribal Solid Waste Management Program is hereby designated to:

1. Provide, or cause the provision of, adequate solid waste handling services, including but not limited to collection, transportation, processing, and transfer within the Reservation;
2. Provide, or cause the provision of, off-Reservation disposal of solid waste under a plan approved by the Tribal Council;

3. Prepare and implement Tribal policies for solid waste management, reuse and recycling;
4. Serve as Chairman of the SWMT to prepare and implement the Integrated Solid Waste Management Plan (ISWMP) and amendments;
5. Conduct studies and investigations regarding new or improved methods of solid waste handling, treatment, and disposal and prepare and implement a solid waste management information storage and retrieval system coordinated with other information systems;
6. Issue solid waste management, collection and transportation permits as designated under this Act;
7. Conducting community outreach and education on the requirements and goals of this Act; and
8. Recommend to the Tribal Council such contracts as deemed necessary, for the accomplishment of essential solid waste services and for the planning, design and construction of solid waste projects, provided that the Solid Waste Director monitors all such contracts for the Tribe.

40.0503

The Compliance Officer.

The Compliance Officer is hereby designated as the responsible agent to ensure compliance with and enforcement of this Act and any permits or Orders issued pursuant to this Act and will be housed in the Tribal EPA Office. The Compliance Officer or his duties shall not be housed within the SWMP. Unresolved compliance issues can be appealed to the Hearing Officer as provided for in the TAPA. The duties of the Compliance Officer shall include:

1. Monitoring, inspecting and ensuring entities and persons covered by this Act are in compliance to include the management handling, treatment, storage, transfer and disposal of solid, special and hazardous waste and the investigation, assessment and remediation of releases or contamination to include the duties under Section 40.1603 and:
 - a. Obtain any information, including records and reports, from any owner or operator necessary to determine whether the owner or operator is in compliance with this Act;
 - b. Conduct any independent monitoring or testing necessary to ensure that owners or operators are in compliance with this Act;
 - c. Enter any site or premises subject to the tribal permit programs or at which records relevant to regulated activity or facility are kept;
 - d. Review and reproduce any records relevant to the regulated activity or facility;
 - e. Make video or photographic records of any regulated activity or facility;
 - f. Inspect at any time any site or premises at which regulated activities are conducted and make photographic, video, or other records of information obtained during the inspection;
 - g. Investigate the activities of any solid waste disposal, transfer, storage facility or collection and transportation service in order to determine compliance with this Act or to verify information obtained from the owner or operator;
 - h. Conduct any and all independent tests or samplings necessary to verify the adequacy of methods (including sampling) used by owners or operators or responsible party to provide information to the Tribe or determine compliance with this Act, including, but not limited to, testing and inspecting any equipment used by the owner or operator or responsible party to test, sample, or obtain information;
 - i. Interview persons employed in the operation of any regulated facility or service subject to the requirements of this Act; and
 - j. Receive and record information submitted by any persons concerning any regulated activity or facility. If requested, the Compliance Officer shall provide a written response to any person providing such information within 60 days of the request;

2. Ensuring the design, construction, operation, monitoring, monitoring after closure of solid waste facilities are in compliance with this Act;
3. Ensuring compliance with permits or Orders issued under this Act and developing procedures for carrying out a permit compliance and inspection program, including but not limited to requiring operators file reports with the Compliance Officer in order to monitor solid waste handling, treatment, storage, transfer and disposal within the Reservation;
4. In the event of an accidental release or spill of a hazardous substance, pollutant or contaminant to the air, land or waters or groundwater of the Reservation resulting in a potential threat to the public health, welfare or the environment within the boundaries of the Reservation ensure compliance with the notification and response requirements of this Act and ensure the appropriate entity addresses the immediate and long term impacts of the release or spill to include all necessary containment, remediation, assessment of impacts and long term monitoring;
5. Ensure compliance with the remediation requirements of this Act by owners, operators, or other parties responsible for releases of hazardous substances, pollutants or contaminants on or from a property or site resulting in contamination to include Remedial Assessment Agreements, Remediation Agreements, Remediation Orders, No Further Action letters or Certifications of Completion;
6. Ensuring compliance with Tribal Institutional Controls or land use restrictions;
7. Conducting community outreach and education on the requirements and means of compliance with this Act;
8. Recommending to the Tribal Council such contracts as deemed necessary, for the accomplishment of essential compliance and enforcement services and/or for the investigation, assessment, or remediation of releases of solid or hazardous waste, hazardous substances, pollutants or contaminants within the Reservation, to include open dumping of solid waste, provided that the Compliance Officer monitors all such contracts for the Tribe; and
9. Seeking grants or other sources of funding to support such efforts, and may cause to be undertaken analyses and studies regarding the best methods for safe solid waste handling, treatment, storage, transfer or disposal within the Reservation; or the investigation, assessment, or remediation of releases of solid or hazardous waste, hazardous substances, pollutants or contaminants within the Reservation, to include open dumping of solid waste. Such a program may include private sector or federal government entities participation in this effort.

40.0504 Annual Report.

The Solid Waste Management Team, the Solid Waste Director and the Compliance Officer shall prepare and file an annual report with the Tribal Council no later than September 1 of each year, commencing September 1, 2007, describing progress achieved under the requirements of this Act as described herein and containing recommended additional administrative and/or legislative actions necessary to implement the requirements, policies and programs of this Act.

40.0505 Public information program.

The Solid Waste Director, the SWMT and the Compliance Director may implement a public information program to provide information to other governments, private industry, tribal members and the general public concerning environmental protection, effective reuse of solid waste, and other solid waste management and compliance matters as it deems appropriate.

40.0506 Studies of municipal solid waste stream.

The Solid Waste Director, the SWMT and the Compliance Director may conduct studies of the nature, extent, and methods of reducing and controlling litter problems on the Reservation including, but not limited to, methods of

improving public education and incentives to reduce waste generation and littering, necessary additional legislation, and improved methods of implementing existing laws.

40.0507 **Coordination and cooperation with other agencies.**

1. The Solid Waste Director, the SWMT and the Compliance Director, jointly or individually, may:
 - a. Coordinate solid waste handling, treatment, transfer or disposal with federal, state and local agencies and with persons in the solid waste industry; and
 - b. Render or receive technical assistance to or from Tribal, state, and local agencies and officials thereof and others involved in the planning and operation of solid or hazardous waste program and facilities.
2. The Compliance Officer may:
 - a. Assist or receive assistance from other Tribal, state, and federal agencies in the development, and maintenance of their inspection, enforcement, training, and regulatory programs;
 - b. May organize, operate, and conduct any solid waste enforcement activity the SWMT or Solid Waste Director deems advisable upon the request of the governing body of the federal agency or Tribal Council, upon the appropriation for such purposes by the federal agency or Tribe of a sum adequate to compensate the Tribal EPA or the Compliance Officer for the full cost of that activity; and
 - c. May request, as necessary, any Tribal, state or federal agency having jurisdiction to investigate and report on any questions or matters involved in solid or hazardous waste handling, treatment, transfer, disposal or release affecting the Reservation environment or its residents.

CHAPTER 40.06
Tribal Integrated Solid Waste Management Program

40.0601 **Tribal Integrated Solid Waste Management Plan (ISWMP).**

The SWMT shall draft and submit a Tribal ISWMP to the Tribal Council for adoption. The ISWMP shall address solid waste management, reuse, recycling and/or disposal including, but not limited to, minimum standards as set forth in Code of Federal Regulations, Title 40 Part 258 for solid waste handling, treatment and disposal for the protection of land, air and water from pollution. During the process of formulating or revising the Tribal policy for solid waste management, the SWMT shall consult with and carefully evaluate the recommendations of all concerned tribal members, Reservation residents and businesses.

40.0602 **Approval of Plan.**

The Integrated Solid Waste Management Plan (ISWMP), describing the location, design, operation, maintenance and ultimate use of solid waste facilities within the Reservation, shall be submitted by the SWMT for approval to the Tribal Council.

40.0603 **Contents of Plan.**

The ISWMP shall, at a minimum:

1. Include a description of the Reservation solid waste service area(s);
2. Include a description of the current Tribal solid waste management program structure and any recommendations for changes and/or additions;
3. Include a description of the Tribe's current waste management practices and propose any recommendations for improvements;

4. Include a summary of the current funding for collection, management and recycling of solid waste, as well as ensuring compliance and enforcement of this Act and the sustainability of such Tribal programs;
5. Include long term goals of the Tribe's solid waste and recycling programs;
6. Include a proposed implementation schedule of recommended management actions;
7. Estimate the volume and composition of solid waste generated on or illegally imported to the Reservation and explain the basis of the estimate;
8. Identify the responsibilities of other Tribal agencies and entities in the implementation of the ISWMP, the distribution of funds to the authorities responsible for development and implementation of the ISWMP, and the means for coordinating all planning and implementation under the ISWMP;
9. Estimate and describe the existing disposal of solid waste in open dumps within the Reservation;
10. Report on the plans for closing of all existing open dumps within the Reservation pursuant to this Act and Federal law;
11. Report on extent of open burning within the Reservation;
12. Report on incineration within the Reservation;
13. Provide that the SWMT may negotiate and recommend to the Tribal Council long-term contracts for the removal of solid waste to authorized or permitted solid waste facilities, the construction and operation of solid waste facilities, securing long-term markets for material and energy recovered from solid waste facilities, and conserving material or energy by reducing the volume of solid waste;
14. Provide for resource conservation or recovery, for disposal of solid waste in permitted sanitary landfills, and for any combination of practices as may be necessary to handle, treat, recycle, reuse or dispose of solid waste in a manner that is environmentally sound and in compliance with this Act and applicable federal regulations;
15. Establish and specify a goal of recycling the solid waste accepted by any recycling facility within the Reservation to the maximum extent possible;
16. Adhere to the federal guidelines for the disposal of solid waste and incorporate the recommended procedures, design, and operations described in Act of Federal Regulations, Title 40, Parts 257 and 258, as amended; and
17. Identify areas for the establishment or expansion of solid waste facilities, to include waste recycling, processing or recovery facilities, and seek Tribal Council and/or BIA action to reserve such areas.

40.0604 Future solid waste facility sites.

In identifying and reserving areas for the establishment or expansion of future solid waste facilities, to include waste recycling, processing or recovery areas, the SWMT shall ensure that the land uses adjacent to or near such areas are compatible with solid waste facilities and shall consider the following:

1. The varying geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to prevent leachate contamination of ground and surface waters, the protection of surface waters from surface runoff contamination, and the protection of ambient air quality;
2. Characteristics and conditions of handling, treatment, and disposal methods, techniques, and practices, and locations of solid waste facilities where such methods, techniques, and practices are conducted, taking into account the nature of the material to be handled;

3. Site Specific Flexibility Requests that are compatible with 40 CFR Part 258 and Tribal requirements;
4. Population density, distribution, and projected growth;
5. Geographic, geologic, climatic, and hydrologic characteristics;
6. The types and locations of transportation facilities;
7. The profiles of local industries and waste types;
8. The constituents and general rates of solid waste;
9. The political, economic, organizational, financial, and management problems affecting comprehensive solid waste management on the Reservation;
10. Types of resource recovery facilities and resource conservation systems that are appropriate; and
11. Available new and additional markets for recovered material and energy resources recovered from solid waste as well as methods for conserving such material and energy.

40.0605 Periodic review of plan.

The SWMT shall review and evaluate the ISWMP at least every three (3) years to obtain maximum consistency with Tribal and federal policy. After such review and evaluation, the SWMT shall propose appropriate amendments to the ISWMP for the consideration of the Tribal Council.

**CHAPTER 40.07
Prohibited Practices and Activities**

40.0701 Open burning.

There shall be no open burning of solid waste on the Reservation without a permit from the Tribal EPA pursuant to Section 40.1503. The Compliance Officer will coordinate the approval of burning permits with the Police Department and Fire Department.

40.0702 Hazardous waste.

No hazardous waste shall be disposed of within the Reservation. Hazardous waste may not be stored more than 90 days and shall be stored or temporarily deposited only at a site or facility approved by the Compliance Officer. Such storage shall be in compliance with this Act and 40 CFR Part 262.34.

40.0703 Agricultural wastes.

Agricultural waste may be disposed of at an approved site by prior arrangement with the Solid Waste Director. The Compliance officer shall be notified of such approved site(s).

40.0704 Septic tank waste disposal.

Septic tank waste disposal shall only be allowed at tribally controlled sewage lagoons. No disposal of septic tank waste shall be made at the transfer stations or any other unauthorized location on the Reservation. A permit for the disposal of septic wastes on the Reservation must be obtained from the Tribal EPA pursuant to Chapter 40.15.

40.0705 Liquids.

Bulk or non-containerized liquid wastes may not be placed in solid waste collection containers or boxes or in solid waste landfill units on the Reservation. Containers of 1 gallon or less holding household liquid wastes shall be deposited within approved collection containers, boxes or transfer stations.

40.0706 Scavenging.

Scavenging of solid waste from collection sites, containers, storage sites, transfer sites or disposal sites is prohibited on the Reservation due to the

liability of the Tribe for injury or health hazards while engaging in the act.

40.0707 Construction and demolition wastes.

Construction and demolition wastes shall not be disposed of in residential collection containers or boxes, on the construction or demolition site or any other site on the Reservation not specifically authorized by the Tribe. Prime contractors are required to obtain a Tribal EPA permit, per Chapter 40.15 of this Act, prior to beginning any construction or demolition work on the Reservation.

40.0708 Animal carcasses.

Dead animals, including livestock and pets, may not be disposed of on public or Tribal lands or placed in solid waste collection containers without the written permission of the Tribe.

40.0709 Prohibition on disposal in open dumps.

In order to protect the limited land, air, and water resources of the Reservation from permanent damage due to hazardous pollution and to protect the health, safety, and welfare of all residents of the Reservation and surrounding communities, disposal of solid waste in any open dump is expressly prohibited within the jurisdiction of the Reservation. All solid waste must be managed and disposed of in compliance with this Act.

40.0710 Illegal dumping and littering.

Persons found to be responsible for illegal dumping or littering on the Reservation, on or near any public grounds, or in or around any public waters of the Reservation, shall be required to remove all solid waste disposed of illegally including any releases or leakage; to restore the site to a condition acceptable to the Compliance Officer; and to dispose of the solid waste at an approved disposal site or drop box location.

40.0711 Maintaining a public nuisance.

Any person(s) who shall act in such a manner as to permit his property or residence or other private property to become dangerous or hazardous, or impair the safety, health or comfort of the public by the discarding of solid waste, refuse or rubbish, will be required to remove such wastes and any resulting releases or leakage.

40.0712 Polluting streams or waters.

It shall be unlawful for any person(s) to throw or discharge into any creek, river, ditch, other water conveyance system, lake or pond any deleterious substance or solid waste such as refuse which is subject to decay.

40.0713 Wrecked, junked or unserviceable vehicles.

It shall be unlawful for any person(s) to store within the villages and communities any wrecked, junked, unregistered or unserviceable vehicles. It shall be unlawful to store outside of the designated villages and communities more than 4 wrecked, junked, unregistered or unserviceable vehicles except as provided for under Chapter 40.09 and Section 40.1504 of this Act.

40.0714 Tires.

No tires may be disposed of at any location other than a facility or site approved or permitted under this Act. Tires may not be delivered to a facility or location within the boundaries of the Reservation that is not in compliance with this Act or abandoned upon any street, alley, highway, public place or private premises. Anyone hauling scrap tires to unapproved disposal sites (ravines, coulees, dumps, gravel pits, tree rows, etc.) is in violation of this Act and subject to enforcement action. If scrap tires are taken to a

location which comes under enforcement action, the transporter and/or the original generator(s) may be liable for cleanup costs; No more than 20 tires may be stored on residential property for private use. Commercial businesses, public/tribal agencies, tire dealers and maintenance facilities must comply with Section 40.1505 of this Act.

40.0715 **Used oil.**

Used motor or lubrication oil is designated as a special waste and may not be dumped, spilled, leaked, or otherwise improperly disposed of within the boundaries of the Reservation.

40.0716 **Major appliances and other white goods.**

It shall be unlawful to store or dispose of any other unserviceable appliances or implements such as stoves, dish washers, refrigerators, washing machines, clothes dryers, water heaters or any other such items out-of-doors on the premises or property. The owner or resident of the property is responsible for proper storage or disposal of the item(s) as required under this Act.

40.0717 **Lead acid batteries.**

No person shall place a used lead acid battery in mixed municipal solid waste, discard or otherwise dispose of a lead acid battery except by delivery to an automotive battery retailer or wholesaler, to a collection or recycling facility authorized under this Act or the State.

40.0718 **Misleading representations.**

It shall be a violation of this Act for any person to knowingly omit material information or make any false statement or representation in any label, record, report, or other document filed maintained or used for purposes or application or compliance with this Act or regulations promulgated there under.

CHAPTER 40.08

Management and Transportation of Hazardous Wastes

40.0800 **General.**

All hazardous waste, as defined in this Act and is not excluded from regulation as a hazardous waste under §261.4(b) and exhibits any of the characteristics of hazardous waste identified in 40 CFR Part 261 Subpart C to include: ignitability; corrosivity; reactivity; or toxicity; or it is listed in 40 CFR Part 261 Subpart D; and has not been excluded from the lists in Subpart D under 40 CFR §§260.20 and 260.22 shall be generated, managed, stored, treated or transported in compliance with this Act and the following requirements:

40.0801 **Generators.**

A generator who treats, stores, or disposes of hazardous waste on-site must comply with 40 CFR Part 262 with respect to that waste to include:

1. §262.11 for determining whether or not he has a hazardous waste;
2. §261.5 for conditionally exempt small quantity generators;
3. §262.12 for obtaining an EPA identification number;
4. §262.34 for accumulation and temporary storage of hazardous waste;
5. §262.40 (c) and (d) for recordkeeping;
6. §262.43 for additional reporting; and
7. §262.70 for farmers.

40.0802 **Transportation.**

Persons transporting regulated quantities of hazardous waste within the Reservation must comply with the standards and requirements of 40 CFR Part

263 if the transportation requires a manifest under 40 CFR part 262.

40.0803 Treatment and Storage.

The standards of 40 CFR Part 264 apply to owners and operators of all facilities which treat or store hazardous waste, except as specifically provided otherwise in this Act or 40 CFR Part 261.

40.0804 Disposal.

The disposal of hazardous waste is prohibited on the Turtle Mountain Reservation.

40.0805 Reuse and Recycling of Hazardous Waste.

1. The following specific hazardous wastes that are recycled or reused shall comply with 40 CFR Part 266 and this Act:
 - a. Recyclable Materials Used in a Manner Constituting Disposal;
 - b. Recyclable Materials Utilized for Precious Metal Recovery;
 - c. Spent Lead-Acid Batteries Being Reclaimed; and
 - d. Hazardous Waste Burned in Boilers and Industrial Furnaces;
2. Universal wastes, to include batteries, pesticides, mercury containing equipment or lamps as described in 40 CFR Part 273, must be managed in compliance with 40 CFR Part 273 and this Act.

CHAPTER 40.09

Management of Special and Industrial Wastes

40.0901 Designation of Special and Industrial Wastes.

A specific type of solid waste may be designated as a Special or Industrial Waste by the Tribe and subject to the requirements of this Act, or other specific storage, management or disposal requirements. Every person, commercial establishment, government agency or facility or industrial facility who generates or stores special or industrial waste as described below within the boundaries of the Reservation shall comply with this Act.

40.0902 Management of Special and Industrial Wastes.

The following special wastes, that are not hazardous waste as defined above, shall be managed as specified below and may be not stored, transferred, disposed of or discharged within the boundaries of the Reservation except at a designated and permitted land disposal or transfer, treatment, storage or recycling facility specifically approved by the Tribe. Special Waste collection, transportation, management, storage or disposal fees may be assessed by the Tribe for such wastes services provided by the Tribe or franchisee(s) within the Reservation. Special and industrial waste and requirements include:

1. Septic Tank Pumpings and Sewage Sludge and other sanitary wastes shall be disposed of at a Tribally designated land disposal or Tribally approved sewage treatment facility in compliance with this Act and 40 CFR Parts 257 and 503, as applicable, and after payment of any applicable permit and/or discharge fees.
2. Used or waste oil is designated as a special waste and must be collected or transported for disposal to any solid waste collection, transfer or storage unit or facility that is in full compliance with 40 CFR Part 279 and this Act and has provision for intermediate storage and recycling of these materials and all such materials are appropriately segregated for recycling.
3. Major appliances (also known as "white goods") such as stoves, dish washers, refrigerators, washing machines, clothes dryers, water heaters, and scrap metal are designated as Special Wastes and may not be collected or transported for disposal to any solid waste disposal, transfer or storage unit or facility within the boundaries of the

Reservation unless such unit or facility is in full compliance with this Act and has provision for intermediate storage and recycling of these materials and all such materials are appropriately segregated for recycling. Refrigeration or air conditioning units must have the refrigerant (i.e. freon) removed by a certified technician in conformance with applicable U.S. EPA and state regulations prior to off Reservation disposal or recycling.

4. Lead-acid batteries must be disposed of by delivery to an automotive battery retailer or wholesaler, or to a collection or recycling facility authorized under this Act or the State. No automotive battery retailer shall dispose of a used lead acid battery except by delivery to the agent of a battery wholesaler, to a battery manufacturer, to a collection or recycling facility authorized under this Act or the laws of the state or to a secondary lead smelter permitted by the U. S. Environmental Protection Agency. Each battery improperly disposed of shall constitute a separate violation.

A person selling lead acid batteries at wholesale, retail or offering lead acid batteries for retail sale within the boundaries of the Reservation shall:

- a. Accept, at the point of transfer, in a quantity at least equal to the number of new batteries purchased per year, used lead acid batteries from customers, if offered by customers; and
 - b. Post written notice which shall be at least eight and one-half (8 1/2) inches by eleven (11) inches in size and shall contain the universal recycling symbol and the following language:
 - 1) "It is illegal to discard a motor vehicle battery or other lead acid battery";
 - 2) "Recycle your used batteries"; and
 - 3) "Tribal Acts require us to accept used motor vehicle batteries or other lead acid batteries for recycling in exchange for new batteries purchased."
 - c. Failure to post the required notice shall be a violation of this Act.
 - d. Any person accepting batteries in transfer from an automotive battery retailer shall be allowed a period not to exceed one hundred twenty (120) days to remove batteries from the retail point of collection.
5. Infectious institutional wastes, medical wastes, laboratory wastes and surgical operating room pathological specimens and disposal fomites must be bagged in Bio/Medical Waste bags or containers obtained from the Indian Health Service or the Tribe. Regulated infectious waste may not be subject to mechanical stress or compaction during loading, unloading, and transit. Transportation of such waste within the boundaries of the Reservation must be conducted by a state permitted transporter for such wastes. Similar emergency room and mortuary wastes may not be disposed of within the boundaries of the Reservation unless such wastes are first incinerated in an incinerator approved and permitted by the XXXX, and applicable federal authority, and disposed of at a solid waste disposal site approved by the Tribe or the State.
 6. Wrecked, Junked or Unserviceable Vehicles (cars and trucks) that are:
 - a. accumulated in a quantity of more than 4 on a single property shall be considered to be a commercial salvage operation and subject all applicable requirements and fees for such an operation in Section 40.1504;
 - b. Not currently licensed and abandoned on Tribal and/or public facilities such as roads, streets, alleys, highways, or public parking areas for more than 48 hours shall be considered junk shall be impounded and towed away at the direction of the Compliance Officer or the Tribal law enforcement department to an impoundment area. Any person claiming such vehicle shall give proof of ownership and pay any towing and storage charges. Vehicles not claimed within 30 days of

impoundment shall be declared abandoned, advertised, and sold at auction by the law enforcement department to pay for towing and storage charges. All remaining income from the sale of the vehicle shall be remitted to the Tribe.

7. Pesticide and Herbicide Wastes: Every person, commercial or industrial facility who handles surplus agricultural pesticides or herbicides and/or pesticide or herbicide containers shall:
 - a. Comply with this Act and 40 CFR Part 262. Surplus pesticides or herbicides may not be discarded within the boundaries of the Reservation in any manner which endangers humans, animals, and/or the environment. Pesticide and herbicide containers must be drained or emptied according to label directions and power or triple-rinsed before processing or disposal; or
 - b. A farmer or rancher within the Reservation boundaries disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with this Section for those wastes provided he triple rinses each emptied pesticide container in accordance with 40 CFR 261.7(b)(3) and disposes of the pesticide residues on his own farm or ranch in a manner consistent with the disposal instructions on the pesticide label and does not endanger human health or the environment.
8. Tires: Tires must be transported to an end-user who will process, recycle and/or dispose the materials in a manner that complies with the laws of the Tribe or the State or the governmental jurisdiction having authority over waste management activities.
 - a. Commercial businesses, public/tribal agencies and tire dealers may store the equivalent of a semi-truck load of whole or shredded scrap tires for transport to a recycling or disposal facility subject to the following conditions:
 - (1) Storage must not create a public nuisance;
 - (2) Access to the storage area must be controlled;
 - (3) The storage area must be accessible to fire control equipment; and
 - (4) Funds must be set aside for disposing or recycling the stored scrap tires (proof of availability of such funds must be available upon request by the Compliance Officer).
 - b. Storage of larger quantities of tires requires a formal solid waste storage permit from the Tribal EPA pursuant to Section 40.1506. Individuals or businesses accepting scrap tires are subject to enforcement action if the activity:
 - (1) creates a nuisance;
 - (2) endangers public health or safety, including harboring disease vectors or insects; or
 - (3) presents a threat to environmental resources.
 - c. Commercial businesses or tire dealers located within the boundaries of the Reservation collecting and hauling scrap tires must have a solid waste transporter permit issued by the Tribal EPA.
 - d. Individual persons may store up to a maximum of 20 tires for personal use on their own property.
9. Dead Animals: Dead animals must be removed in a timely manner and be managed by renderers, disposed of at a permitted solid waste landfill or at an alternative location designated by the Tribal EPA. Private commercial animal removal companies shall be used for removal and disposal of all livestock carcasses; pets shall be buried or taken to a tribally approved transfer or disposal site.

During an emergency, potentially large numbers of livestock may need to be managed as rapidly and as efficiently as possible. The Tribe may issue an emergency permit for one-time disposal events based on various practical factors during emergency conditions. The Tribal EPA, Solid Waste Director and other local, state and federal agencies will work together with livestock owners to accomplish the efficient and

environmentally sound disposal of animal carcasses and related materials so as to minimize impacts to human and animal health and to water sources. Disposal under emergency permits must be restricted to dead animals and associated, generally inert waste, unless otherwise authorized.

10. Asbestos and Asbestos Containing Materials: Removal, transportation and disposal of Asbestos and Asbestos Containing Materials must be conducted in compliance with the applicable requirements of this Act, the Clean Air Act (42 U.S. C. 7401-7671q) and follow U.S. Environmental Protection Agency guidelines. Asbestos and Asbestos Containing Materials must be disposed of outside of the Reservation at a state approved landfill facility. Asbestos disposal must be coordinated with the landfill owner/operator. Friable asbestos-containing material must be disposed into landfills that have agreed to accept the material and have appropriate facilities, procedures, equipment and training for managing such waste.
Prior to shipping, friable asbestos-containing material must be wetted. Friable asbestos-containing material must be placed in leak-tight containers and be properly labeled. Containers should be carefully handled. Handling of regulated asbestos-containing material must be performed by certified asbestos personnel.
11. Abandoned Mobile Home or Trailer: Mobile homes or trailers that are an unsafe structure, unfit for habitation, junked, partially dis-assembled, wrecked or non-operative and which are abandoned or not inhabited for more than 180 days may be declared a solid waste by the Solid Waste Director or the Compliance Officer and must be managed accordingly and in full compliance with this Act. The property owner will be provided a Warning Letter by the Compliance Officer to properly repair, remove and/or dispose of the mobile home or trailer in accordance with this Act and any other applicable Tribal, state or federal regulations within 30 days. Failure to comply with this Warning Letter may result in further enforcement action and penalties pursuant to this Act. The right to a hearing may be provided to the property owner to allow for repair of the mobile home or trailer to make it safe and fit for habitation or to provide additional time to dispose of the mobile home or trailer and comply with the Warning Letter or Notice of Violation.
12. Construction and Demolition Wastes. All construction or demolition wastes and debris must be properly disposed in accordance with this Act. Prime contractors are required to obtain a Tribal EPA permit, per Section 40.1502 of this Act, prior to beginning any construction or demolition work on the Reservation.
13. Agricultural wastes. Agricultural waste and products shall be stored as to minimize nuisance, flies, rodents and odor, and shall not result in the contamination of ground or surface water sources.

CHAPTER 40.10
Solid Waste Storage

40.1001 **Containers.**

The owner, agent or occupant of every dwelling, business establishment or other premises where refuse accumulates, shall provide a sufficient number of suitable and approved containers for receiving and storing of refuse and shall keep all refuse therein. The owner, agent or occupant of every dwelling, business establishment or other premises where refuse accumulates, shall be responsible for the safe and sanitary storage of all solid waste accumulated at that premise until it is removed,

1. Approved containers shall be maintained in a manner consistent with this Act and acceptable to the ISWMP. Containers that are broken or otherwise fail to meet the requirements of this Act, shall be replaced.

2. Drop-box containers shall be periodically disinfected, and shall be steam cleaned and painted as deemed necessary by the ISWMP.
3. Approved individual containers shall be stored off the ground on racks or stands and easily accessible for collection by the SWMP or authorized representatives.

40.1002 Storage of Solid Waste

Solid Waste shall be stored according to the following provisions:

1. Rubbish shall be stored in an approved container or in a manner that will confine the waste in one area, and not create a public nuisance. Bulky rubbish such as tree trimming, newspaper, weeds and large cardboard boxes shall be handled as directed by the Solid Waste Director. Where garbage separation is not required, containers for the storage of mixed rubbish and garbage shall meet the requirements specified by the Solid Waste Director.
2. Garbage shall be stored in containers approved by the Solid Waste Director.

CHAPTER 40.11

Collection, Transfer and Disposal

40.1101 Collection schedule.

The Solid Waste Director shall establish a schedule and arrange for the collection of solid waste on a timely basis but no less than once every seven days utilizing a Tribal refuse collection service or its franchisee(s).

40.1102 Collection service.

All Reservation residents shall be required to subscribe to the Tribal refuse collection service or its franchisee(s). Reservation residents may take their own trash to an on- Reservation disposal or transfer site for a fee.

40.1103 Collection service fees.

All residents of the Reservation will be assessed a monthly solid waste fee. Fees for transfer, recycling, collection of special or bulky wastes or other special services shall be set and collected as prescribed. All solid waste fees will be set by the SWMT with concurrence from Tribal Council based upon the cost of services of a competitive bid process for franchise(s).

40.1104 Non-payment of fees.

Non-payment of collection or transfer fees, after ninety days, shall, be a violation of this Act and result in action being taken by the Water Utility Board. Action may include the discontinuation of other utilities provided by the Board.

40.1105 Private collection vehicles.

Private vehicles used for collection and transportation of refuse shall be loaded and moved in such a manner that the contents, including ashes, will not fall, leak or spill from vehicles. Open top vehicles or vehicles with attached or towed open top containers shall be covered with a tarp or other covering while in transit on public roads to ensure load security and prevent the release any debris or liquids. Any releases, littering or spillage from such vehicles are the responsibility of the vehicle owner or operator and must be cleaned up within 24 hours of such release or spillage.

40.1106 Permitted collection vehicles.

Tribally permitted vehicles used for the collection and transportation of garbage or refuse containing garbage shall have covered, watertight, metal bodies of easily cleanable construction shall be cleaned frequently to prevent a nuisance, and shall be maintained in good repair. Any releases,

littering or spillage from such vehicles are the responsibility of the vehicle owner or operator and must be cleaned up within 24 hours of such release or spillage.

40.1107 Collection standards.

Solid Waste shall be deposited, stored and collected in a manner that prevents spillage and littering. Should spillage and/or littering occur, the waste shall be cleaned up by the responsible person within 24 hours and returned to the vehicle or appropriate facility or container. Property owners, residents and home owners are the responsible person for releases, littering or spillage of solid waste from their residence or property until such wastes are collected by the authorized collection service.

40.1108 Pets and animals.

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

40.1109 Animal carcasses.

Animal carcasses or parts of animal carcasses shall be disposed of pursuant to Section 40.0708.

40.1110 Access.

Access to storage and collection containers should be kept clear to prevent interference with collection services.

40.1111 Load rejection.

The Solid Waste Director or the Collection Service Franchisee(s) reserves the right to refuse any and all materials at the collection sites, transfer stations, or any other solid waste facility.

40.1112 Material separation.

The Solid Waste Director, the Compliance Officer or the Collection Service Franchisee(s) reserves the right to require separation of any materials deemed necessary prior to collection or acceptance at a solid waste management or transfer facility.

CHAPTER 40.12

Solid Waste Permits: General

40.1201 Application submittal; Filing fee.

Each permit application, including renewals, shall be accompanied by a reasonable filing fee established by SWMT according to a fee schedule to reflect the cost of processing such applications, including but not limited to the cost of technical and legal consultants, office staff, and overhead. This fee is in addition to the fees authorized for permit issuance, operation, monitoring and enforcement. The Fee may be waived by the Tribal Council when the permittee is operating a permitted activity under contract to the Tribe.

40.1202 Business license required.

No person shall construct or operate a commercial solid waste management, storage or transfer facility within the jurisdiction of the Reservation except as authorized by a business license.

40.1203 Contents of permit application.

Applications filed pursuant to this Act shall be submitted to the Solid Waste Director in the form and format required by the SWMT and shall contain the

information required under this Act and in the Tribal permit application guidelines.

40.1204 Issuance of permit; Contents.

The Solid Waste Director may issue, modify, or revise a permit that shall contain all terms and conditions that the Tribal Council determines to be appropriate for the construction and/or operation of a solid waste management, storage or transfer facility or for the transportation of solid waste. A permittee must comply with all terms and conditions of the permit and any modifications or revisions.

40.1205 Issuance of Permit: Conditions.

The Solid Waste Director shall not issue, modify, or revise a solid waste facility or transportation permit unless it is convinced that primary consideration is given by the permittee to preventing environmental damage or health threats and that the long-term protection of the environment and public health is the guiding criterion. To achieve these purposes, the Tribal Council may:

1. Prohibit or condition the handling, treatment, transfer or disposal of solid waste to protect, rehabilitate, or enhance the environmental quality;
2. Require the proposed facility or transportation operation to be in full compliance with the applicable rules and regulations in effect on the date of permit issuance; and
3. Require feasible mitigation measures identified in any Environmental Assessment or Environmental Impact Statement prepared pursuant to the Tribal Environmental Policy Act (TEPA) or the National Environmental Policy Act (NEPA 1505.2c, 42 USC 4321-370a), be incorporated as permit conditions.

40.1206 Permit issuance period.

1. Solid waste collection or transportation permits may be issued for a period of up to twelve (12) months and must be renewed annually and approved by the Tribal Council.
2. Solid Waste Management Facility permits may be issued for a period of up to five (5) years and are subject to an annual report and review by the Solid Waste Director and the Compliance Officer to the Tribal Council.

40.1207 Periodic permit review.

Any permit issued, modified, or revised hereunder shall be reviewed and, if necessary, be revised by the Solid Waste Director on the annual anniversary of the last issuance, modification or renewal of the permit.

40.1208 Permit revocation or modification.

The Tribal Council may revoke a permit or may modify a permit and impose additional or revised permit conditions if the Compliance officer, Solid Waste Director or the Solid Waste Management Team determines that:

1. The method or location of collection, transportation, or the place or manner in which the solid waste is stored, processed, transferred, treated or disposed of is potentially detrimental to, may damage or pollute the environment, or adversely impact public health, welfare or natural resources of the Reservation; or
2. The applicant has a significant incidence or history of failing to comply with this Act, other Tribal Acts or laws or is deemed in significant non-compliance with a Tribal Administrative Order or Tribal permit issued pursuant to this Act.

40.1209 Permit denial.

The Tribal Council may deny the permit or may impose permit conditions that will adequately protect against unreasonable degradation of the environment, public health, welfare and natural resources of the Reservation, if the Solid Waste Management Team determines that:

1. The proposed method or location of collection, transportation, or the place or manner in which the solid waste is to be stored, processed, transferred, treated or disposed of will potentially be detrimental to, damage or pollute the environment, public health, welfare or natural resources of the Reservation; or
2. The applicant has an incidence or history of failing to comply with this Act, similar federal or state regulations or is reasonably deemed not likely to comply with Tribal permit conditions.

40.1210 Renewal denial.

The Tribal Council may deny renewal of a permit for failure of the permittee to properly report or otherwise comply with this Act or the permit.

40.1211 Compliance with applicable law.

Receipt of a permit shall not relieve any person of the responsibility to construct and operate all solid waste facilities and collection systems in a manner that complies with any and applicable Tribal and Federal laws, rules, or regulations.

40.1212 Public review and comment.

There shall be a public notice of a proposed permit issuance and a minimum of thirty (30) days opportunity for public review and comment at relevant stages of the permitting process.

40.1213 Public hearing on permit application.

No permit shall be issued except after a public hearing at which the applicant and all interested parties have an opportunity to present evidence on whether the permit application should be granted and the conditions to be included in the permit.

40.1214 The notice of public hearing.

The Solid Waste Director shall publish a public notice of a public hearing on a permit application. The notice shall be the form approved by the Tribal Council, as specified in the Turtle Mountain Band of Chippewa Administrative Procedures Act, as amended Title 22 of the Turtle Mountain Tribal Act. The Tribal Council shall hold the hearing no earlier than twenty (20) days and no later than forty-five (45) days from applicant's receipt of the Statement of Issues. All written notices, requests, and statements shall be delivered personally or by certified or registered mail, return receipt requested.

40.1215 Statement of issues.

A written Statement of Issues shall be delivered by the TM-EPA Director to the permit applicant. The Statement of Issues shall specify the laws, rules and regulations with which the applicant shall show compliance. If applicable, this Statement of Issues shall specify any particular facts or matters that the Tribal Council determines would justify a denial of the permit.

40.1216 Informal review of permit decision.

If the Solid Waste Director denies a permit or if the applicant deems the terms and conditions of the permit inappropriate the permit applicant may request reconsideration of the decision or the permit terms in writing within fifteen (15) days after the applicant receives formal written notice of the denial or of the terms and conditions of the permit.

40.1217 Formal appeal of permit decision.

In the event that the permit is denied after reconsideration, or the applicant cannot agree to the terms and conditions of the permit, the applicant may file a written request for a hearing on the contested permit before the Tribal Council. The request must be filed within 30 days after the receipt of the written decision on the permit has been issued by the Solid Waste Director. Copies of the request shall be served upon the Solid Waste Director, the Tribal Council and all parties of record by certified mail, return receipt requested.

40.1218 Application for revision of permit.

If a permittee wishes to modify his operation, he shall file an application for revision of his existing permit at least 120 days in advance of the date when the proposed modification is to take place. Under circumstances that present an immediate danger to public health, as determined by the Compliance Officer or the TM-EPA EPA Director, the 120 day filing period may be waived by the Tribal Council. No operator of a permitted solid waste facility or transportation service shall make any significant change in the design or operation of any solid waste facility or transportation service except in conformity with the terms and conditions of the permit issued to such operator.

40.1219 Investigations, reports, inspections.

1. Investigations. The Tribal Council, Compliance Officer and the Tribal Court, in issuing or reviewing any facility permit or solid waste transportation permit or in connection with any action relating to or authorized by this Act, may investigate the construction, maintenance, and operation of any facility or transportation service owned or operated by the permittee or applicant.
2. Reports by Permittees. Each report filed by the permittee shall be submitted in a form and format specified by the permit and the Solid Waste Director.
The Solid Waste Director or the Compliance Officer may require that the permittee furnish such technical or monitoring program reports or other reports that they may specify to determine full compliance with the permit and this Act.
3. Inspections. The Compliance Officer shall make periodic inspections any permitted premises, container, facility, equipment, or vehicle used for, and any records relating to, the management, handling, treatment, storage or disposal of solid waste to ensure compliance herewith and to determine that owners and/or operators are complying with applicable permit requirements and this Act. Such inspection may be unannounced.

40.1220 Protection of proprietary information.

Upon the Tribe's approval of the written request of any person furnishing any report, notice, application, or other document required hereby, the Tribe shall not make available for inspection by the public those portions of such report, notice, application, or other document that contains information declared proprietary or confidential information. However, such report, notice, application, or other document or portions thereof, shall be made available to the Tribe or its agencies and to any other government agency or agencies, provided that, the information is at all times kept confidential, and/or used for enforcement or investigative purposes. Such declaration of proprietary or confidentially is subject to review by the Tribal Court.

CHAPTER 40.13

Solid Waste Management Facility, Collection and/or Transportation Permits

40.1301 Application for permit.

Any person who proposes to become an operator of a solid waste management facility or a transporter of solid waste shall file with the Solid Waste Director an application for a facility or transportation permit at least 120 days in advance of the date on which such person desires to commence construction of a solid waste facility or begin collection and/or transportation of solid waste. The decision to issue or not issue the permit shall be made by the Tribal Council within 120 days of the time the application is filed, unless, in the Solid Waste Director's best judgment, additional time is necessary to gather additional information on the application, to conduct environmental studies related to the application, or to require further analysis related to the application.

40.1302 Existing solid waste management facilities.

Existing solid waste management facilities on the Reservation must obtain a permit within 180 days of the effective date of this Act to continue in operation. All conditions required for a new facility shall apply to an existing one. Compliance with this Act and applicable guidelines of 40 CFR Part 258 will be required or the facility must cease operation and be closed.

40.1303 Additional conditions for solid waste management facility permit.

The Tribal Council shall not issue, modify, or revise a facility permit unless it is accompanied by a Tribal building, special use, or other applicable permit(s) or lease authorizing the establishment of the facility, and such permit or lease has been approved by the Bureau of Indian Affairs, if appropriate. The decision to issue, modify, or revise a facility permit requires a finding by the SWMT that the proposed permit is consistent with the Solid Waste Management Plan and with the standards adopted by the Tribal Council.

40.1304 Contents of application: solid waste management facilities.

Permit applications filed pursuant to this Section for the storage, accumulation, transfer, treatment or other management of solid waste shall include:

1. A description of the facilities, mechanical and other equipment, holding tanks, vehicles, and locations and means of temporary solid waste storage or accumulation used or to be used by the applicant;
2. A site evaluation report describing the geographic, geologic, climatic, and hydrologic characteristics of the place or places where and the manner in which the applicant will handle, treat, or dispose of the solid waste;
3. A description of the land uses and facilities on adjoining properties;
4. A description of the practices, technologies and procedures that will be employed to ensure adequate protection of the environment, public health and welfare to include prevention of leakage, excessive noise, odors, and other releases or spillage and the capability to respond to any such releases;
5. Assurances of the manner in which the applicant will meet the financial assurance requirements established pursuant to this Act and the permit;
6. A description of the training program for employees in environmental concerns in managing solid waste, addressing any releases, recognizing hazardous or improper wastes and to provide such employees with needed skills for the safe operation of the facility and related equipment;
7. A closure and post-closure maintenance plan for the solid waste management facility; and
8. Such other information as the Tribal Council and or the Solid Waste Director deems necessary.

40.1305 Collection and/or transportation of solid waste.

No person shall engage in the collection and/or transportation of solid waste originating or terminating at a location within the jurisdiction of the Reservation except as authorized by a solid waste business license.

40.1306 Existing solid waste collection and/or transportation services.

Existing commercial solid waste collection and/or transportation services operating on the Reservation must obtain a permit within 180 days of the effective date of this Act to continue in operation. All conditions required for a new commercial service shall apply to an existing one. Compliance with this Act will be required or the service must cease operation.

40.1307 Additional conditions for solid waste collection and/or transportation permit.

As a condition for the issuance of a solid waste collection and/or transportation permit, the Solid Waste Director shall:

1. Require every vehicle operated by the transporter to be conspicuously marked or placarded to identify the solid waste transported and its principal hazard. Any such vehicle shall be marked in a like manner with the full name or legally registered trade names or names of the transporter and the number of the Tribal solid waste collection and/or transportation permit(s) issued pursuant to this Section;
2. Require the collector or transporter to make an annual (or as otherwise conditioned in the permit) report to the Solid Waste Director, indicating the number and type of containers collected, the volume (and weight if available) and nature of solid waste collected and/or transported of, the place and manner in which such solid waste was finally disposed, the number and nature of any releases or spillage and responses taken, and such other information as the permit may require. A copy of the report shall be provided to the Compliance Officer.

40.1308 Contents of application: solid waste transportation.

Permit applications filed pursuant to this Section for the transportation of solid waste shall include:

- a) A description of the number and type of the vehicles and related mechanical and other equipment to be used by the applicant;
- b) A site evaluation report describing the location and physical characteristics of the place or places, including uses of adjoining properties, where and the applicant will store or maintain solid waste vehicles and related equipment, if located on the Reservation;
- c) A description of the practices, technologies and procedures that will be employed to ensure adequate protection of the environment, public health and welfare to include prevention of leakage, excessive noise, odors, and other releases or spillage and the capability to respond to any such releases;
- d) Assurances of the manner in which the applicant will meet the financial assurance requirements established pursuant to this Act and the permit;
- e) A description of the training program for employees in environmental concerns in managing solid waste, addressing any releases, recognizing hazardous or improper wastes and to provide such employees with needed skills for the safe operation of the transportation equipment and related facilities; and
- f) Such other information as the Tribal Council and or the Solid Waste Director deems necessary.

40.1309 Financial assurance for solid management waste facilities.

As a condition for the issuance, modification, revision, or review of a solid waste management facility permit, the owner/operator shall provide assurance of adequate financial ability to:

- a) Respond to personal injury claims, public or private property damage claims, environmental and natural resource damage claims and response to a

release from the facility or equipment that may result from the construction, operation and/or closure of the facility;

b) Provide for the cost of closure and post-closure maintenance in an amount equal to the estimated cost of closure and thirty years of post-closure maintenance;

The evidence of financial assurance shall be in the form of a trust fund into which funds shall be deposited on an annual basis in amounts sufficient to meet closure and post-closure maintenance costs when needed, or an equivalent financial instrument or insurance or combination of such instruments acceptable to the SWMT and the Tribal Council. The SWMT shall review and approve such evidence.

The amounts that the owner/operator will deposit annually in the trust fund or other acceptable financial instrument shall ensure adequate resources for closure and post-closure maintenance.

The trust fund, or other accepted financial instrument or insurance, shall state that:

a) The Tribe may draw upon the trust fund, in its discretion, to monitor and maintain facility before or after closure or to take any necessary remedial or cleanup actions; and

b) The trust fund, insurance, or other approved financial instrument may not be closed or terminated without the written approval of the Tribe.

40.1310 Closure and post-closure for solid waste facilities.

The closure or post-closure of a solid waste facility shall meet the requirements and procedures of 40 CFR Part 258, this Act and the following:

a) The owner/operator shall develop and submit closure, and if required, post closure plans for a waste management facility. The Compliance Officer shall review closure plans and post-closure maintenance plans to determine their compliance with this Act, the permit and the requirements of 40 CFR Part 258;

b) The owner/operator shall certify to the Tribal Council that he has prepared an initial estimate of closure and, if appropriate, post closure maintenance costs for a period of not less than thirty (30) years after closure. The facility owner/operators shall annually calculate and revise as needed the cost estimates for closure and post-closure maintenance;

c) The owner/operator may distinguish between preliminary and final plans and provide that preliminary plans may require less specifically and engineering detail than final plans. Preliminary plans shall provide sufficient detail to enable the owner/operator and the Compliance Officer to estimate accurately the costs for closure and post-closure maintenance; and

d) All documentation relating to the preparation of the closure and post-closure maintenance plan shall be retained by the owner/operator and shall be available for inspection and copying by the Compliance Officer or the Solid Waste Director at all reasonable times upon request.

40.1311 Post closure financial assurance.

After Closure and during post-closure maintenance, the operator shall maintain evidence of financial ability for post-closure maintenance at all times equal to the estimated costs of thirty (30) years of post-closure maintenance, except at fifteen years before the end of the post-closure maintenance period specified in the post-closure maintenance plan, the owner/operator may request approval of Tribal Council to provide evidence of financial ability in a lesser amount. Throughout the closure and post-closure period, the progress shall be monitored and certified by registered Civil Engineer (P .E.) to ensure the closure and post-closure plans are followed.

CHAPTER 40.14

Solid Waste Fees and Taxes

40.1401 Revenues and taxes.

The Solid Waste Director shall impose reasonable fees and taxes established by SWMT. All fees and taxes are subject to review and approval by the Tribal Council. Fees and taxes are to be developed in cooperation with the Tribal Rights Employment Office (TERO) to meet the requirements of the Tribal TERO fee structure.

40.1402 **Permit fees.**

a) Solid Waste Management Facility and Transportation Fees. In order to recover tribal program costs, the Solid Waste Director shall impose reasonable fees established by SWMT on each operator of a solid waste management facility or solid waste transportation service for permit issuance, operation, monitoring and enforcement. The fee may be based on the weight, volume, or type of solid waste received, handled, treated, stored or disposed of by any such operator, or on any other appropriate basis or combination thereof. The Tribal Council may waive such fees for solid waste management or collection/transportation services where such management or service is conducted pursuant to a contract agreement with the Tribe.

b) Special Waste Management Facility and Transportation Fees. In order to recover tribal program costs, the TM-EPA Director shall impose reasonable fees established by SWMT on each operator of a special waste management facility or special waste transportation service for permit issuance, operation, monitoring and enforcement. The fee may be based on the weight, volume, or type of special waste received, handled, treated, stored or disposed of by any such operator, or on any other appropriate basis or combination thereof.

c) All fees for permits required under this Act shall be posted and available as the Turtle Mountain Tribe Solid and Hazardous Waste Management Act Schedule of Fees. The Schedule shall be public information and available from the Tribal EPA Director, Tribal Solid Waste Director or the Compliance Officer.

40.1403 **Prime contractor construction permit fee.**

Prime contractors are required to obtain a Tribal EPA permit, per Chapter 40.15 of this Act, prior to beginning any construction or demolition work on the Reservation. The permit fee shall be payable to the Tribal EPA and shall be for the sum of 1% of the total contract. For the purposes of this requirement a Prime Contractor is the prime contractor for construction or demolition projects funded by a federal agency, Tribal Govt., or other commercial construction. This does not apply to private residential or agricultural property construction or demolition.

40.1404 **Permit applications; Filing fees.**

Each permit application, including renewals, shall be accompanied by a reasonable filing fee established by SWMT according to a fee schedule to reflect the cost of processing such applications, including but not limited to the cost of technical and legal consultants, office staff, and overhead. This fee is in addition to the fees authorized for permit issuance, operation, monitoring and enforcement.

40.1405 **Individual collection fees and transfer station fees.**

A fee for the collection of the individual household garbage shall be imposed to defray costs of the service. This fee will be determined by and approved by SWMT and Tribal Council before it is imposed.

40.1406 **Non-payment of fees.**

The Water Utility Board shall have jurisdiction to hear matters regarding the non-payment of collection or special waste handling or management fees. Decisions may be appealed to the Tribal Court.

CHAPTER 40.15
Special Waste Management Permits

40.1501 **Special waste management permits.**

All permits required in this Section for the management or disposal of special waste, as designated by this Act, shall be applied for and obtained from the Tribal EPA and shall comply with the permit application and issuance requirements of Chapter 40.12. All fees for the issuance of such permits shall be remitted to the Tribal EPA.

40.1502 **Construction and demolition wastes permit.**

Prime contractors are required to obtain a Tribal EPA permit, per Section 40.1403 of this Act, prior to beginning any construction or demolition work on the Reservation. The permit fee shall be payable to the Tribal EPA and shall be for the sum of 1% of the total contract cost. Failure to obtain a permit will result in delay of the start up of the construction or demolition project. If a construction project begins without a Tribal EPA permit, the construction site will be closed down and penalties/fines along with interest will be assessed according to the number of days the construction project was in operation without a permit. Any false information given on such permit application can result in the Turtle Mountain Tribe EPA and other environmental departments denying permits on any projects within the Reservation Boundaries for that Prime contractor for a period of two years. Such permit application shall be provided in the format designated by the Tribal EPA.

40.1503 **Open burning permit.**

A permit must be obtained from the Tribal EPA for any open burning on the Reservation. The Compliance Officer will coordinate the approval of open burning permits with the Police Department and Fire Department.

40.1504 **Commercial salvage yard permit.**

Any commercial operation that has cause to maintain an accumulation of used farm equipment, industrial equipment or used motor vehicles for salvage purposes shall obtain a permit from the Tribal EPA to maintain a Salvage Yard. Salvage Yards shall be fenced with locking gates and maintained in a manner to prevent environmental, community health or nuisance hazards. All Salvage Yards shall be inspected quarterly, or as needed, by the Compliance Officer to assure compliance with this Act and the permit. All solid, special and hazardous wastes shall be properly contained and managed in conformance with this Act and the permit.

40.1505 **Tire storage and hauling permit.**

a) Storage of tires in quantities greater than one semi-trailer load requires a formal solid waste storage permit from the Tribal EPA.

b) Commercial businesses or tire dealers located within the boundaries of the Reservation collecting and hauling scrap tires must have a solid waste transporter permit issued by the Tribal Solid Waste Director.

40.1506 **Emergency permits.**

The Tribe may issue an emergency permit for one-time disposal events based on various practical factors during emergency conditions. The Tribal EPA, Solid Waste Director and other local, state and federal agencies will work together with to accomplish the efficient and environmentally sound disposal of solid and/or hazardous waste and related materials so as to minimize impacts to human health, the environment and to water resources. Disposal under emergency permits must be restricted to generally inert or other solid wastes from a specific site or area and for a specific period of time.

40.1507 Permit for disposal of septic wastes by commercial septic pumping service.

A permit for the disposal of septic wastes by a commercial septic pumping service on the Reservation must be obtained from the Tribal EPA pursuant to Chapter 40.12.

**CHAPTER 40.16
Enforcement**

40.1601 Enforcement agent.

The Turtle Mountain EPA Compliance Officer is hereby designated as the enforcement agent entrusted with the duty and responsibility of ensuring the proper handling, treatment and disposal of solid, special and hazardous waste on the Reservation, investigating the release, or threat of release, of a hazardous substance, pollutant or contaminant, petroleum product, controlled substance or mining materials and of ensuring compliance by all persons and government agencies with this Act. Decisions of the Compliance Officer may be appealed to the Hearing Officer under the procedures set forth in the Tribal Administrative Procedures Act. Final decisions may be appealed to the Tribal Court of the Turtle Mountain Band of Chippewa, which has jurisdiction over all offenses and violations of this Act.

40.1602 Enforcement of act.

In order to monitor compliance and enforce all provisions of this Act and regulations adopted hereunder that pertain to the minimum standards for solid and hazardous waste handling, treatment, and disposal, for the protection of the public health and safety and of land, air and water; and insure compliance with the conditions of all permits, determinations, orders, plans or other actions taken by the Tribe under this Act; the Compliance Officer shall have the authority to:

1. Conduct investigations and gather information necessary for the enforcement of this Act;
2. Remove, render inoperative, shut down, close, modify or otherwise control the methods of any operation involved with the collection, transportation, storage, disposal or release of solid or hazardous waste;
3. Inspect at any time any site or premises at which regulated activities are conducted and make photographic, video, or other records of information obtained during the inspection and make video or photographic records of any regulated activity or facility;
4. Enter any site or premises subject to the tribal permit programs or at which records relevant to regulated activity or facility are kept and review and reproduce any records relevant to the regulated activity or facility;
5. Obtain any information, including records and reports, from any owner or operator of a facility or operation permitted under this Act, necessary to determine whether the owner or operator is in compliance with this Ordinance;
6. Conduct any independent monitoring or testing necessary to ensure that owners or operators of a facility or operation permitted under this Act are in compliance with this Act;
7. Conduct any and all independent tests or samplings necessary to verify the adequacy of methods (including sampling) used by owners or operators to obtain information to determine compliance with this Act, including, but not limited to, testing and inspecting any equipment used by the owner or operator to test, sample, or obtain information.
8. Collect, organize and catalog existing information and studies available from all sources, both public and private, pertaining to the management of solid and hazardous waste and past releases of hazardous substances,

- pollutants or contaminants within the exterior boundaries of the Turtle Mountain Reservation;
9. Develop such additional data and studies pertaining to solid and hazardous waste and solid waste management as are necessary to accomplish the objectives of this Act;
 10. Solicit public comment and obtain expert advice when appropriate; and
 11. Investigate activities which affect solid and hazardous waste management to determine whether they are in compliance with this Act and applicable Acts, regulations, orders, determinations, permits, standards, etc., issued under this Act;
 12. Investigate the activities of any solid waste disposal facility or solid waste storage, collection and transportation service in order to determine compliance with this Act or to verify information obtained from the owner or operator;
 13. Interview persons employed in the operation of any regulated facility or service subject to the requirements of this Act;
 14. Receive and record information submitted by any persons concerning any regulated activity or facility. If requested, the Compliance Officer shall provide a written response to any person providing such information within 60 days of the request.

40.1603

Duties.

The Compliance Officer's duties shall include:

1. Enforcement of Permits and Orders. Enforce compliance with permits or Orders issued pursuant to this Act.
2. Enforcement of Mitigation Measures. Enforce compliance with feasible mitigation measures identified within Environmental Assessment/Environmental Impact Statement prepared pursuant to the Tribal Environmental Protection Act (TEPA) Title - of the Turtle Mountain Tribal Act and the National Environmental Protection Act (NEPA).
3. Enforcement of Response Measures. Enforce compliance with response or remediation measures required under Section 40.18 of this Act.
4. Enforcement by Federal Agencies. Ability to request enforcement by state or federal agencies of their respective laws and regulations governing solid or hazardous waste handling, treatment, disposal or releases where those laws and regulations may be applicable.
5. Provide Information. Provide information to the affected public, the Tribal Council, and other Tribal departments as requested and where such requests do not conflict with other provisions of this Act.
6. Development of Program. Develop, implement, and maintain inspection, enforcement and training programs.
7. Record Keeping. Keep and maintain accurate records of its inspection, enforcement and training programs.
8. Consultation with Health Agencies. Consult with appropriate health agencies concerning all actions involving solid waste handling, treatment and disposal.
9. Periodic Review. The TM-EPA Director shall periodically review the Compliance Officer and its implementation of the enforcement program. This review may include the inspection by the TM-EPA Director, or any person authorized by the TM-EPA Director, of all books, records, accounts and other documents of the Compliance Officer. If the TM-EPA Director finds that the Compliance Officer is not adequately fulfilling its enforcement responsibilities, the TM-EPA Director shall notify the Compliance Officer and the Tribal Council of its intention to take remedial action if the Compliance Officer does not correct the problems specified by TM-EPA Director.

40.1604

Actions on complaints.

If the Compliance Officer receives a complaint concerning the violation of applicable tribal or federal environmental or solid waste laws, regulations or permit conditions, the Compliance Officer shall investigate to ensure proper consideration of the complaint. The Compliance Officer's investigation may include the inspection of the facility or transportation vehicle/container to determine whether any applicable tribal or federal law, regulation, or permit has been or is being violated.

1. If the Compliance Officer receives a complaint concerning a solid waste facility, collection system, release, or other activity, and the Compliance Officer is not able or authorized to take action concerning the complaint, the Compliance Officer shall refer the complaint within ten days of receipt to the appropriate state or federal agency.
2. If the Compliance Officer receives a complaint concerning a solid waste facility, collection system, release, or other activity, and the Compliance Officer does not refer it to another agency, or if the Compliance Officer receives a complaint referred to it by another agency, the Compliance Officer shall either take enforcement action concerning that facility or transporter or provide the person who filed the complaint with a written statement within thirty (30) days explaining why an enforcement action would not be appropriate.

40.1605

Enforcement actions.

The Compliance Officer may initiate informal actions to inform a party of violations of this Act where such violations do not pose an imminent risk to public health or the environment or are not habitual in nature to include a written warning notice. Failing timely and complete compliance with this Act, or where such violations pose an imminent risk to public health or the environment or are habitual in nature, the Compliance Officer may issue the following types of formal Administrative Enforcement Actions:

1. Notice of Violation (NOV). The Compliance Officer shall, upon discovery of a violation of this Act, or violation of any permit issued under this Act, provide a Notice of Violation (NOV) that sets forth the acts or omissions with which the person, government agency or permittee is charged and specifies the terms, laws, conditions, rules, or regulations that is alleged to have been violated. The NOV and all accompanying documents shall be delivered personally or by certified or registered mail, return receipt requested to the person, government agency or permittee and a copy provided to the TM-EPA Director and Solid Waste Director. The NOV may include:
 - a. A list of the violations, acts or omissions with which the person, government agency or permittee is charged and specifies the permit terms, laws, conditions, rules, regulations or requirements of this Act that is alleged to have been violated;
 - b. A compliance schedule for any violation of a permit issued pursuant to this Act or any other violation of this Act that cannot be corrected immediately;
 - c. Notification of potential fines or penalties that may result from failure to comply with the NOV;
 - d. Notification of additional or subsequent enforcement action(s) that may result from failure to comply with the NOV;
 - e. Procedures to notify the Compliance Officer of compliance with the NOV; and
 - f. Procedures to request an informal meeting with the Compliance Officer and/or the TM-EPA Director to discuss the violations cited in the NOV and/or the compliance schedule.
2. Administrative Orders. The Compliance Officer may issue a Tribal Administrative Order to any person, to include assessment of appropriate penalties or fines, who:

- a. constructs or operates a solid waste facility in violation of his facility permit;
 - b. constructs or operates a solid waste facility without a facility permit;
 - c. transports solid waste in a manner in violation of his solid waste transportation permit;
 - d. transports solid waste without a solid waste transportation permit;
 - e. violates any standards, permit or requirements of this Act, for the management, handling, transfer, treatment, or disposal of solid, special or hazardous waste;
 - f. fails to apply for or comply with any permit required under this Act;
 - g. violates any requirements of this Act to report and/or respond to a spill or release;
 - h. violates any requirements of this Act to properly investigate, assess, abate, or remediate a release; or
 - i. violates any other requirements of this Act.
3. Cease and Desist Orders. The Compliance Officer may issue an Order to an owner/operator to cease and desist where the construction or operation of a solid waste facility or the transportation of solid waste is causing or threatening to cause a condition of hazard, pollution, or nuisance due to the release or migration of solid, special or hazardous waste or solid or to any person to cease and desist any improper action or activity that is in violation of this Act and:
 - a. causing, or threatening to cause, a release or spill of a solid, special or hazardous waste or other hazardous material; or
 - b. causing any adverse impact on public health, welfare or the environment.
 4. Remedial Action Orders. The Compliance Officer may require a person, government agency or the owner/operator of a solid waste facility or the solid waste transporter to take corrective action necessary to abate any release, hazard, pollution, or nuisance or to protect public health and safety and the environment. all be in conformance with Chapter 40.18 of this Act.

40.1606 Notice to Chairman and Tribal Council.

Ten(10) days before issuing an enforcement order that is not for an emergency, within five (5) days after issuing an enforcement order for emergency, and within fifteen (15) days after discovering a violation of a Tribal law, regulation, or permit that is likely to result in an enforcement action, the Compliance Officer shall provide a written statement providing an explanation and justification for the enforcement order and a description of the violation to the Tribal Chairman, Tribal Council, Tribal law enforcement department, the Solid Waste Director and the TM-EPA Director.

40.1607 Remedial actions.

a) Imminent Threats. If any of the circumstances set forth herein above pose an imminent threat to public health, life or the environment, the TM-EPA Director may approve the Compliance Officer to initiate appropriate action pursuant to Section 40.1801(a).

b) Other Remedial Actions. If any of the circumstances set forth herein above do not pose an imminent threat to public health or the environment, but the Compliance Officer deems it necessary for the public health and safety to perform timely clean up, abatement work or remedial work, the TM-EPA Director may approve the Compliance Officer to perform such actions pursuant to Section 40.1801(b).

40.1608 Compliance schedule.

The Compliance Officer shall develop a compliance schedule for any violation of a permit issued pursuant to this Act or any other violation of this Act

that cannot be corrected immediately and include such compliance schedule as part of a NOV or Order. The compliance schedule shall assure that diligent progress shall be made by the responsible person, government agency or permittee to bring the solid, special or hazardous waste management facility, transporter or other activity or situation into compliance with the minimum standards of this Act and any applicable permit within a specific period of time determined by the TM-EPA Director and the Compliance Officer. If the person, permittee, government agency, facility or transporter is not in compliance within the period specified, the Compliance Officer may assess additional fines or penalties and/or recommend to the Tribal Council that they revoke, suspend, or modify the permit until such time as violations of the minimum standards are remedied.

40.1609 **Revocation, suspension, or modification of permit.**

If a permittee of a facility or transporter permitted under this Act fails to comply with an Administrative Order issued pursuant to this Act the Compliance Officer and TM-EPA may recommend to the Tribal Council that they revoke, suspend, or modify the permit until such time as violations are remedied.

40.1610 **Statement of charges.**

A hearing to determine whether an Administrative Order should be issued may be initiated by the Compliance Officer by filing a written Statement of Charges that sets forth the acts or omissions with which the person, government agency or permittee is charged and specifies the terms, laws, conditions, rules, or regulations that is alleged to have been violated. The Statement of Charges and all accompanying documents shall be delivered personally or by certified or registered mail, return receipt requested to the permittee and to the Hearing Officer.

40.1611 **Notice of hearing.**

The Statement of Charges shall be accompanied by a notice advising the person, government agency or permittee of a date for a hearing, which hearing shall be held no earlier than twenty (20) days and no later than forty-five (45) days from the Compliance Officer's mailing or personal delivery of the Statement of Charges. The notice shall inform the person, government agency or permittee that they have the right to inspect and copy documents relative to the Statement of Charges.

40.1612 **Notice of defense.**

Within fifteen (15) days after service upon the person, government agency or permittee, they may deliver to the Compliance Officer a Notice of Defense in which they may object to the Statement of Charges upon the grounds that it does not state acts or omission upon which the Compliance Officer may proceed or to the form of the Statement of Charges on the ground that it is so indefinite or uncertain that the person, government agency or permittee cannot identify the acts or omissions or prepare the permittee's defense.

a) The Notice of Defense shall be deemed a specific denial of all parts of the Statement of Charges not expressly admitted. Failure to file a Notice of Defense shall constitute a waiver of the right to a hearing. The Statement of Charges will stand and legal action for remedy will begin.

b) The Notice of Defense shall be in writing signed by or on behalf of the person, government agency or permittee.

c) A copy of any Statement of Charges and Notice of Defense shall be sent by the Compliance Officer to the Chairman and the Tribal Council.

40.1613 **Hearings.**

All hearings shall be conducted pursuant to Chapter 22.11 of the Tribal Administrative Procedures Act, as amended, Title 22 of the Turtle Mountain

Tribal Act (TAPA). A Hearing Officer shall be appointed pursuant to Chapter 22.10 of the TAPA for all matters subject to the requirements of this Act.

40.1614 Discovery.

Prior to the hearing, any party, upon written request made to any other party prior to the hearing is entitled to:

- a) Obtain the names and addresses of witnesses to the extent known to the other party, including but not limited to, those intended to be called to testify at the hearing;
- b) Inspect and make a copy of any relevant documents in the possession or custody or under the control of the other party, including but not limited to statements made by any person pertaining to the subject matter of the proceeding, all writings pertaining to the subject matter of the proceeding, and investigative reports pertaining to the subject matter of the proceeding. Nothing in this Section shall authorize the inspection or copying of any writing or thing that is privileged from disclosure by law or otherwise made confidential or protected as attorney work product or otherwise;
- c) Before the hearing has commenced, the hearing panel shall request the participation, at the request of any party, for attendance of witness or production of documents at the hearing.

40.1615 Issuance of decision.

Cases shall be decided by concurrence of at least two members of the appeal panel. The decision shall be based on the rules of the TAPA, shall be in writing and shall contain findings of fact, a determination of the issues presented, and the assessment of costs and penalties, if any. Copies of the decision shall be sent to all parties and to the Chairman and the Tribal Council.

40.1616 Law Enforcement Service.

The Turtle Mountain Law Enforcement Police, Game and Fish Departments and Bureau of Indian Affairs (BIA) Police are also hereby given authority for citation of persons found to be in violation of this Act. It shall be the duty of these departments to enforce the provisions of this Act fairly as to all persons within the Reservation. The Turtle Mountain EPA Compliance Officer shall be notified within 72 hours of any citations issued pursuant to this authority.

CHAPTER 40.17

Violations: Criminal and Civil Penalties

40.1701 Fines and penalties.

Any person who violates any provision of this Act may be subject to fines and penalties imposed by the Compliance Officer, the Water Utility Board or civil and criminal fines and penalties imposed by the Tribal Court in addition to remedies specifically provided for any violation.

40.1702 Civil penalties for violations

Any person who engages in the unauthorized handling, treatment, or disposal of solid waste, special waste or hazardous waste within the Reservation; who constructs or operates a solid, special or hazardous waste facility in violation of his facility permit; who constructs or operates a solid, special or hazardous waste facility without a facility permit; who transports solid, special or hazardous waste in violation of a solid waste transportation permit; who violates any requirements found in this Act or the Tribal Environmental Policy Act; or who violates any standard adopted by the Tribe and Compliance Officer for the handling, treatment or disposal of solid, special and hazardous waste shall be liable for:

1. A civil penalty not to exceed fifteen thousand dollar (\$15,000.00) each day for each violation, to be assessed by the Compliance Officer; or
 2. Alternatively, any person found guilty of violating any of the provisions under this Act may be required to provide not less than eight (8) hours, but not more than two hundred (200) hours of community service assisting the Solid Waste Program, Compliance Officer, or performing other kinds of community service designated by the SWMT.
 3. A penalty matrix shall be developed by the Compliance Officer for the range of penalties to be assessed in consideration of the severity of the violation and potential threat to public health or the Environment. The matrix shall be reviewed and approved by the Solid Waste Management Team.
- Any person who commits any of the above prohibited acts may be subject to criminal penalties and also may be liable for any civil damages caused by the commission of such acts and may be excluded from the Reservation. Any person who commits any of the above prohibited acts, or whose employees or agents in the course of their employment or agency commit any of the above prohibited acts, may have its rights to engage in activities on the Reservation suspended or terminated.

40.1703 Disposition of civil penalty funds.

Civil penalty funds collected shall be paid seventy-five percent (75%) to the Tribal EPA and twenty-five percent (25%) to the General, Fund of the Tribe. Penalty funds paid to the Tribal EPA shall be retained in a fund designated for meeting the costs of responses to environmental emergencies on the Reservation.

40.1704 Penalties in addition to others.

Penalties under this section are in addition to and do not supersede or limit any other remedies, civil or criminal.

40.1705 Injunctive relief.

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

40.1706 Criminal penalties.

Any person over whom the Tribal Court can exercise criminal jurisdiction, and who knowingly violates any of the provisions under this Act, shall, upon conviction in Tribal Court, be guilty of a criminal offense, and shall be subject to a fine of not more that Fifteen Thousand Dollars (\$15,000.00), for each day each violation occurs, and in the discretion of the Tribal Court, may also be subject to imprisonment for not more than one year.

40.1707 Summary of the penalty calculation system for administrative and civil penalty policy.

The Turtle Mountain Band of Chippewa Indians (TMBCI) Environmental Protection Agency (EPA) TMBCI/EPA penalty calculation system established under this Administrative and Civil Penalty Policy ("Policy") shall be applicable to the penalties assessed pursuant to Title 40 TMBCI Solid and Hazardous Waste Management Code (SHWMC). This policy shall be applied for all calculated penalties that are over \$100.00, or where a penalty amount is not specified by Title 40 TMBCI Solid and Hazardous Waste Management Code (SHWMC) or policy (see Appendix A. for standard/specified administrative penalties or fines). Appeals of assessed administrative penalties/fines at or below \$200.00, or as specified in Appendix A, is limited to the TMBCI/EPA Director or Tribal Solid Waste Management Team (TSWMT) designated for first level of appeal and may not be appealed to Tribal Court. Under This Policy, the seriousness of the

violation and any good faith efforts to comply with applicable Tribal requirements are to be considered in assessing a penalty. This Penalty Policy consists of:

- (1) determining a gravity-based penalty for a particular violation, from a penalty assessment matrix;
- (2) a "multi-day" component, as appropriate, to account for a violation's duration;
- (3) adjusting the sum of the gravity-based and multi-day components, up or down, for case specific circumstances; and
- (4) adding to this amount the appropriate economic benefit gained through non-compliance.

40.1708 Establishment of penalty calculation methodology.

More specifically, this Penalty Policy establishes the following penalty calculation methodology:

Penalty amount = gravity-based + multi day +/- adjustments + economic benefit component

In administrative civil penalty cases, the TMBCI/EPA will perform two separate calculations under this Policy:

- (1) to determine an appropriate amount to seek in the administrative complaint and subsequent litigation, and
 - (2) to explain and document the process by which the Agency arrived at the penalty figure it has agreed to accept in settlement.
- (2) The methodology for these calculations will differ only in that no downward adjustments (other than those reflecting a violator's good faith efforts to comply with applicable requirements) will usually be included in the calculation of the proposed penalty for the administrative complaint. In those instances where the violator or reliable information demonstrates prior to the issuance of the complaint that applying further downward adjustment factors (over and above those reflecting a violator's good faith efforts to comply) is appropriate, enforcement personnel may in their discretion (but are not required to) make such further downward adjustments in the amount of the penalty proposed in the complaint.

40.1709 Considerations for determining penalty.

In determining the amount of the penalty to be included in the complaint, enforcement personnel should consider all possible ramifications posed by the violation and resolve any doubts (e.g., as to the application of adjustment factors or the assumptions underlying the amount of the economic benefit enjoyed by the violator) against the violator in a manner consistent with the facts and findings so as to preserve TMBCI/EPA ability to litigate for the strongest penalty possible. It should be noted that assumptions underlying any upward adjustments or refusal to apply downward adjustments in the penalty amount are subject to revision later as new information becomes available. In civil judicial cases, TMBCI/EPA will use the narrative penalty assessment criteria set forth in the Policy to explain the penalty amount agreed to in settlement.

40.1710 Primary components of penalty calculation.

Primary Components of Penalty Calculation:

1. potential for harm; and
2. extent of deviation from a statutory or regulatory requirement.

These two factors constitute the seriousness of a violation under the SHWMC, and have been incorporated into the following penalty matrix from which the gravity-based component will be chosen.

40.1711 Penalty Matrix.

Extend	of	Deviation	from
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Requirement				
Potential for Harm		Minor	Moderate	Major
	Minor	\$20 to \$200	\$200 to \$600	\$600 to \$1,200
	Moderate	\$1,200 to \$2,000	\$2,000 to \$3,200	\$3,200 to \$4,400
	Major	\$2,000 to \$5,000	\$3,200 to \$5,000	\$4,400 to \$5,000

40.1712 Multiple and Multi-day (continuing) violation calculations.

The Policy also explains how to factor into the calculation of the gravity based component the presence of multiple and multi-day (continuing) violations.

The amount of economic benefit from noncompliance gained by the violator will be calculated and added to the gravity-based penalty amount. After the appropriate gravity-based penalty amount (including the multi-day component) has been determined, it may be adjusted upward or downward to reflect particular circumstances surrounding the violation. The amount of any economic benefit enjoyed by the violator is not subject to adjustment.

When adjusting the gravity-based penalty amount the following factors should be considered:

1. good faith efforts to comply/lack of good faith (downward or upward adjustment);
2. degree of willfulness and/or negligence (upward or downward adjustment);
3. history of noncompliance (upward adjustments);
4. ability to pay (downward adjustment);
5. environmental projects to be undertaken by the violator (downward adjustment; and
6. other unique factors, including but not limited to the risk and cost of litigation and the cooperation of the facility during the inspection, case development and enforcement process prior to prehearing exchange (upward or downward adjustment).

These factors (with the exception of the upward adjustment factor for history of noncompliance and the downward adjustment factor for a violator's good faith efforts to comply) should usually be considered after the penalty has been proposed, i.e., during the settlement stage.

40.1713 Other forms of penalties that may be combined.

In Addition, the amount of a calculated penalty may be off-set or in combination with other forms of penalty(s) provided for under the SHWMC to include:

1. Community service
2. Tribal Confinement
3. Cancellation of a contract
4. Prohibition of future contracts
5. Banishment from conducting business on the Reservation

40.1714 Administrative/civil penalty limit.

Chapter 40.17 of the SHWMC, provides that if any person or party has violated or is in violation of a requirement of the SHWMC the Director of TMBCI/EPA may, among other options, issue an order assessing an administrative/civil penalty of up to \$15,000.00 per day for each violation. This amount provides that any order assessing a penalty shall take into account:

1. the seriousness of the violation, and
2. any good faith efforts to comply with the applicable requirements.

40.1715 Policy goals.

The goals of this Policy are:

1. deterrence;
2. fair and equitable treatment of the regulated community; and
3. swift resolution of environmental problems.

40.1716 TMBCI/EPA Policy and internal guidelines.

This document sets forth the TMBCI/EPA Policy and internal guidelines for determining penalty amounts that: (1) should be sought in administrative actions filed under the SHWMC and (2) would be acceptable in settlement of administrative and judicial enforcement actions under the SHWMC.

Note: This Policy does not limit the penalty amount that may be sought in tribal civil judicial actions. In tribal civil judicial actions the TMBCI may, in its discretion, continue to file complaints requesting a civil penalty up to the maximum amount, and may litigate for the maximum amount justifiable on the facts of the case.

Under this Policy penalties are:

1. assessed in a fair and consistent manner;
2. appropriate for the gravity of the violation committed;
3. calculated so that economic incentives for noncompliance with requirements are eliminated;
4. sufficient to deter persons from committing violations of Tribal Codes; and
5. intended to ensure that compliance is expeditiously achieved and maintained

This Policy does not address whether assessment of a civil penalty is the correct enforcement response to a particular violation. Rather, this Policy focuses on determining the proper civil penalty amount that the TMBCI/EPA should obtain once a decision has been made that a civil penalty amounts for the purposes of administrative enforcement actions, under appropriate circumstances, TMBCI/EPA personnel may apply the maximum penalty.

40.1717 Civil penalty policy applicable upon adoption.

This Civil Penalty Policy is immediately applicable upon adoption and should be used to calculate penalties sought in all administrative actions or accepted in settlement of both administrative and judicial civil enforcement actions brought under the SHWMC after the date of the Policy, regardless of the date of the violation.

The procedures set out in this document are intended solely for the guidance of Tribal personnel. They are not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any party in litigation with the Tribe. The TMBCI/EPA reserves the right to act at variance with this Policy.

40.1718 Documentation and release of information.

1. Documentation for penalty sought in administrative litigation: In order to support the penalty proposed in the administrative enforcement action, enforcement personnel must include in the case file an explanation of how the proposed penalty amount was calculated. As a sound case management practice in administrative cases, a case "record" file should document or reference all factual information on which the TMBCI/EPA Compliance officer will need to rely to support the penalty amount sought in the enforcement action. Full documentation of the reasons and rationale for the penalty complaint amount is important to expeditious, successful administrative enforcement of RCRA violations. The documentation should include all relevant information and documents which served as the basis for the penalty complaint amount and were relied upon by the Director of the TMBCI/EPA. In general, only final documents, but not preliminary documents, such as drafts and internal memoranda reflecting earlier deliberations, should be included in the record file. All documentation supporting the penalty calculation should be in the record file at the time the complaint is issued. The documentation should be supplemented to include a justification for any adjustment to the

penalty amount in the complaint made after initial issuance of the complaint, if such adjustments are necessary.

40.1719 Pre-hearing conference or evidentiary hearing presents detailed information.

Enforcement personnel must be prepared to present at a pre-hearing conference or evidentiary hearing more detailed information reflecting the specific factors weighed in calculating the penalty proposed in the complaint. The record supporting the penalty amount specified in the complaint should include a penalty computation worksheet which explains the potential for harm, extent of deviation from Tribal regulatory requirements, economic benefit of noncompliance, and any adjustment factors applied (e.g., good faith efforts to comply). An example of the worksheet is attached in the Appendix to this Policy. Also, the record should include any inspection reports and other documents relating to the penalty calculation.

40.1720 Documentation of penalty settlement amount.

Until settlement discussions or the pre-hearing information exchanges occur with the respondent, mitigating and equitable factors and overall strength of the TMBCI/EPA enforcement case may be difficult to assess. Accordingly, preparation of a penalty calculation worksheet for purposes of establishing the TMBCI/EPA settlement position on penalty amount may not be feasible prior to the time that negotiations with the violator commence. Once the violator has presented to the TMBCI/EPA with its best arguments relative to penalty mitigation, the TMBCI/EPA may, at its discretion, complete and document a penalty calculation to establish its initial "bottom line" settlement position. However, at a minimum, prior to final approval of any settlement, whether administrative or judicial, enforcement personnel should complete a final worksheet and narrative explanation of the penalty calculation summary which provides the rationale for the final settlement amount to be included in the case file. As noted above, enforcement personnel may, in arriving at a penalty settlement amount, deviate significantly from the penalty amount sought in an administrative complaint, provided such discretion is exercised in accordance with the provisions of this Policy.

40.1721 Release of information.

Release of information to members of the public relating to the use of this Policy in enforcement cases is subject to the tribal public information policies or laws.

40.1722 Relationship between penalty amount sought in an administrative action and accepted in settlement.

The Tribal Administrative Procedures Act (TAPA) for administrative proceedings shall be utilized by the TMBCI/EPA to include a specific proposed penalty in the complaint or at a later specified time. The TMBCI/EPA shall provide the respondent with an explanation of how the penalty was calculated in accordance with any criteria set forth in the TAPA. This Policy requires that enforcement personnel calculate a proposed penalty (and include this amount and the underlying rationale for adopting it either in methodology for calculating penalty amounts which would be acceptable to the Tribal Court in settlement of administrative and judicial enforcement actions. The dollar amount of the proposed penalty that will be sought in the administrative hearing may exceed the amount of the penalty the Agency would accept in settlement. This may be so for several reasons:

1. At the time the complaint is filed, the TMBCI/EPA will often not be aware of mitigating factors (then known only to the respondent) on the basis of which the penalty may be adjusted downward.
2. It is appropriate that the TMBCI/EPA have the enforcement discretion to accept in settlement a lower penalty than it has sought (in its complaint, because in settling a case the TMBCI/EPA is able to avoid the costs and

risks of litigation. Moreover respondents must perceive that they face some significant risk of higher penalties through litigation to have appropriate incentives to agree to penalty amounts acceptable to the TMBCI/EPA in settlement.

40.1723 TMBCI/EPA enforcement personnel procedures.

Therefore, TMBCI/EPA enforcement personnel should, as necessary, prepare two separate penalty calculations for each administrative proceeding—one to support the initial proposed penalty and the other to be placed in the administrative file as support for the final penalty amount the TMBCI/EPA accepts in settlement.

40.1724 Calculating an administrative proceeding.

In calculating the amount of the proposed penalty to be sought in an administrative proceeding, TMBCI/EPA personnel should total: (1) the gravity-based penalty amount (including any multi-day component), and (2) an amount reflecting upward adjustments [Citation 14] of the penalty, and subtract from this sum an amount reflecting any downward adjustments in the penalty based solely on respondent's "good faith efforts [Citation 15] to comply with applicable requirements." This total should then be added to the amount of any economic benefit accruing to the violator. The result will be the proposed penalty the TMBCI/EPA will seek in the administrative proceeding.

40.1725 Penalty figure accepted in settlement by TMBCI/EPA.

The methodology for determining and documenting the penalty figure the TMBCI/EPA accepts in settlement should be basically identical to that employed in calculating the proposed penalty, but should also include consideration of: (1) any new and relevant information obtained from the violator or elsewhere, and (2) all other downward adjustment factors (in addition to the "good faith efforts" factor weighed in calculating the proposed penalty). It may be noted that this Policy serves as guidance not only to be TMBCI/EPA personnel charged with responsibility for calculating appropriate penalty amounts for violations of the SHWMC but also may be used by Tribal judicial officers presiding over judicial civil actions.

40.1726 Calculating a penalty amount to support TMBCI/EPA penalty in judicial actions.

In judicial actions, it will generally only be necessary to calculate a penalty amount to support any penalty the TMBCI/EPA is to accept in settlement. Counsel for the Tribe may point out to the court in judicial actions that the penalty figure it seeks is consistent with the rationale underlying the Penalty Policy. However, counsel should not suggest that the court is bound to follow the Policy in assessing a civil penalty. Judicial officers have discretion to apply most of the upward or downward adjustment factors described in this Policy in determining what penalty should be imposed on a violator. However, judgments as to whether a penalty should be reduced in settlement because:

- (1) the violator is willing to undertake an environmental project in settlement of a penalty claim;
- (2) the TMBCI/EPA faces certain litigative risks in proceeding to hearing or trial, or
- (3) the violator demonstrates a highly cooperative attitude throughout the compliance inspection and enforcement process, are decisions involving matters of policy and prosecutorial discretion which by their nature are only appropriate to apply in the context of settling a penalty claim. It is therefore contemplated that decision makers in administrative proceedings would not adjust penalty amounts downward based upon their assessment of any of these three "settlement only" factors in assessing a civil penalty.

40.1727 Determination of gravity-based penalty amount.

The seriousness of a violation must be taken into account in assessing a penalty for the violation. The gravity-based component is a measure of the seriousness of a violation. The gravity-based penalty amount should be determined by examining two factors:

1. potential for harm; and
2. extent of deviation from a statutory or regulatory requirement.

40.1728 Potential for harm.

The SHWMC was adopted in order to prevent harm to human health and the environment. Thus, noncompliance with any requirement of the SHWMC can result in a situation where there is a potential for harm to human health or the environment. In addition to those violations that involve actual or potential contamination from the release of hazardous wastes or substances, violations such as failure to comply with recordkeeping requirements create a risk of harm to the environment or human health as well as undermine the integrity of the Tribal regulatory program. Accordingly, the assessment of the potential for harm resulting from a violation should be based on two factors:

1. the risk of human or environmental exposure to hazardous waste and/or hazardous constituents that may be posed by noncompliance, and
2. the adverse effect noncompliance may have on Tribal regulatory purposes or procedures for implementing the SHWMC.

40.1729 Risk of exposure.

The risk of exposure presented by a given violation depends on both the likelihood that human or other environmental receptors may be exposed to hazardous waste and/or hazardous substances and the degree of such potential exposure. Evaluating the risk of exposure may be simplified by considering the factors which follow below.

1. Probability of Exposure: Where a violation involves the actual management of waste, a penalty should reflect the probability that the violation could have resulted in, or has resulted in a release of waste or waste constituents, or hazardous conditions posing a threat of exposure to waste or waste constituents. The determination of the likelihood of a release should be based on whether the integrity and/or stability of the waste management unit or waste management practice is likely to have been compromised.

40.1730 Factors to consider for making a determination.

Some factors to consider in making this determination would be:

1. evidence of release (e.g., existing waste spillage or soil or groundwater contamination);
2. evidence of waste mismanagement (e.g., improper waste sorting or containers in poor condition); and
3. adequacy of provisions for detecting and preventing a release (e.g., equipment condition and inspection procedures).

40.1731 Larger penalty presumptively appropriate circumstances.

A larger penalty is presumptively appropriate where the violation significantly impairs the ability of the waste management system to prevent and detect releases of waste and/or waste constituents.

1. Potential Seriousness of Contamination: when calculating risk of exposure, enforcement personnel should weigh the harm which would result if the waste or waste constituents were in fact released to the environment.
 - a. quantity and toxicity of wastes (potentially) released;
 - b. likelihood or fact of transport by way of environmental media (e.g., air and groundwater); and
 - c. existence, size and proximity of receptor populations (e.g., local residents, fish, and wildlife, including threatened or endangered

species) and sensitive environmental media (e.g., surface waters and aquifers).

In considering the risk of exposure, the emphasis is placed on the potential for harm posed by a violation rather than on whether harm actually occurred. Violators rarely have any control over whether their pollution actually causes harm. Therefore, such violators should not be rewarded with lower penalties simply because the violations did not result in actual harm.

In considering this factor, the environmental sensitivity of the receptor areas or populations should be examined. The risk of exposure to a particularly sensitive environmental area, such as a wetlands, a drinking water source, or the habitat of a threatened or endangered species, may be a basis for an upward adjustment of the category chosen for the potential harm (i.e., minor to moderate, moderate to major) or a selection of a higher amount in the range of the chosen penalty matrix cell.

40.1732 **Harm to the Tribal Regulatory Program.**

There are some requirements of the SHWMC which, if violated, may not appear to give rise as directly or immediately to a significant risk of contamination as other requirements. Noncompliance with these requirements, however, directly increases the threat of harm to human health and the environment. Therefore, all regulatory requirements are fundamental to the continued integrity of the SHWMC. Violations of such requirements may have serious implications and merit substantial penalties where the violation undermines the regulatory purposes or procedures for implementing the SHWMC. Some examples of this kind of regulatory harm include:

1. failure to submit a timely/adequate permit application;
2. failure to respond to a formal information request;
3. operating without a required permit;
4. failure to prepare or maintain required records; or
5. failure to submit required reports

It should also be clear that these types of requirements are based squarely on protection concerns and are fundamental to the overall goals of the SHWMC to handle wastes in a safe and responsible manner.

40.1733 **Applying the potential for harm factor.**

1. Enforcement personnel should evaluate whether the potential for harm is major, moderate, or minor in a particular situation. The degree of potential harm represented by each category is defined as:
MAJOR:

- a. The violation poses or may pose a substantial risk of exposure of humans or other environmental receptors to hazardous waste or substances; and/or (2) the actions have or may have a substantial adverse effect on regulatory purposes or procedures for implementing the SHWMC.
- MODERATE:
- b. The violation poses or may pose a significant risk of exposure of humans or other environmental receptors to hazardous, special or solid waste or substances; and/or (2) the actions have or may have a significant adverse effect on statutory or regulatory purposes for implementing the SHWMC.
- MINOR:
- c. The violation poses or may pose a relatively low risk of exposure of humans or other environmental receptors to hazardous, special or solid waste or constituents; and/or (2) the actions have or may have a small adverse effect on statutory or regulatory purposes or procedures for implementing the SHWMC.

40.1734 **Extent of deviation from requirement.**

Evaluating the Extent of Deviation (Definition): The "extent of deviation" from the SHWMC and its regulatory requirements relates to the degree to which the violation renders inoperative the requirement violated. In any violation

situation, a range of potential noncompliance with the subject requirement exists. In other words, a violator may be substantially compliance with the provisions of the requirement or it may have totally disregarded the requirement (or a point in between). In determining the extent of the deviation, the following categories should be used: MAJOR: The violator deviates from requirements of the regulation to such an extent that most (or important aspects) of the requirements are not met resulting in substantial noncompliance. MODERATE: The violator significantly deviates from the requirements of the regulation but some of the requirements are implemented as intended. MINOR: The violator deviates somewhat from the regulatory requirements but most (or all important aspects) of the requirements are met.

40.1435 Penalty assessment matrix.

Each of the above factors-potential for harm and extent of deviation from a requirement-forms one of the axes of the penalty assessment matrix. The matrix has nine cells, each containing a penalty range. The specific cell is chosen after determining which category (major, moderate, or minor) is appropriate for the potential for harm factor, and which category is appropriate for the extent of deviation factor.

		Extent of Deviation from Requirement		
		Minor	Moderate	Major
Potential for Harm	Minor	\$20 to \$200	\$200 to \$600	\$600 to \$1,200
	Moderate	\$1,200 to \$2,000	\$2,000 to \$3,200	\$3,200 to \$4,400
	Major	\$2,000 to \$5,000	\$3,200 to \$5,000	\$4,400 to \$5,000

The lowest cell (minor potential for harm/minor extent of deviation) contains a penalty range from \$20 to \$200. The highest cell (major potential for harm/major extent of deviation) is limited by the maximum penalty allowance of \$5,000 per day for each violation.

Note that all references in this Policy to matrix cells consist of the Potential for Harm factor followed by the Extent of Deviation factor (e.g., major potential for harm/moderate extent of deviation is referred to as major/moderate).

The range of numbers provided in each matrix cell serves as a "fine tuning" device to allow enforcement personnel to better adapt the penalty amount to the gravity of the violation and its surrounding circumstances. Enforcement personnel should analyze and rely on case-specific factors in selecting a dollar figure from this range. Such factors include the seriousness of the violation (relative to other violations falling within the same matrix cell), the environmental sensitivity of the areas potentially threatened by the violation, efforts at remediation or the degree of cooperation evidenced by the facility (to the extent this factor is not to be accounted for in subsequent adjustments to the penalty amount), the size and sophistication of the violator, the number of days of violation, and other relevant matters.

For some continuing violations, it is possible that circumstances may change during the period of violation in some manner that could affect the Potential for Harm or Extent of Deviation determinations. Enforcement personnel may choose difficult matrix cells for different periods of the same violation. For example, for a violation that lasts for 100 days, the circumstances during the first 50 days may warrant a penalty from the major/major cell. On day 51, if the violator takes affirmative steps to come into compliance or otherwise address the noncompliance but does not completely end the violation, the Potential for Harm or Extent of Deviation may change enough to

warrant a different category (i.e., moderate or minor). In such a case, enforcement personnel should calculate separate penalties for the distinct periods of violation. This adjustment only applies where actions of the violator change the circumstances; natural attenuation or other natural changes in the circumstances should not result in this type of bifurcated penalty calculation.

When considering the sophistication of the violator, enforcement personnel may presume, in the absence of information to the contrary, that entities such as small organizations and small business do not possess the same level of sophistication as other regulated entities. This presumption should, in most circumstances, result in a lower penalty amount than would otherwise be selected for similar violations.

40.1736

Multiple and multi-day penalties.

1. Multiple Violations Criteria: In certain situations, the TMBCI/EPA may find that a facility has violated several different requirements. A separate penalty should be proposed in an administrative proceeding and obtained in settlement or litigation for each separate violation that results from an independent act (or failure to act) by the violator and is substantially distinguishable from any other claim in the complaint for which a penalty is to be assessed. A given claim is independent of, and substantially distinguished from, any other claim when it requires an element of proof not needed by the others. In many cases, violations of different sections of the regulations constitute independent and substantially distinguishable violations. For litigation or settlement purposes, each of the violations should be assessed separately and the amounts added to determine a total penalty to pursue. It is also possible that different violations of the same section of the regulations could constitute independent and substantially distinguishable violations. For penalty purposes, each of the violations should be assessed separately and the amounts totaled.

Penalties for multiple violations also should be sought in litigation or obtained in settlement where one party or person has violated the same requirement in substantially different locations. An example of this type of violation is failure to clean up discharged waste during transportation. A transporter who did not clean up waste discharged in two separate locations during the same trip should be charged with two counts. In these situations, the separate penalty assessments are justified. Similarly, penalties for multiple violations are appropriate when a party or person violates the same requirement on separate occasions but not as multi-day violations. An example would be the case where the facility fails for a year to submit required quarterly reports. For penalty purposes, each failure to report during the year, which is four total violations, should be assessed separately.

2. Compression of Penalties for Related Violations: In general, penalties for multiple violations may be less likely to be appropriate where the violations are not independent or not substantially distinguishable. Where a claim derives from or merely restates another claim, a separate penalty may not be warranted. For example, if an owner/operator of a waste management facility submitted a permit application with a cover letter, signed by the manager's secretary, but failed to sign the permit application, and also thereby failed to have the appropriate responsible person sign the application, the owner/operator has violated the requirement that the application be signed by a responsible company official. The

TMBCI/EPA has the discretion to view the violations resulting from the same factual event, failure to sign the application at all, and failure to have the person legally responsible for the permit application sign the application at all, and failure to have the person resulting from the same factual event, failure to sign the application at all, and failure to have the person legally responsible for the permit application sign it, as posing one legal risk. In this situation, both sections violated should be cited in the complaint, but one penalty, rather than two, may be appropriate to pursue in litigation or obtain in settlement, depending upon the facts of a case. The fact that two separate sections were violated may be taken into account in choosing higher "potential for harm" and "extent of deviation" categories on the penalty matrix.

In cases such as these where multiple violations result from a single initial transgression, assessment of a separate penalty for each distinguishable violation may produce a total penalty which is disproportionately high. Accordingly, in the specifically limited circumstances described, enforcement personnel have discretion to forego separate gravity-based and multi-day penalties for certain distinguishable violations, so long as the total penalty for all related violations is appropriate considering the gravity of the offense and is sufficient to deter similar future behavior and recoup economic benefit. In deciding which penalties should be compressed (i.e., the violations for which separate penalties should not be calculated), enforcement personnel should consider the seriousness of the violation, the importance of the underlying requirement to the regulatory scheme, and the economic benefit resulting from each violation. Violations that involve substantial noncompliance or that result in economic benefit that should be recaptured, should be set forth separately in the complaint. Even where separate penalties are not calculated for distinguishable violations, all significant violations should still be cited separately in the complaint to demonstrate the magnitude and scope of the violations. [Citation 21] The recitation of all significant violations will provide further support for a penalty that is based on a risk of harm and extent of deviation for the totality of the violations.

3. Multiple Violations Treated as Multi-day Violations: Multiple violations are appropriate where the TMBCI/EPA can demonstrate that independent and independent and substantially distinguishable violations have occurred. Violations should be treated as multi-day violations (one penalty with a multi-day component) where the same violation continues uninterrupted for more than one day.

Where a facility has through a series of independent acts or omissions repeatedly violated the same statutory or regulatory requirement, the violations may begin to closely resemble multi-day violations in their number and similarity to each other. This is particularly true where the violations occur within close proximity in time to each other and are based on similar acts by the violator. In these circumstances, enforcement personnel have discretion to treat each violation after the first in the series as multi-day violations (assessable at the rates provided in the multi-day matrix), if to do so would produce a more equitable penalty calculation. For example, if a facility fails to submit four quarterly reports in the same year, the TMBCI/EPA may treat these as four separate violations. However, if a facility is required to conduct daily inspections but fails to do so for an entire month or longer, the TMBCI/EPA may calculate the penalty utilizing the multi-day matrix. In those cases where a series of recurring, separate violations are treated as multi-day violations, enforcement personnel should treat each occurrence as one day for purposes of calculating the multi-day component.

Penalties for multi-day violations procedures.

1. The SHWMC provides the TMBCI/EPA with the authority to assess in administrative actions or seek in court civil penalties of up to \$5,000.00 per day of non-compliance for each violation of a requirement of the SHWMC. Any such penalty assessed should consist of a gravity-based component, economic benefit component, and to the extent that violations can be shown or presumed to have continued for more than one day, an appropriate multi-day component. The multi-day component should reflect the duration of the violation at issue, subject to the guidelines set forth in Section VII C., below.
2. After it has been determined that any of the violations alleged has continued for more than a day, the next step is to determine the length of time each violation continued and whether a multi-day penalty is mandatory, presumed, or discretionary. In most instances, the TMBCI/EPA should only seek to obtain multi-day penalties. If a multi-day penalty is appropriate, for the number of days it can document that the violation in question persisted. However, in some circumstances, reasonable assumptions as to the duration of a violation can be made. For example, in the case where an inspection reveals that a facility has no groundwater monitoring wells in place it can be assumed, in the absence of evidence to the contrary, that the facility has never had any wells. Here the violation can be treated as having commenced on the day that the permit triggered the requirements began or the effective date of the regulations, whichever is later. A multi-day penalty could then be calculated for the entire period from the date the facility was required to have wells in place until the date of the inspection showing they did not.
3. Conversely, in cases where there is no permit or regulatory deadline from which it may be assumed compliance obligations began to run, a multi-day penalty should account only for each day for which information provides a reasonable basis for concluding that a violation has occurred. Where EPA determines that a violation persists, enforcement personnel may calculate the penalty for a period ending on the date of compliance or the date the complaint is filed or, if the complaint references only the statutory maximum, the date the proposed penalty is submitted.
4. If the calculation is based on the date the complaint is filed, and if the violation continues after that date, the complaint should include language stating that the TMBCI/EPA may amend the complaint because the violation may continue to occur after filing. For example, the complaint could state:

The violation alleged in Count 1 of this complaint is of a continuing nature and continues, to the best of the TMBCI/EPA knowledge and belief, as of the date of the filing of this complaint. The TMBCI/EPA, therefore, reserves the right to amend this complaint and the penalty proposed herein to reflect additional days of violation for the violation alleged in Count 1.
5. Alternatively, enforcement personnel may consider including language in the complaint stating that the penalty will include a specific, additional per day amount until the violation is corrected. The language of the complaint should be clear that the amount chosen is based on the circumstances as they are known at the time the complaint is filed and that if the conditions change, the amount of the penalty sought may change. For example, the complaint could state:

"The violation alleged in Count 1 of this complaint is of a continuing nature and continues, to the best of the TMBCI/EPA knowledge and belief, as of the date of the filing of this complaint. In addition to the penalty proposed in paragraph ___ of this complaint, the TMBCI/EPA is hereby assessing an additional penalty of \$___ for each day after the filing of the complaint that the violation alleged in Count 1 continues. This

additional penalty assessment is based on the same factors on which the penalty in paragraph __ is based. Should circumstances or conditions relating to the alleged violation change, the TMBCI/EPA reserves the right to adjust the continuing penalty amount accordingly.

40.1738 Calculation of the multi-day penalty.

After the duration of the violation has been determined, the multi-day component of the total penalty is calculated, pursuant to the Multi-Day Matrix, as outlined below.

1. Determine the gravity-based designations for the violation, e.g., major-major, moderate-minor, or minor-minor.
2. Determine, for the specific violation, whether multi-day penalties are mandatory, presumed, or discretionary, as follows:
 - a. Mandatory multi-day penalties. Multi-day penalties are considered mandatory for 2-180 of all violations with the following gravity-based designations: major-major, major-moderate. The only exception is when they have been waived or reduced, in "highly unusual cases, ". Multi-day penalties for days 181+ are discretionary.
 - b. Presumption in favor of multi-day penalties. Multi-day penalties are presumed appropriate for days 2-180 of violations with the following gravity-based designations: major-minor, moderate-major, moderate-moderate. Therefore, multi-day penalties should be sought, unless case-specific facts overcoming the presumption for a particular violation are documented carefully in the case files. The presumption may be overcome for one or more days. Multi-day penalties for days 181+ are discretionary.
 - c. Discretionary multi-day penalties. Multi-day penalties are discretionary, generally, for all days of all violations with the following gravity-based designations: minor-major, moderate-minor, minor-moderate, minor-minor. In these cases, multi-day penalties may be imposed for some or all days. The bases for decisions to impose or not to impose any discretionary multi-day penalties must be documented in the case files.
3. Locate the corresponding cell in the following Multi-Day Matrix. Multiply a dollar amount selected from the appropriate cell in the multi-day matrix (or, where appropriate, a larger dollar amount not to exceed \$5,000.00 by the number of days the violation lasted. (Note: the duration used in the multi-day calculation is the length of the violation minus one day, to account for the first day of violation at the gravity-based penalty rate.)

40.1739 Extend of deviation from requirement.

Potential for Harm:

The dollar figure to be multiplied by the number of days of violation will generally be selected from the range provided in the appropriate multi-day cell. The figure selected should not be less than the lowest number in the range provided. Selections of a dollar figure from the range of penalty amounts can be made at the TMBCI/EPA discretion based on an assessment of case-specific factors, including those discussed below.

In determining whether to assess multi-day penalties and what penalty amount is appropriate to select from the multi-day matrix, the Department must analyze carefully the specific facts of the case. This analysis should be conducted in the context of the Penalty Policy's broad goals of:

1. ensuring fair and consistent penalties which reflect the seriousness (gravity) of violations;
2. promoting prompt and continuing compliance; and
3. deterring future non-compliance

Additional factors which may be relevant in analyzing these Policy goals in the context of a specific case include the seriousness of the violation relative to other violations falling within the same matrix cell, efforts at

remediation or the promptness and degree of cooperation evidenced by the facility (to the extent not otherwise accounted for in the proposed penalty or settlement amount), the size and sophistication of the violator, the total number of days of violation, and other relevant considerations. All of these factors must be analyzed in light of the overriding goals of the Penalty Policy to determine the appropriate penalties in a specific case. As discussed above, this Penalty Policy permits the TMBCI/EPA to waive or reduce multi-day penalties, when otherwise mandatory for a violation, in a "highly unusual case." Because almost all continuing "major" violations warrant multi-day penalties, it is anticipated that such a waiver will occur very infrequently. As required with the presumptive multi-day violations, when the TMBCI/EPA has determined that it will either reduce the number of days of violation or will not use the multi-day matrix for violations that fall into the mandatory category, the case-specific facts justifying the reduction or waiver must be documented in the case file.

40.1740 Effect of economic benefit of noncompliance.

This Policy encourages the recapture of any significant economic benefit of non-compliance that accrues to a violator from non-compliance with the SHWMC. Enforcement personnel shall evaluate the economic benefit of noncompliance when penalties are calculated. The fundamental premise of this Policy is that economic incentives for noncompliance are to be eliminated. If, after the penalty is paid, violators still profit by violating the law, there is little incentive to comply. Therefore, it is incumbent on all enforcement personnel to calculate economic benefit. An "economic benefit" component should be calculated and added to the gravity-based penalty component when a violation results in "significant" economic benefit to the violator. Economic benefit can result from a violator delaying or avoiding compliance costs, or when the violator achieves an illegal competitive advantage through its non-compliance.

The total economic benefit amount (all violations added together) should be compared to the chart to determine whether an economic benefit component should be included in the proposed penalty. Any decision not to seek an economic benefit penalty and the rationale for such a decision should be documented on the Penalty Computation Worksheet.

40.1741 General policy on settlement.

The general Policy is to not settle cases for an amount less than the economic benefit of noncompliance. However, there are four general areas where settling the total penalty amount for less than the economic benefit may be appropriate. The four exceptions are:

1. the economic benefit component consists of an insignificant amount;
2. there are compelling public concerns that would not be served by taking a case to trial;
3. it is unlikely, based on the facts of the particular case as a whole, that the Tribe will be able to recover the economic benefit in litigation; or
4. the company has documented an inability to pay the total proposed penalty.

If a case is settled for less than the economic benefit component, a justification must be included on the Penalty Compulsion Worksheet.

40.1742 Economic benefit from delayed costs and avoided costs.

This section discusses two types of economic benefit from noncompliance in determining the economic benefit component:

1. benefit from delayed costs; and
2. benefit from avoided costs.

Delayed costs are expenditures which have been deferred by the violator's failure to comply with the requirements. The violator eventually will have to spend the money in order to achieve compliance. Delayed costs are either capital costs (essentially construction or equipment) or one-time non-

depreciable costs (e.g., cleaning up a spill).

Avoided costs are expenditures which will never be incurred. Avoided costs include the usual operating and maintenance costs which would include any annual periodic costs such as leasing monitoring or testing equipment.

40.1743 Calculation of economic benefit from delayed and avoided costs.

Enforcement personnel may use the rule of thumb approach whenever the economic benefit penalty is not substantial (generally under \$10,000) and use of an expert financial witness may not be warranted. This can be a simple matter of determining the local avoided costs of compliance.

For economic benefit penalties that are more substantial (generally more than \$10,000), enforcement personnel should use an expert financial witness or seek the assistance of other enforcement agencies.

The economic benefit component should be calculated initially for the maximum period of noncompliance. Enforcement personnel should then determine whether that amount should be reduced for any reasons. However, enforcement personnel should be prepared to support the calculation of economic benefit for the entire period of noncompliance if there is any uncertainty regarding potential reductions that may have been identified.

The economic benefit calculation should also take into account the entire period that a violator enjoys the benefit. In almost all cases, the violator will enjoy the financial benefit until the economic benefit penalty is paid. Therefore, this calculation should be based on a penalty payment date corresponding roughly with the relevant hearing date. At the hearing, TMBCI/EPA personnel should be prepared to inform the Presiding Officer that the violator will continue to enjoy the economic benefit until the penalty is paid and the relevant time period should include any time periods after the hearing prior to penalty payment.

40.1744 Additional information on economic benefit.

In addition to delayed and avoided costs, an economic benefit may accrue to a violator in the form of an illegal competitive advantage. In this type of economic benefit, the illegal activity results in a financial gain that the violator would not otherwise realize if the violation had not been committed. In most cases, a violating facility will realize either benefits from delayed/avoided costs or from an illegal competitive advantage; however, where the circumstances support it, any penalty amount based on benefits due to illegal competitive advantage should be added to any other type of economic benefit that has been calculated.

An example of an illegal competitive advantage would be a waste hauler that charges a lower fee for his services due to avoidance of full tipping fees at a landfill due to illegally dumping portions of the waste loads prior to legal disposal at the landfill.

40.1745 Adjustment factors and effect of settlement.

1. Adjustment Factors. Background: As mentioned in Section VI of this document, the seriousness of the violation is considered in determining the gravity-based penalty component. The reasons the violation was committed, the intent of the violator, and other factors related to the violator are not considered in choosing the appropriate cell from the matrix. However, any systems for calculating penalties must have enough flexibility to make adjustments that reflect legitimate differences between separate violations of the same provision. In assessing penalties, the TMBCI/EPA must take into account any good faith efforts to comply with the applicable requirements. There are several such adjustment factors to consider. These include the degree of willfulness and/or negligence, history of noncompliance, ability to pay, and other unique factors. This adjustment may also include an additional adjustment factor for environmental projects undertaken by the violator, and that are not to the

direct benefit to the violator.

2. **Recalculation of Penalty Amount:** If new information becomes available after the issuance of the proposed penalty which makes it clear that the initial calculation of the penalty is in error, enforcement personnel should adjust this figure. Enforcement personnel should document on the Penalty Computation Worksheet the basis for recalculating the gravity-based or economic benefit component of the penalty. For example, if after the issuance of the proposed penalty, information is presented which indicates that less waste is involved than was believed when the proposed penalty was issued, it may be appropriate to recalculate the gravity-based penalty component. Thus, if enforcement personnel had originally believed that the violator had improperly stored ten barrels of hazardous wastes but it was later determined that only a single container of hazardous waste was improperly stored, it may be appropriate to recalculate the "potential for harm" component of the gravity-based penalty from "major" to "moderate" or "minor." On the other hand, if enforcement personnel initially believed a violator had fully complied with a specified requirement but subsequently determine that this is not the case, it would be appropriate to amend the complaint as necessary to add a new count, and revise the total penalty amount upward to account for this previously undiscovered violation. Likewise, if new information shows that a previously known violation is more serious than initially thought, an upward revision of the penalty amount may be required. Furthermore, if the violator presented new information which established that the work performed was technically inadequate or useless (e.g., the violator drilled wells in the wrong spot or did not dig deep enough), it may be more appropriate to keep the gravity-based penalty as originally calculated and evaluate whether it would be appropriate to mitigate the penalty based on the "good faith efforts" adjustment factor. When information is presented which makes it clear that the gravity-based or economic benefit penalty component is in error, enforcement personnel may, of course, choose to formally amend the complaint to correct the original penalty component. In all instances, any recalculation of the penalty should be carefully documented on the Penalty Computation Worksheet and include a summary in the enforcement file.
3. **Application of Adjustment Factors:** The adjustment factors can increase, decrease or have no effect on the penalty amount sought from the violator. Adjustments should generally be applied to the sum of the gravity-based and multi-day components of the penalty for a given violation. All supportable upward adjustments of the penalty amount of which the TMBCI/EPA is aware ordinarily should be made prior to issuance of the proposed penalty, while downward adjustments (with the exception of those reflecting good faith efforts to comply) should generally not be made until after the proposed should be placed on the violator. Enforcement personnel should use whatever reliable information on the violator and violation is readily available at the time of assessment. However, if a penalty is to achieve deterrence, both the violator and the general public must be convinced that the penalty places the violator in a worse position than those who have complied in a timely fashion. Moreover, allowing a violator to benefit from noncompliance punishes those who have complied.
 - a. **Good Faith Efforts to Comply/Lack of Good Faith.**

Good faith efforts to comply with applicable requirements must be considered in assessing a penalty. The violator can manifest good faith by promptly identifying and reporting noncompliance or instituting measures to remedy the violation before the TMBCI/EPA detects the violation. Assuming self-reporting is not required by law and the violations are expeditiously corrected, a violator's admission or correction of a violation prior to detection may provide a basis for

mitigation of the penalty, particularly where the violator institutes significant new measures to prevent recurrence. Lack of good faith, on the other hand, can result in an increased penalty. Likewise, claims by a violator that "it was not told" by the Tribe, the TMBCI/EPA or the Compliance Officer that it was out of compliance should not be cause for any downward adjustment of the penalty.

b. Degree of Willfulness and/or Negligence.

In cases where civil penalties are sought for "knowing" violations of the Tribal Laws/Code(s), the penalty may be adjusted upward for willfulness and/or negligence.

In assessing the degree of willfulness, and/or negligence, the following factors should be considered, as well as any others deemed appropriate:

- (1) how much control the violator had over the events constituting the violation;
- (2) the foreseeability of the events constituting a violation;
- (3) whether the violator took reasonable precautions against the events constituting the violation;
- (4) whether the violator knew or should have known of the hazards associated with the conduct; and
- (5) whether the violator knew or should have known of the requirement which was violated.

It should be noted that this last factor, lack of knowledge of the requirement, should never be used as a basis to reduce the penalty. To do so would encourage ignorance of the law. Rather, knowledge of the Tribal law/code(s) should serve only to enhance the penalty. The amount of control which the violator had over how quickly the violation was remedied also is relevant in certain circumstances. Specifically, if correction of the environmental problem was delayed by factors which the violator can clearly show were not reasonably foreseeable and were out of his or her control and the control of his or her agents, the penalty may be reduced.

4. History of Noncompliance (upward adjustment only) where a party previously has violated Tribal environmental laws/code(s) at the same time or a different site, this is usually clear evidence that the party was not deterred by the previous enforcement response. Unless the current or previous violation was caused by factors entirely out of the control of the violator, this is an indication that the penalty should be adjusted upwards.

Some of the factors that enforcement personnel should consider in making this determination are as follows:

- a. how similar the previous violation was;
- b. how recent the previous violation was;
- c. the number of previous violations; and
- d. violator's response to previous violation(s) in regard to correction of problem.

A violation generally should be considered "similar" if the TMBCI/EPA previous enforcement response should have alerted the party to a particular type of compliance problem. A previous violation of the same requirement would constitute a similar violation. Nevertheless, a history of noncompliance can be established even in the absence of similar violations, where there is a pattern of disregard of environmental requirements contained in Tribal or another federal environmental statute. Enforcement personnel should examine multimedia compliance by the respondent and, where there are indications of a history of noncompliance, the penalty should be adjusted accordingly. For the purpose of this section, a "previous violation" includes any act or omission for which a formal or informal enforcement response has occurred (e.g., Tribal, EPA or State notice of violation, warning letter,

complaint, consent agreement, final order, or consent decree). The term also includes any act or omission for which the violator has previously been given written notification or warning, however informal, that the TMBCI/EPA believes a violation exists.

5. Ability to Pay (downward adjustment only): The TMBCI/EPA generally will not assess penalties that are clearly beyond the means of the violator. Therefore, the enforcement personnel should consider the ability of a violator to pay a penalty. At the same time, it is important that the regulated community not see the violation of environmental requirements as a way of aiding a financially-troubled business.

Enforcement personnel should conduct a preliminary inquiry into the financial status of the party against whom a proposed penalty is being assessed. This inquiry may include a review of publicly-available information. The ability of a violator to pay a proposed penalty is not a factor that the TMBCI/EPA must consider in assessing a penalty. However, because this is a mitigating factor set forth in this Policy, enforcement personnel should be generally aware of the financial status of the violator in the event that this is raised as an issue in settlement or hearing.

The burden to demonstrate inability to pay rests on the violator, as it does with any mitigating circumstances. Thus, a person or party's inability to pay usually will be considered only if the issue is raised by the violator. If the violator fails to fully provide sufficient information, then enforcement personnel should disregard this factor in adjusting the penalty. When the TMBCI/EPA determines that a violator cannot afford the penalty as prescribed by this Policy or the cost of compliance or from carrying out remedial measures which the TMBCI/EPA deems to be more important than the deterrence effect of the penalty (e.g., payment of penalty would preclude proper clean up of a release), the following options should be considered in the order presented:

- a. consider an installment payment plan with interest;
- b. consider a delayed payment schedule with interest (for example, such a schedule might even be contingent upon an increase in sales or some other indicator of improved business); or
- c. consider straight penalty reductions; or
- d. consider other penalties provided for under the SHWMC.

As indicated above, the amount of any downward adjustment of the penalty is dependent on the individual facts of the case regarding the financial capability of the violator and the nature of the violations at issue.

6. Environment Projects (downward adjustment only): Under certain circumstances the TMBCI/EPA may consider adjusting the penalty amount downward in return for an agreement by the violator to undertake an appropriate environmentally beneficial project. Such a project should not directly benefit the violator or be in response to another order or enforcement action by the Tribe, the State or a Federal agency.
7. Other Unique Factors: This Policy allows an adjustment for factors which may arise on a case-by-case basis. When developing its settlement position, the TMBCI/EPA should evaluate every penalty with a view toward the potential for protracted litigation and attempt to ascertain the maximum civil penalty the tribal court is likely to award if the case, considering, for example, the probability of proving violations, the probability that the Tribe's legal arguments will be accepted, the opportunities which exist to establish a useful precedent or send a signal to the regulated community, the availability and potential effectiveness of the Tribe's evidence, including witnesses, and the potential strength of the violator's equitable and legal defenses. Where the TMBCI/EPA determines that significant litigative risks exist, it may also take into account any disproportionate resource outlay involved in litigating a case that it might avoid by entering into a settlement. Downward adjustments of

the proposed penalty for settlement purposes may be warranted depending on the TMBCI/EPA assessment of these litigation considerations. The extent of the adjustments will depend, of course, on the specific litigation considerations presented in any particular case.

In addition to litigation risks, enforcement personnel can consider, for the purposes of an expedited settlement, the cooperation of the person or party throughout the compliance evaluation and enforcement process. Enforcement personnel may reduce the gravity-based portion of the penalty by as much as 10% considering the degree of cooperation and preparedness during the inspection, provision of access to records, responsiveness and expeditious provision of supporting documentation requested by the process. In addition to creating an incentive for cooperative behavior during the activities listed above, this adjustment factor further reinforces the concept that respondents face a significant risk of higher penalties in litigation than in settlement. This adjustment factor should only be considered in settlements agreed to in principle by the parties before the filing of the prehearing exchange of information.

It is important to note the difference between a penalty adjustment for cooperative attitude and for good faith efforts to comply. While self-reporting and correction of violations qualify as good faith efforts, the cooperation and attitude of the violator throughout the investigation and enforcement process should be the focus under this factor. For example, a violator may qualify for the adjustment if it voluntarily provides information prior to the TMBCI/EPA use of investigative tools such as information request well in advance of the due date and otherwise cooperates fully, a downward adjustment may be appropriate. By contrast, this factor should not be applied to those cases where the violator indicates an interest in settlement and enters into negotiations but does not demonstrate other indications of cooperation. Generally, this adjustment factor should apply to those violators who demonstrates and maintain a high degree of willingness to work with the TMBCI/EPA regarding the investigation and resolution of violations.

40.1746 **Effect of settlement.**

This Policy encourages settlement of a proceeding at any time as long as the settlement is consistent with the provisions and objectives of Tribal Laws and Code(s). If the violator believes that it is not liable or that the circumstances of its case justify mitigation of the penalty proposed in the administrative or civil action, they may request a settlement conference in accordance with such provisions in the SHWMC.

40.1747 **Appendix.**

Standardized Penalties as specified by the Director of the TMBCI/EPA. This list of standard minor offense penalties may be added to the discretion of the Director of the TMBCI/EPA.

For minor/minor first offenses:

VIOLATION	Standard	Penalty/Fine
Littering (minor first offense)		\$25.00
Transporting, Uncovered Waste Load (Tarp)		\$50.00
Dumping of "White Goods"		\$25.00 @ item
Dumping "Bulk Waste"		\$25.00 @ item
Dumping household waste (less than 1 cu. yd)		\$25.00
Dumping Septic Wastes		\$100.00

CHAPTER 40.18

Tribal Response and Remedial Action Program

40.1801 **Remedial actions by Turtle Mountain Tribal Response Program (TM-TRP).**

The TM-TRP, as a part of the TM-EPA, may investigate, assess, and remediate, or require a responsible party to investigate, assess or remediate a release, or threat of release, of a hazardous waste, substance, pollutant, contaminant, petroleum product, controlled substance or mining materials that may pose a threat to public health, welfare or the environment.

1. Remedial Actions by TM-TRP in Circumstances Posing an Imminent Threat. If a release of a hazardous substance, pollutant or contaminant results from the management, handling, treatment, storage, transportation or disposal of a solid or hazardous waste, hazardous material, petroleum product, controlled substance or from mining activity poses an imminent threat to life or public health, TM-TRP may:
 - a. Perform such activities as are necessary to address the threat in cooperation with any other Tribal, state, or federal agency;
 - b. Conduct inspections and investigations as provided for in Chapter 40.16 of this Act; and
 - c. Expend any available funds to perform any assessment, cleanup, abatement, and remedial activities required to mitigate the threat, subject to the approval of the Tribal Council.
2. Remedial Actions by TM-TRP; Generally. If a release of a hazardous substance, pollutant or contaminant resulting from the management, handling, treatment, storage or disposal of a solid waste or hazardous waste, petroleum product, controlled substance or from mining activity does not pose an imminent threat to life, health or the environment, but TM-TRP and/or the Compliance Officer deems it necessary for the public health, safety or the environment to perform assessment, cleanup, abatement or other remedial actions, TM-TRP may perform such activities in cooperation with any other Tribal, state, or federal agency and expend available monies thereon, subject to the approval of the Tribal Council.
3. Remediation by TM-TRP at Orphan Sites. The Tribal EPA may expend funds, subject to approval of the Tribal Council, for the purpose of remediation of orphan sites and the performance of any other activity as defined in this Section. Such activities may include conducting site evaluations and testing, evaluating remedial measures, selecting remediation requirements, and constructing, installing, maintaining and operating systems to remedy contamination in accordance with a remediation work plan prescribed by the Tribal EPA Director (the TM-EPA Director) for the orphan site. The liability of the TM-TRP and the Tribes to fulfill the requirements of this Section is limited to the amount of funds available for such actions. As used in this Section, orphan sites means:
 - a. Sites where the Tribal EPA Director determines that there is no viable party that is responsible for causing or contributing to the contamination present at the site;
 - b. Sites where the TM-TRP has issued a no further action letter, and where there is a subsequent discovery of contamination which was present at the site when the no further action letter was issued but:
 - (1) Was not known to the site owner or the TM-TRP at the time the no further action letter was issued, provided that a comprehensive and complete site characterization was conducted by the party to the Remediation Agreement;
 - (2) Is not the result of activities conducted on the site after the no further action letter was issued; and
 - (3) Does not constitute an imminent or substantial endangerment to human health or the environment which is being addressed by the holder of the no further action letter pursuant to a reopening of the no further action letter under this Section; or
 - c. Spill sites, where the TM-TRP determines that the person responsible for the spill cannot be identified, or where the department must take prompt action to prevent hazards to human health or the environment at a site where a responsible party, or other appropriate state or federal

authority, fails to act promptly.

4. Remedial Actions by TM-TRP for Failure to Perform.
Remedial action may be taken by the TM-TRP in the absence of, or in addition to, assessment, cleanup, abatement, or remedial activities by the site owner, operator or other persons in cooperation with any other Tribal, state, or federal agency in the event that the activities subject to a Tribal Order or Voluntary Remediation Agreement are not satisfactorily performed or completed.

40.1802 Remedial action contracting.

TM-TRP may perform remedial activities itself or by or in cooperation with any other Tribal, state, or federal agency or private contractor. To this end and notwithstanding any other provisions of law, TM-TRP may:

1. Enter into oral or written contracts for such activities, and the contracts, whether written or oral, may include provisions for equipment rental and the furnishing of labor and materials necessary to accomplish or complete the activities; and
2. Expend any available funds to contract any assessment, investigation, cleanup, abatement, or remedial activities, subject to the approval of the Tribal Council.

40.1803 Liability of owners, operators and other persons.

Whenever the TM-TRP determines that the operation of a solid waste management facility or the collection or transportation of solid waste is causing or threatening to cause a release of a hazardous substance, contaminant or pollutant or a condition of hazard, pollution, or nuisance due to the migration of hazardous or solid waste, or for any other reason, TM-TRP may require the operator of the solid waste facility or the solid waste transporter to take corrective action necessary to abate any hazard, pollution, or nuisance or to protect public health and safety and the environment the owner or operator of the property or business may be held liable for all damages and costs associated with the assessment, investigation, cleanup, abatement, or remedial actions caused by such release or threat or release. However, an "innocent land owner", as defined below, is not liable for investigation, monitoring, remediation or other response action, or relates costs, regarding contamination attributable to a release, discharge or migration of contaminants on his property.

1. Innocent Land Owner. For the purposes of this Section "Innocent land owner" means a person who did not cause or contribute to the source of contamination and who is one (1) of the following:
 - a. An owner of real property that has become contaminated as a result of a release or migration of contaminants from a source not located on or at the real property;
 - b. An owner of real property who can show with respect to the property that the owner has no liability for contamination under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607(a), because the owner can show a defense as provided in section 107(b) of that act (42 U.S.C. 9607(b));
 - c. An owner of real property who at the time of becoming the owner of the property, and after exercising due diligence, did not know or should not have reasonably known about the presence of contamination on the property;
 - d. A lender or fiduciary who owns or holds a security interest in land, unless the lender or fiduciary participated in the management of a site at the time that the owner or operator thereof caused a release or migration of contaminants; or
 - e. A unit of Tribal government which acquired ownership or control through bankruptcy, abandonment or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the

Tribal government agency contributed to the contamination.

2. To be eligible for immunity under this Section, such "innocent land owner" shall:
 - a. Grant to the TM-TRP or to a person designated by the TM-TRP, reasonable access to the land for purposes of investigation, monitoring or remediation;
 - b. Comply with any requirements established by the TM-TRP that are necessary to comply with federal grants or programs;
 - c. Not use the real property in a manner that causes exposure of the public to harmful environmental conditions; and
 - d. Comply with any Tribal engineering or institutional controls applicable to the real property.
3. Any person who knowingly transfers, conveys or obtains an interest in land to avoid liability for contamination, remediation or compliance with any provision of this Act shall not be an innocent owner.
Notwithstanding the provisions of this Section, an innocent land owner who undertakes a cleanup of his property must comply with all applicable provisions of this Act.

40.1804 Recovery of expenditure of tribal funds.

In any case under this Section where the TM-TRP expends funds to investigate, assess, remediate or contain contamination resulting from a spill or a release, and where the TM-TRP has identified a responsible party, and the responsible party is not an "innocent Land owner", the responsible party shall reimburse the TM-TRP. If a release of a hazardous substance, pollutant or contaminant is assessed, remediated, the effects thereof abated, or other necessary remedial action is taken by the TM-TRP as described above, the person or persons who committed or allowed the improper disposal, action or release shall be liable to TM-TRP for the reasonable costs actually incurred in cleaning up any solid waste, hazardous waste or hazardous material, abating the effects thereof, monitoring, implementing engineering controls or taking other remedial action. The amount of such costs shall be recoverable in a civil action in the Tribal Court, together with the costs of suit incurred by TM-TRP in recovering such monies. A judgment ordering the payment of these costs to TM-TRP will bear interest at the rate of fifteen percent (15%) a year or at the rate of interest allowable on judgments under XXXXXX law, whichever is greater. TM-TRP shall reimburse the Tribes to the extent of the latter's contribution.

40.1805 Remedial action and enforcement orders.

Whenever TM-TRP determines that a person or responsible party is causing, has caused or is threatening to cause a condition of hazard, pollution, or nuisance due to the release or migration of a hazardous substance, pollutant or contaminant TM-TRP may issue an Order, pursuant to Chapter 40.16 of this Act, to take emergency action, cease or desist and/or require the person or responsible party to take corrective or remedial action necessary to abate any hazard, pollution, or nuisance or to protect public health and safety and the environment. Any person shall, upon order of TM-TRP, cease and desist any improper action, remediate a release of a hazardous substance, pollutant or contaminant, abate the effects thereof, and take any other remedial action directed by TM-TRP pursuant to this Section.

40.1806 Accidental release or spill.

In the event of an accidental release or spill of a hazardous substance, pollutant or contaminant to the air, land or waters or groundwater of the Reservation resulting in a potential threat to the public health, welfare or the environment within the boundaries of the Reservation the persons causing the release or the originating facility's or vehicle's owner or operator must implement the requirements of this Section to include:

1. Timely and Appropriate Action. The persons causing the release or the originating facility or vehicle owner or operator must take timely and appropriate action to include notification of appropriate officials and government agencies as specified below. Failure to take timely and appropriate action, as directed by this Section and the Compliance Officer may result in enforcement action pursuant to this Act and other Tribal Acts and/or referral to appropriate state or federal agencies.
2. When Notification is Required. Where an accidental spill or release of a hazardous substance, pollutant or contaminant has occurred within the boundaries of the Reservation; and
 - a. The release poses a potential threat to the public health, welfare or the environment; or
 - b. The release exceeds 25 gallons or causes a sheen on surface water; or
 - c. It exceeds any Tribal or federal U.S EPA groundwater, surface water or drinking water quality standards; or
 - d. The release is required to be reported according to SARA, Title III, § 304 (1986); or
 - e. The Compliance Officer requires a notification of a release to be made.
3. Who to Notify of a Release. The owner or operator of a facility or a vehicle believed to be the source of such a release of a hazardous substance, pollutant or contaminant must notify the TM-TRP within ___(time)___? at ___(phone No.)___ as well as the appropriate State and federal authorities.
4. Notification Information Required. All notifications and reports of an accidental release or spill of any hazardous substance, pollutant shall contain the following information, at a minimum, to the best of the reporting person's ability:
 - a. Name and telephone number of the reporting person;
 - b. Name and address of the facility (or location of the spill or accident);
 - c. Name of facility/vehicle owner contact if different than reporting person;
 - d. Time and type of incident, for example spill, release, fire, etc;
 - e. Name, description and quantity of materials involved, to the extent known;
 - f. The extent of any injuries, if known;
 - g. The possible hazard to human health or the environment outside the facility or to the nearby area;
 - h. Description of actions taken to mitigate the release or spill; and
 - i. Other authorities notified.
5. Additional Reports. Subsequent to the initial report, the responsible person shall immediately notify the Compliance Officer of information that changes the accuracy of the initial report. As directed by the Compliance Officer, the responsible person shall make additional reports verbally or in writing.
6. Response Action Required. The owner or operator of a facility or a vehicle believed to be the source of such a release or spill of a hazardous substance, pollutant or contaminant must comply with the requirements of this Act and the Compliance Officer to address the immediate and long term impacts of the release or spill to include all necessary containment, remediation, assessment of impacts and long term monitoring.

40.1807

Remediation standards.

Any voluntary or involuntary remedial action conducted by an owner, operator or responsible party or by the TM-TRP, shall:

1. Be protective of human health, safety and the environment. A remedy shall be considered to be protective of human health if it reduces risk to human receptors of acute and chronic toxic exposures to contaminants to levels that do not pose a significant risk to human health. A remedy shall be

considered to be protective of the environment if it adequately reduces risk of significant adverse impacts to ecological receptors for which habitats have been identified on or near the site. Remedies may meet this requirement through a combination of removal, treatment, monitored natural attenuation, engineering or Tribal institutional controls. Any site where a remedy is proposed that includes leaving contamination above background or risk based levels in place utilizing engineering or Tribal institutional controls must also be approved by the Tribal Council pursuant to this Act;

2. Attain Standards Established by the Tribe. A remedy shall attain standards established under this Section for air, soil, water and ground water affected by the release, unless the Tribal EPA Director sets an alternate standard. No standard set under this Section for a contaminant shall be set at a level or concentration lower than the background level or concentration for that contaminant. A remedy must attain standards or alternate standards by the end of the remediation period set forth in the Remediation Agreement. A remedy shall be considered to attain Tribal standards for air, soil water and ground water if it:
 - a. Meets any applicable media standards established under Tribal or federal Act, law or rule or regulation; or
 - b. Meets site-specific, risk-based standards developed for the eligible site;
3. Meet Site-Specific, Risk-Based Standards. The exposure factors to be used by the Tribal EPA Director to establish site-specific, risk-based standards under this Section for hazardous substances, pollutants or contaminants in groundwater shall assume that groundwater may be used as a drinking water source, provided that no standard set under this Section for a contaminant shall be set at a level or concentration lower than the background level or concentration for that contaminant. For substances that may adversely impact water quality, the exposure factors to be used by the Tribal EPA Director shall assume uses consistent with the class of use prior to contamination of the groundwater;
4. Maintain Source Control. The remedy shall control any sources of releases so as to reduce or eliminate, to the extent technically practicable, further releases as required to protect human health and the environment. A remedy shall be considered to control sources of releases if it controls the release of contaminants from sources to any media in concentrations that:
 - a. exceed applicable standards set by the Tribal EPA Director under this Section, or the soil standards under this Section; and
 - b. complies with any applicable federal, state or Tribal standard for management of wastes generated as a consequence of the remedy; and
5. Comply with this Act. A remedy shall be considered to comply with applicable standards for management of wastes if all wastes generated as a consequence of implementation of the remedy are treated, stored or disposed of in compliance with the requirements of this Act and any applicable state or federal requirements.

40.1808

Remedy selection.

The Tribal EPA Director shall choose a remedy, or combination of remedies, from among those remedies which meet the requirements of this Section, as applicable. In choosing a remedy, the Tribal EPA Director shall consider:

1. The extent to which the remedy will be reliable and effective for the long term. For remedies that include engineering or Tribal institutional controls, the TM-EPA Director shall consider the expected life cycle performance of any engineering controls, monitoring systems and institutional controls;
2. The extent to which the remedy results in a reduction of toxicity, mobility or volume of contaminants;

3. The degree to which remedies incorporate treatment or removal of contaminants to lower long term risk to human health and the environment;
4. The time required for each remedy to attain standards for air, soil water and ground water specified in this Section, as applicable. A remedy involving monitored natural attenuation may be considered whether or not the TM-EPA Director has made a determination of technical impracticability. Monitored natural attenuation shall be deemed effective if there is evidence that natural attenuation is occurring and will be completed within a reasonable time period;
5. Any adverse impacts which may be caused by a remedy, and shall take into consideration:
 - a. The gravity of any projected impact and the cost and availability of measures to mitigate the impact;
 - b. The extent and nature of contamination and practicable capabilities of remedial technologies, and whether achieving standards is technically impracticable;
 - c. Reasonably anticipated future land uses or use restrictions in a Tribal institutional control area;
 - d. Consistency of remedies with the nature and complexities of releases of contaminants;
 - e. Consistency of the remedies with cultural and traditional values of the Tribes; and
 - f. Cost of the remedy to include capital, operation and maintenance, engineering and institutional control costs and monitoring costs for the anticipated life of the remedy.

40.1809 Voluntary remediation eligibility.

Sites or properties that are eligible for voluntary remediation shall include:

1. Sites or properties which meet the following conditions:
 - a. Sites, or portions of sites or properties, where releases occurred before the effective date of this Act; and
 - b. The site, or portion of site or property, where the release occurred was not subject to the requirements of a Tribal solid waste permit under this Act at the time of the release; or
 - c. The site is not covered by an Order of the TM-TRP, TRIBAL COUNCIL or by any court and entered with the consent of the person or entity.
2. Sites, or portions of sites, where releases occurred on or after the effective date of this Act and where the responsible party, owner or operator is implementing a pollution prevention plan approved by the TM-TRP to prevent further releases consistent with this Act.
3. Waste management or disposal units that have been permitted under this Act and the TM-EPA Director determines that the release from the permitted unit, if restricted or prohibited by the permit, cannot be remediated in accord with the permit requirements because of technical impracticability.
4. Site or properties that are not eligible to be voluntary remediation sites shall include:
 - a. A site for which remediation is not voluntary under this Section;
 - b. A site that is listed on the National Priorities List of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675;
 - c. A commercial solid waste management facility, commercial waste incineration or disposal facility permitted under this Act;
 - d. Underground and aboveground storage tanks subject to federal remediation requirements under RCRA;
 - e. Radioactive waste storage or processing facilities subject to Federal requirements;

- f. Any site where a release resulted from continuous or repeated violations of any law, rule, regulation, permit or Order under this Act or other Tribal, state or federal Act, law or regulation.

40.1810 Voluntary remediation requirements.

Consistent with the policy and purpose of this Act, this Section shall provide incentive to a responsible party, owner or operator to voluntarily remediate eligible sites. All voluntary remediation for eligible sites shall be performed in accordance with this Act and all remediation requirements shall be contained in a Remediation Agreement issued by the TM-TRP. The following requirements and procedures are necessary for voluntary remediation of eligible sites or properties under this Act:

1. The remediation shall not conduct un-permitted releases of hazardous substances, pollutants or contaminants to the environment of the Reservation;
2. Except as provided in this Section, no additional remediation requirements may be imposed by the TM-TRP under this Act for remediation of any site or property subject to a Remediation Agreement issued by the TM-TRP, unless the Remediation Agreement has been reopened or terminated pursuant to this Act;
3. Nothing in this Section shall prohibit the imposition of remediation requirements to address the release of a contaminant which may occur after a Remediation Agreement has been entered into or a no further action letter has been issued;
4. Remediation authorized by the TM-TRP under this Section shall not be deemed a prohibited act under this Act, or of any rules or regulations promulgated thereunder;
5. Nothing herein shall relieve owners or operators of eligible sites from applicable permit requirements under this Act or limit the TM-EPA Director's ability to undertake enforcement action relating to a complaint under this Act and impose a penalty for violation of the Act;
6. Nothing in this Section shall limit the TM-EPA Director's authority to order any person to abate any condition that poses an imminent or substantial endangerment to human health or the environment, or the TM-EPA Director's authority to issue emergency orders or take emergency action.

40.1811 Application for participation in the voluntary remediation program.

To participate in the TM-TRP voluntary remediation program an applicant identified as the owner, operator or other responsible party must submit an application to the Tribal EPA Director of the TM-TRP that provides a location and description of the site. The application shall also describe the site-specific conditions which the applicant believes satisfy one (1) or more of the above eligibility criteria of this Section. No later than forty-five (45) days after receipt of the application, the TM-TRP shall give written notice to the applicant containing the TM-EPA Director's determination of the site eligibility for participation in the voluntary remediation program.

40.1812 Non-voluntary remediation.

The Tribal EPA Director may require remediation by owners, operators, or other parties responsible for releases of hazardous substances, pollutants or contaminants on or from a property or site resulting in contamination. Such remediation, for parties that do not participate in the voluntary remediation program in this Act, may be required under a Tribal Order or permit issued pursuant to this Act. Remediation is not voluntary under this article if it is required by:

1. Order of the TM-TRP, Compliance Officer, Tribal Council or by any federal or state court and entered into without the consent of a person; or
2. Order of the TM-TRP, Compliance Officer, Tribal Council or by any federal or state court and entered without the consent of a person who has failed

or refused to enter into, or breached the terms of, a Remediation Assessment Agreement, Remediation Agreement or reopened Remediation Agreement; or

3. Administrative or judicial order to which the United States Environmental Protection Agency is a party, which is issued after the effective date of this Act, on a site or property that has been determined not to be eligible under this Section.

Sites or properties that are not eligible for voluntary remediation are subject to all other applicable requirements of this Act.

40.1813 Remediation assessment agreement.

The Remediation Assessment Agreement shall contain the terms and conditions agreed to by the parties, which shall include the information, supporting documents, existing data or reports and procedures required by the TM-TRP for completion of an environmental assessment or site characterization that is adequate and appropriate to:

1. Support selection of a permanent or long term protective remedy for the site and adjacent property;
2. Meet the standards of this Act and any applicable federal requirements; and
3. Develop a remediation work plan and schedule.

For any site that is determined by the TM-EPA Director to have the potential for significant contamination, be located in an area where human exposures to contaminants are likely, or require evaluation of remedial alternatives, the TM-EPA Director shall require the Site Characterization Plan within the Remediation Assessment Agreement to include the collection of any data and site information needed to evaluate alternative remedial actions. Not all potential remedies must be evaluated for a site.

The TM-EPA Director and the applicant may enter into a single agreement containing both characterization and remedial action plans.

40.1814 Remediation agreement.

Any Remediation Agreement shall contain, at a minimum:

1. A Remedial Action Plan, including:
 - a. the remediation standards and objectives for the site or property;
 - b. the remediation standards and objectives for adjacent property;
 - c. a description of any engineering or proposed Tribal institutional controls;
 - d. a schedule for the required remediation activities; and
 - e. conditions for the effective and efficient implementation of the Remediation Agreement.
2. A suitable bond or other evidence of financial assurance, that is approved and accepted by the TM-EPA Director, to assure the satisfactory performance of the planned remediation and maintenance of engineering controls and any long term monitoring activities. It shall be the duty of any successor in interest in the property to maintain such bond or financial assurance; and
3. Re-opens or termination clauses determined appropriate by the TM-EPA Director.

The TM-EPA Director may enter into a Remediation Agreement for any site or property subject to a prior administrative or judicial order or permit which contains remedial requirements. However, no Remediation Agreement for any such site or property shall be effective until the previous order or permit has been modified to incorporate the terms of the Remediation Agreement. Modifications to Orders or permits under this Section shall be made using the procedures specified in the prior Order or permit.

Entry into a Remediation Agreement under this Section shall not affect the duty of the site owner or operator to comply with any prior order or permit.

40.1815 **Public notification.**

The residents of the Turtle Mountain Reservation shall be notified of remedial actions planned and conducted under this Section.

1. The TM-TRP shall notify the affected public of all confirmed releases requiring a response plan for soil, water and/or groundwater remediation, and upon request, provide or make available to the interested public information concerning the nature of the release and any corrective actions planned or taken;
2. Following any voluntary remediation application and determination by the Tribal EPA Director that a site is an eligible site, or following the submission of any application to modify an existing voluntary Remediation Agreement, the applicant shall:
 - a. Give written notice to all known property owners of record and/or responsible tribal or government agency(s) of land, which is contiguous to the site, of the proposed action;
 - b. The notice shall be of a form and content prescribed by the TM-TRP, provide a description of the site and summarize the proposed Remediation Agreement; and
 - c. Shall publish such notice in a newspaper of general circulation in community in which the site is located. Such notice shall:
 - (1) identify the site or property;
 - (2) provide a summary of the criterion which makes the site eligible for participation in the TM-TRP voluntary remediation program under this Section; and
 - (3) provide contact information for the public to comment on the proposed action.
3. The public shall be provided a minimum of 14 days notice and an opportunity to comment on a draft Response Action Plan and related activities.
4. The public shall be provided a minimum of 14 days notice for any public meetings on a planned Response Action.

40.1816 **Public participation.**

For any Remedial Action the TM-EPA Director shall implement a public participation plan. In implementing the plan, the TM-EPA Director shall consult with and consider the public participation needs of interested parties, including but not limited to all known adjacent property owners of record of land, responsible tribal or federal government agencies and local public interest groups.

In determining whether there is significant public interest, the TM-EPA Director shall consider whether there have been responses to the notices required under this Section by:

1. At least five (5) individuals;
2. An organization representing at least twenty (20) individuals;
3. The governing body of a local government or Tribal District; or
4. The Tribal Council.

The TM-EPA Director shall provide an opportunity for a public meeting on a planned Remedial Action and the meeting shall be held if the TM-EPA Director finds sufficient public interest.

The applicant for voluntary remediation shall implement a public participation plan which shall be provided by the TM-EPA Director. In implementing the plan, the applicant or owner shall consult with and consider the public participation needs of interested parties, including but not limited to all known adjacent property owners of record of land, tribal or federal government agencies, local government groups, and public interest groups.

40.1817 **Public record.**

1. The TM-TRP shall establish and maintain a Public Record of response actions conducted by the TM-TRP, or conducted by another party, or tribal or government agency, with oversight by the TM-TRP, that is updated at least annually. The Public Record shall include, at a minimum:
 - a. A record of sites that at which response actions have been completed during the previous calendar year, including the name and location of such sites;
 - b. A record of sites at which response actions are planned to be conducted in the coming calendar year;
 - c. Upon completion of a response action, information of whether the site will be suitable for unrestricted use or if institutional controls on the use of the site or property will be implemented by the TM-TRP or the Tribes as part of the remedy; and
 - d. Other such information as deemed appropriate by the TM-TRP.
2. The public shall have access to all documents and related materials that the owner/operator of a site or property and/or the TM-TRP are relying upon to make response action decisions or conduct the site activities to include the:
 - a. Notification of a Release
 - b. Spill Reports
 - c. Assessment Report(s)
 - d. Remedial Agreement or Action Plan and related documents
 - e. Notification of Completion of a Response Action
 - f. Certification of Completion of a Response Action; and
 - g. Post Response Action/Monitoring Plan (if required).

The public shall be provided a minimum of 14 days notice for any public meetings on a planned Response Action and for an opportunity to comment on a Response Action Plan and related activities.

40.1818

Documentation of completion.

1. The TM-TRP may issue either of two (2) letters to a responsible party, person or government agency to document that a response action is complete:
 - a. A Certificate of Completion; or
 - b. A No Further Action (NFA) letter.
2. Both assurances may affect TM-TRP's ability to require additional remediation at a site or property and give site owners, operators, prospective purchasers, or other responsible party or government agency certainty about the extent of their remediation liability. If a Certificate of Completion or No Further Action letter is issued the TM-TRP shall record a notice of such action in the office of _____ with the deed for the site or property and shall file the notice in the office of the _____ no later than ten (10) business days after the date of issuance.
3. If a term or condition of any No Further Action letter, covenant not to sue, or Certificate of Completion requires the maintenance of a bond or other evidence of financial assurance, it shall be the duty of any successor in property interest to maintain such bond or financial assurance.
4. No person or entity shall change any engineering or institutional controls contained in a Remediation Agreement, NFA letter or Certificate of Completion without the prior written consent of the TM-TRP. Before a change may be made, the TM-TRP shall review the contamination at the site and any new requirements shall be incorporated into a subsequent Remediation Agreement, NFA letter or certificate of completion. Upon entry into a subsequent Remediation Agreement or Certificate of Completion or issuance of a NFA letter, the TM-EPA Director shall modify or terminate any prior Remediation Agreement, NFA letter or Certificate of Completion.

5. Certification of Completion. Certificates of Completion must be requested from TM-TRP in writing. A Certification of Completion may be issued by the TM-EPA Director for sites that have been cleaned up according to the terms and conditions in an approved Voluntary Remediation Agreement. The Certification of Completion may state that, at the time the certificate is issued, all remediation requirements necessary to protect human health and the environment have been successfully completed and that TM-TRP currently has no plans to further evaluate the site or to impose additional remediation requirements. In addition:
 - a. A Certificate of Completion does not limit the TM-TRP ability to undertake enforcement actions or to impose penalties for violations of this Act;
 - b. A Certificate of Completion does not relieve the responsible party from applicable tribal, state or federal environmental permitting requirements;
 - c. A Certificate of Completion may be issued for an entire site or for only a particular area on a site, or a particular set of contaminants, or a particular environmental medium. Partial Certificates of Completion will contain disclaimers explaining that the coverage of the liability assurance is limited to the specific area, contaminants, or media addressed and that the TM-TRP ability to require additional remediation is not limited for other areas, contaminants, or media;
 - d. If a Certificate of Completion is requested because the responsible party believes no cleanup is necessary, information must be provided to the TM-TRP documenting that the site (or portion of a site) for which the certificate is requested has been characterized in accordance with the site characterization performance criteria in the Remediation Assessment Agreement and that contaminants of concern either have not been released or are below required cleanup levels;
 - e. Consistent with the re-openers and termination clauses in the Remediation Agreement, the TM-TRP may, upon request, provide the property owner or prospective purchaser a covenant not to sue. Any covenant not to sue shall extend to subsequent owners.
6. The TM-EPA Director may reopen a Certificate of Completion based on the provisions in the certificate and/or:
 - a. The site owner fails substantially to comply with the terms and conditions of the certificate;
 - b. Contamination is discovered that was present on the site but was not known to the owner/responsible party or the TM-TRP on the date the certificate was issued;
 - c. An imminent and substantial endangerment to human health or the environment is discovered;
7. TM-TRP determines that the site remedy has failed to meet remediation objectives; or
8. TM-TRP determines that the certificate was based on fraud, material misrepresentation, or failure to disclose material information.
9. The TM-EPA Director may issue a Conditional Certificate of Completion where:
 - a. A monitored natural attenuation remedy is approved and TM-TRP determines that no exposure to contaminated media is reasonably expected to occur during the period of monitored natural attenuation. The Certificate of Completion will be conditioned on the volunteer's continued compliance with the monitoring requirements associated with the Remediation Agreement, site uses not changing during the period of natural attenuation, and confirmation sampling to show that cleanup levels are achieved when the period of natural attenuation is complete;
 - b. An alternative (i.e., restricted use) soil cleanup levels are approved in conjunction with a use control area determination. In these

- circumstances, the certificate of completion will be conditioned on continued compliance with the requirements of the use control area; or
- c. A technical impracticability determination is made for cleanup of soil or water in accordance with this Act, provided the volunteer achieves alternative cleanup levels established by the TM-TRP. The Certificate of Completion will be conditioned on the volunteer's continued compliance with any controls on land use to prevent human or environmental exposure to contaminated media.
10. No Further Action Letter (NFA). If the TM-EPA Director determines that no further remediation is required on a property or site; the TM-TRP may, upon request, issue a No Further Action (NFA) Letter to a responsible party, person or government agency and/or a prospective purchaser or leasee to document that a response action is complete pursuant to this Act and any Tribal Order or permit requiring such action, and that no further action may be required. The NFA letter may provide site owners, operators, prospective purchasers, or other responsible party or government agency certainty about the extent of their remediation liability. The letter may state that, at the time the letter is issued, all remediation requirements necessary to protect human health and the environment have been successfully completed and that TM-TRP currently has no plans to further evaluate the site or to impose additional remediation requirements. Special conditions and/or re-openers may be included in the NFA letter when:
 - a. The property or site requires engineering or institutional controls or other use restrictions to meet the standards in this Section; or
 - b. Monitored natural attenuation over a reasonable period of time is appropriate and that no exposure to contaminated media is reasonably expected during the period of natural attenuation. The No Further Action letter may require that the current use of the property continue during the period of natural attenuation and also may require that testing be conducted to confirm that standards are met.
 11. The TM-TRP may reopen a No Further Action determination at any time if:
 - a. An imminent and substantial endangerment to human health or the environment is discovered; or
 - b. The TM-TRP determines that the monitored natural attenuation remedy is not effective in meeting the standards for a No Further Action letter under this Section.

40.1819

Institutional controls.

An institutional control area or site may be created or modified by a majority vote of the Tribal Council and/or a responsible government agency. \

1. The Tribal EPA Director, an owner or leasee of a site or property or a government agency responsible for a site or property may propose long-term restrictions on the use of a site or property and shall petition to the Tribal Council and to the appropriate governmental entity or entities, as appropriate, for the creation of such an institutional control area to establish long-term restrictions on the use of the site or property. Such petitioner for creation or modification of an institutional control area shall:
 - a. Provide data, information, reports and any other information required in a Remediation Assessment Agreement and/or Remediation Agreement under this Section;
 - b. Document written notice of the petition to all property owners of record of land contiguous to the site; and
 - c. Publish notice of the petition and a public meeting in a newspaper of general circulation in the community in which the site is located. The notice shall identify the property, generally describe the petition and proposed use restrictions, direct that comments may be submitted to the Tribal Council and any responsible governmental entity or entities to

- whom the petition has been submitted, and provide the date, time and place of a public meeting. The public meeting shall be held no sooner than thirty (30) days after the first publication of the notice.
2. The Tribal Council shall approve or deny such petition for an institutional control area within one hundred eighty (180) days after the petition is received in accordance with applicable rules, regulations and procedures. The petitioner, property owner or leasee and a responsible governmental entity may agree to extend the time period in which the Tribal Council is to vote upon the petition.
 3. The Tribal Council may, on a vote taken within one hundred eighty (180) days after the petition is received, condition its vote approving the petition upon the determination by the Tribal EPA Director that a remedy can be selected that meets the requirements of this Section and is consistent with petition.
 4. The Tribal EPA or the Compliance Officer may request an institutional control be placed on a property or site but shall not have the authority to require a Tribal or governmental entity to adopt any restriction applicable to a site as part of a remediation or response action or a Remediation Agreement. Before a voluntary remediation applicant and the TM-TRP may enter into a Remediation Agreement that includes long-term restrictions on the use of a site or property, the owner or leasee of the site or property must obtain an institutional control designation for the site as provided for in this Section.
 5. The restrictions in an institutional control area are enforceable by the Tribal Council or the Compliance Officer by injunction, mandamus or abatement, in addition to any other remedies provided by Tribal law or Act.
 6. Institutional controls or use restrictions shall run with the land and be binding upon successors in land ownership and/or leases.
 7. A violation of any use restriction or institutional control shall be deemed a violation of this Act, and the Compliance Officer or Tribal Council may bring any action for such violation against the owner or leasee of the property or site for the violation at the time the violation occurs or against the person who violates the use restriction or institutional control.
 8. Nothing in this Section shall contravene or limit the authority of any Tribal, county, city or government agency to regulate and control the property under their jurisdiction.

40.1820

Re-openings or terminations.

1. Re-openings. The TM-TRP may reopen a Remediation Agreement, covenant not to sue, No Further Action Letter or Certificate of Completion at any time if:
 - a. The current owner fails substantially to comply with the terms and conditions of the Remediation Agreement, covenant not to sue, No Further Action Letter or Certificate of Completion;
 - b. An imminent and substantial endangerment to human health or the environment is discovered;
 - c. Contamination is discovered that was present on the site but was not known to the owner, responsible party or the TM-TRP on the date of the Remediation Agreement or when the TM-TRP issued a covenant not to sue, NFA letter or certificate of completion; or
 - d. The remedy fails to meet the remediation objectives that are contained in the Remediation Agreement, NFA letter or Certificate of Completion;
 - e. The monitored natural attenuation remedy is not effective in meeting the standards under this section.
2. Terminations. The TM-TRP may terminate a Remediation Agreement, covenant not to sue, Certificate of Completion or No Further Action letter if:

- a. It is discovered that any of these instruments were based on fraud, material misrepresentation or failure to disclose material information;
or
 - b. If a responsible party's or property owner's willful violation of any use restriction results in harmful exposures of any toxic contaminant to any user or occupant of the site.
3. If a Remediation Agreement, covenant not to sue, Certificate of Completion or No Further Action letter is reopened or terminated, the TM-TRP shall record a notice of such action in the office of _____ with the deed for the site and shall file the notice in the office of the _____ no later than ten (10) business days after the date of the Remediation Agreement, covenant not to sue, certificate of completion or no further action letter is reopened or terminated.

40.1821 **Disputes and appeals.**

1. If a person and the TM-EPA Director or Compliance Officer is unable after good faith efforts to resolve a dispute arising under this Section pursuant to the provisions of an agreement, the person may request a hearing to appeal the TM-EPA Director's or Compliance Officer's decision.
2. All hearings shall be conducted pursuant to Chapter 22.11 of the Tribal Administrative Procedures Act, as amended, Title 22 of the Turtle Mountain Tribal Act (TAPA). A Hearing Officer shall be appointed pursuant to Chapter 22.10 of the TAPA for all matters subject to the requirements of this Act.

40.1822 **Public right to intervene.**

Any person having an interest that is or may be adversely affected may intervene as a matter of right in any civil action for response actions or remedies specified in this Act.

40.1823 **Fees, notices and appeal.**

1. The TM-TRP shall implement a fee system and schedule of fees, subject to the approval of the Tribal Council, which are applicable to the applicant for a Remediation Assessment Agreement, Remediation Agreement, Certificates of Completion or No Further Action letter authorized under this Section. Fees shall cover all reasonable direct and indirect costs of the Tribal EPA Director's, the TM-TRP's and Compliance Officer's participation in any activity authorized by this Section.
2. The TM-TRP shall give written notice of the amount of the fee assessment to the applicant.
3. The applicant for the Remediation Assessment Agreements, Remediation Agreements, Certificates of Completion and No Further Action letters authorized under this Section may appeal the assessment to the Tribal Council within thirty (30) days of receipt of the notice.

CHAPTER 40.19
Limitations

40.1901 **Appropriations.**

Nothing in this Act shall cause the Turtle Mountain Tribe, the Solid Waste Director, Tribal EPA or the Compliance Officer to expend funds in excess of appropriations or other available funds.