TITLE 46. SOLID WASTE CODE

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TITLE 46. SOLID WASTE CODE

TITLE 46. SOLID WASTE

CHAPTER 1. GENERAL

SECTION 46-1-1. Title.

This Chapter shall be known as the Omaha Tribe Solid Waste Code.

SECTION 46-1-2. Authority, Findings, Intent, and Purpose.

(a) The Tribal Council of the Omaha Tribe of Nebraska, mindful of its constitutional obligations under Articles IV(j) and (p) of the Constitution and Bylaws of the Omaha Tribe has enacted the Omaha Tribal Solid Waste Code as set forth in this Chapter.

(b) It is the Omaha Tribal Council's intent that the requirements of this Chapter provide adequate remedies for the protection of the health, welfare and safety of the public and of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(c) The Omaha Tribal Council finds and declares that the lack of comprehensive control of solid waste presents a significant danger to the public and the environment, by contaminating the air, surface water, ground water and subsurface soils. The Omaha Tribal Council further finds that the health and welfare of individuals within its jurisdiction are being endangered by improperly operated solid waste management systems and by the improper and unregulated disposal of wastes.

(d) It is declared by the Omaha Tribal Council to be public policy to control solid waste management systems to protect the public health and safety and to conserve natural resources whenever possible.

(e) It is the intent of the Omaha Tribal Council to establish a program for the regulation of solid waste which implements stringent control collection and disposal of solid waste, including corrective action, closure, and post-closure care.

(f) It is the intent of this Chapter to authorize the Omaha Tribe Environmental Protection Department to establish, administer, and enforce a solid waste management program and to provide for the administration and enforcement of this Chapter and to provide penalties for violation of this Chapter. The Omaha Tribe Environmental Protection Department may use the authority provided in this Chapter and other appropriate authority provided by law to remedy violations of requirements established under this Chapter.

SECTION 46-1-3. Jurisdiction.

(a) The Omaha Tribe of Nebraska asserts the inherent sovereignty to exercise civil authority and jurisdiction over the conduct of tribal members and all other persons on all lands within the exterior boundaries of the Omaha Indian Reservation and other lands within the jurisdiction of the Omaha Tribe. This Chapter is designed to maintain the environment, natural resources, public health, safety, welfare, political integrity and economic security of the Omaha Tribe. Because violations of this Chapter or any rules, regulations, or orders adopted hereunder will demonstrably and seriously impact the environment, natural resources, public health, safety, welfare, political integrity and economic security of the Omaha Tribe, this Chapter, and any rules, regulations, or orders adopted or issued hereunder, are specifically designed and shall apply to:

(1) all persons within the exterior boundaries of the Omaha Indian Reservation, without exception, including but not limited to, all tribal members and all other persons within the exterior boundaries of the Omaha Indian Reservation, including any Indians who are members of other Tribes, all non-Indians, and any other person as defined in this Chapter;

(2) all places and lands located anywhere within the exterior boundaries of the Omaha Indian Reservation and all other lands within the jurisdiction of the Omaha Tribe of Nebraska,

including all trust lands, and notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, and any real property interest of any kind, held by any person as defined in this Chapter;

(3) the provisions of this Chapter and the rules, regulations, or orders promulgated or issued hereunder, in whole or in part, shall not apply to any person or to any property owned or operated by such person, where prohibited by Federal law, or to such extent and under such terms and conditions as may be provided in any voluntary compliance agreement entered into pursuant to the provisions of this Chapter.

SECTION 46-1-4. Purpose.

(a) The purpose of this Chapter is to:

(1) Promote the health, safety, and welfare of tribal members and all other persons within the exterior boundaries of the Omaha Indian Reservation and other lands within the jurisdiction of the Tribe;

(2) Promote the cultural, social, and economic stability of residential, agricultural, commercial, industrial, forest, riparian, and environmentally sensitive lands within the exterior boundaries of the Omaha Indian Reservation and other lands within the jurisdiction of the Tribe;

(3) Contribute to the protection of the historical and cultural values and traditions of the Omaha Tribe, the permanent Omaha tribal homeland, and the aboriginal character of the Omaha Tribe;

(4) Minimize air, water, and land from solid, liquid, and hazardous waste pollution, including contamination of aquifers, groundwater, surfact waters, drinking water supplies, and all other natural resources;

(5) Enhance the standard of living, quality of life, welfare and well-being of all persons within the exterior boundaries of the Omaha Indian Reservation and other lands within the jurisdiction of the Tribe;

(6) Provide and promote tribal environmental protection and services within the exterior boundaries of the Omaha Indian Reservation and other lands within the jurisdiction of the Tribe, and to regulate environmental activities under principles of tribal sovereignty;

(7) Implement, regulate, and enforce environmental standards and criteria, orders, license, and permit conditions, and laws, rules, and regulations under this Chapter, for the sanitary storage, collection, transportation, and disposal of all waste within the exterior boundaries of the Omaha Indian Reservation and other lands within the jurisdiction of the Tribe; and,

(8) Encourage the good management of solid waste and the conservation of natural resources through the promotion or development of systems to collect, separate, reclaim, recycle, and dispose of solid waste for energy production purposes where economically feasible and to provide a coordinated solid waste and resource recovery plan.

SECTION 46-1-5. Public Policies.

(a) To implement this Chapter, the following are declared to be public policies:

(1) Maximum recycling from solid waste is necessary to protect the public health, welfare, and quality of natural environment;

(2) Solid waste management systems shall be developed, financed, planned, designed, constructed, and operated for the benefit of the people;

(3) Private industry is to be utilized to the maximum extent possible in planning, designing, managing, constructing, operating, manufacturing, and marketing functions related to solid waste management systems;

(4) Local governments shall retain primary responsibility for adequate solid waste management with the Omaha Tribe preserving those functions necessary to assure effective solid waste management systems throughout the Tribe's jurisdiction;

(5) Costs for the management and regulation of solid waste management systems shall be charged to those persons generating solid waste in order to encourage the reduction of the solid waste stream;

(6) Encouragement and support be given for separation of solid waste at its source in order to maximize the value of such solid waste for re-use;

(7) The Omaha Tribe shall provide technical advisory assistance to local governments and other affected persons in the planning, developing, financing, and implementation of solid waste management systems;

(8) Actions and activities performed or carried out by persons and their contractors in accordance with this Chapter shall be in conformity with the tribal solid waste plan; and,

(9) When licensing a solid waste management system, the Department shall consult with units of local government that have jurisdiction over the area encompassing the proposed system;

(b) This Chapter is in addition and supplemental to any other law providing for the financing of a solid waste management system and does not amend or repeal any other law.

SECTION 46-1-6. Definitions.

(a) Unless the context clearly requires otherwise, in this Chapter, the following definitions apply:

(1) "Board" means the Omaha Tribal Council;

(2) "Component Part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including an automobile, boat, motorcycle, trailer, or aircraft, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, passenger compartment fixtures;

(3) "Composting" means the controlled biological decomposition of organic matter into humus;

(4) "Container Site" or "Site" means a solid waste management facility that:

(A) is generally open to the public for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards; or,

(B) receives waste from waste collection vehicles, and:

(i) receives no more than 3,000 tons of waste each year;

(ii) has control measures in place, including on-site staffing, to adequately contain solid wastes and blowing litter on the site and to minimize spills and leakage of liquid wastes; and,

(iii) is a site at which a local government unit requires commercial waste haulers to deposit wastes at the site only during hours that the site is staffed;

(iv) is an approved site which is a solid waste landfill established and operated in compliance with 40 CFR 257 and 258; and,

(v) is a facility or site where solid waste or hazardous waste is disposed of which is not a sanitary landfill and which does not meet the criteria issued under 40 CFR 257 and 258 and which is not a facility authorized for disposal of hazardous waste;

(5) "Department" means the Omaha Tribe Environmental Protection Department;

(6) "Dispose" or "Disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water;

(7) "Domestic Sewage" means waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works;

(8) "Generator" means a person that produces infectious waste;

(9) "Household Waste" means any solid waste derived from households, including single and multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public land management facilities; "Household Hazardous Waste" means materials that could be classified as hazardous waste under 40 CFR 261.20 – 261.35 but are exempt from treatment as hazardous waste under 40 CFR 261.4(b)(1), including non-empty household containers of paint, paint products, household cleaners, automotive fluids, pesticides, pool chemicals, household batteries, and similar materials;

(10) "Industrial Wastewater" means wastewater generated in a commercial or industrial process;

(11) "Infectious" means capable of producing disease; to be infectious, the following factors simultaneously must be present:

(A) virulence, which is the ability of microorganisms to cause disease;

(B) dose, which is microorganisms in a quantity sufficient to cause infection;

(C) portal of entry, which is an opening or route of access into a human body; and,

(D) host susceptibility, which means the host's natural resistance is incapable of preventing infection;

(12) "Infectious Waste" means waste capable of producing infectious disease, with infectious disease including, but not limited to:

(A) cultures and stocks of infectious agents and associated biologicals;

(B) human pathological waste, including tissues, organs, and body parts removed during surgery or an autopsy;

(C) free-flowing waste human blood and products of blood, including serum, plasma, and other blood components and items soaked or saturated with blood; and,

(D) sharps that have been used in patient care, medical research, or industrial laboratories;

(13) "Integrated Waste Management" means the coordinated use of a priority of waste management methods, including waste prevention;

(14) "Junk Vehicle" means a discarded, ruined, wrecked, or dismantled motor vehicle including an automobile, boat, motorcycle, trailer, or aircraft, and component parts, that is not lawfully and validly licensed and remains inoperative or incapable of being driven;

(15) "Local Government" means a county, incorporated city or town, or solid waste management district organized under the laws of the Omaha Tribe of Nebraska.

(16) "Motor Vehicle Wrecking Facility" means:

(A) a facility buying, selling, or dealing in four (4) or more vehicles per year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or,

(B) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts; a facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based on weight or any other type of classification, however, the term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to an other facility;

(17) "Open Burning" means the burning of any materials wherein the air contaminants resulting from combustion are emitted directly into the ambient air without passing through a stack or chimney;

(18) "Person" means any individual, firm, partnership, company, association, corporation, city, town, or local governmental entity or any other State, Federal, or private entity, whether organized for profit or not;

(19) "Postconsumer Material" means only those paper products generated by a consumer that have served their intended end uses and have been separated or diverted from the solid waste stream;

(20) "Public View" means any point six (6) feet above the surface of the center of a public road;

(21) "Recycling" means all activities involving the collection of recyclables to prepare them for resale, the marketing of recovered material for use in the manufacture of similar or different products, and the purchase of products containing recycled material;

(22) "Resource Recovery Facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse;

(23) "Resource Recovery System" means a solid waste management system that provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of non-recoverable waste residues;

(24)

(A) "Septage" means liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives only domestic sewage;

(B) septage does not include material removed from a septic tank, cesspool, or similar treatment works that receives industrial wastewater and does not include grease removed from a grease trap at a restaurant;

(25) "Sharps means any discarded health care article that may cause punctures or cuts, including but not limited to needles, scalpel blades, and broken glass that may be contaminated with blood;

(26) "Shielding" means the construction or use of fencing or manmade or natural barriers to conceal junk vehicles from public view;

(27) "Solid Waste" means:

(A) all putrescible and nonputrescible wastes, solid and semi-solid, including but not limited to garbage, trash, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution facilities, solid, liquid, semi-solid, or contained gaseous material, construction and demolition wastes, dead animals, including offal, discarded home and industrial appliances, wood byproducts and inert materials, abandoned or junked vehicles and components, infectious wastes, and all other discarded material;

(B) solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the Department, slash and forest debris regulated under laws administered by the Department of Natural Resources and Conservation, or marketable byproducts, or solid or dissolved materials in irrigation return flows or industrial discharges that are point source subject to permit under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954 (68 Stat. 923), as amended;

(28) "Solid Waste Management System" means any system that controls the storage, treatment, recycling, or disposal of solid waste; for the purposes of this definition, a Container Site is not a component of a solid waste management system;

(29) "Solid Waste Plan" means the plan formulated by the Department as authorized by this Chapter;

(30) "Special Waste" means solid waste that has unique handling, transportation, or disposal requirements to ensure protection of the public health, safety, and welfare and the environment;

(31) "Steam Sterilization" means a treatment method for infectious waste using saturated steam within a pressure vessel (known as a steam sterilizer, autoclave, or retort) at a time, for a period of time, and at a temperature sufficient to kill infectious agents within the waste;

(32) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years;

(33) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate treatment, storage, or disposal.

(34) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume;

(35) "Treatment Works" means a device or system used to treat, including to recycle and to reclaim, either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature;

(36) "Waste Reduction" means practices that decrease the weight, volume, or toxicity of material entering the solid waste management stream after consumer or commercial use but prior to incineration or disposal;

(37) "Waste Tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

SECTION 46-1-7. Duties of the Department.

(a) The Department shall:

(1) prepare a Tribal Solid Waste Management and Resource Recovery Plan for

submission to the Board;

(2) prepare rules necessary for the implementation of this Chapter for submission to the Board, including but not limited to rules:

(A) governing the submission of plans for a Solid Waste Management System;

(B) governing solid waste management systems, including:

(i) requirements for plans of operation and maintenance;

(ii) classifications of disposal sites according to the physical capabilities of such sites to contain the type of solid waste to be disposed of;

(iii) procedures to be followed in the disposal, treatment, or transport of solid wastes;

(iv) suitability determinations of a site from a public health standpoint when hydrology, geology, and climatology are considered;

(v) requirements relating to ground water monitoring;

(vi) requirements for recordkeeping and reporting;

(vii) requirements for the imposition of a fee based on the direct and indirect costs for solid waste generated off Reservation and disposed of on Reservation;

(viii) requirements to maintain satisfactory financial assurance to the Omaha Tribe sufficient to provide for waste treatment, including tires, removal, transportation, and disposal, fire suppression, or other measures necessary to protect the environment and the health, safety, and welfare of the public; and,

(ix) any other factors relating to the sanitary disposal or management of solid wastes;

(C) establishing, for the purpose of determining the tonnage or volume-based solid waste management fee that a facility is subject to, methods for determining or estimating the amount of solid waste incinerated or disposed of at such facility;

(D) establishing the license application fee that a facility is subject to;

(E) establishing the flat annual license renewal fee that a facility is subject to;

(F) establishing the tonnage or volume-based annual renewal fee that a facility is subject to:

(G) providing procedures for the collection of the solid waste management fee; and,

(H) providing guidelines for integrated waste management;

(3) provide technical assistance to persons within the tribal jurisdiction for planning, designing, constructing, financing, and operating:

(A) a Solid Waste Management System in order to ensure that the system conforms to the Tribal Solid Waste Management and Resource Recovery Plan;

(B) integrated waste management programs; and,

(C) collection, disposal, reduction, and educational programs for household hazardous wastes and small quantities of hazardous waste that are exempt from

regulation under other laws;

(4) enforce and administer the provisions of this Chapter;

(5) approve plans for a proposed Solid Waste Management System submitted by a local government; and,

(6) serve as a clearinghouse for information of waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility.

SECTION 46-1-8. Powers of the Department.

(a) The Department may:

(1) accept loans and grants from the Federal government and other sources to carry out the provisions of this Chapter;

(2) collect the solid waste management fees provided for herein; and,

(3) take such action and exercise such authority as is provided herein to accomplish the purposes of this Chapter.

SECTION 46-1-9. Duties of the Board.

(a) The Board shall:

(1) adopt a Tribal Solid Waste Management and Resource Recovery Plan after complying with appropriate procedures for such adoption; and,

(2) adopt rules necessary for the implementation of this Chapter, including but not limited to rules governing:

(A) submission of plans for a Solid Waste Management System; and,

(B) the application fee, flat annual license renewal fee, and tonnage or volume-based renewal fee for Solid Waste Management Systems prepared by the Department.

SECTION 46-1-10. Tribal Regulations no more stringent than Federal Regulations or Guidelines.

(a) Except as provided in subsections (2) through (6), or unless required by tribal law, the Department may not adopt a rule to implement this Chapter that is more stringent than the comparable Federal regulations or guidelines that address the same circumstances, and the Department may incorporate by reference comparable Federal regulations or guidelines;

(b) The Department may adopt a rule to implement this Chapter that is more stringent than comparable Federal regulations or guidelines only if the Department makes a written finding after a public hearing and public comment and based on evidence in the record that:

(1) the proposed standard or requirement protects the public health or the environment; and,

(2) the proposed standard or requirement can mitigate harm to the public health or environment and is achievable under current technology;

(c) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the Department's conclusion, which written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed standard or requirement;

(d) A person affected by a rule of the Department that that person believes to be more stringent that comparable Federal regulations or guidelines may petition the Department to review the rule, and if the Department determines that the rule is more stringent than comparable Federal

regulations or guidelines, the Department shall comply with this section by either revising the rule to conform to the Federal regulations or guidelines, or by making the written finding, as provided under subsection (2) hereinabove within a reasonable period of time, not to exceed 12 months after receiving the petition; provided however, that a petition under this section does not relieve the petitioner of the duty to comply with the challenged rule, and further provided that the Department may charge a petition filing fee in an amount not to exceed $500;

(e) A person may also petition the Department for a rule review under subsection (4) hereinabove if the Department adopts a rule in an area in which no Federal regulations or guidelines existed and the Federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted Department rule; and,

(f) This section does not apply to a rule adopted under emergency rulemaking provisions.

SECTION 46-1-11. Variance.

(a) A person may apply to the Board for a variance from rules adopted hereunder and the Board may grant a variance if it finds that:

(1) failure to comply with the rules does not result in a danger to public health or safety, or the environment; or,

(2) compliance with the rules from which a variance is sought would produce hardship without producing benefits to public health and safety, or the environment, that outweigh the hardship;

(b) A variance may not be granted except after a hearing and consideration by the Board of the relative interests of the applicant, the public, and owners of the property likely to be affected by the variance under consideration, and only if the Board makes a written finding after a public hearing and public comment and based on evidence in the record that:

(1) the proposed variance protects the public health and safety, or the environment; and,

(2) the proposed variance can mitigate harm to the public health and safety, or the environment, and is achievable under current technology; and,

(3) the written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the Board's conclusion, which written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed variance;

(c) This section may not be construed as relieving the Board from the obligation to comply with the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), as amended, or as allowing the Board to grant a variance less restrictive than that Act.

CHAPTER 2. SOLID WASTE MANAGEMENT

SECTION 46-2-1. Solid Waste Management Plan – Hearings and Action.

(a) A proposed Solid Waste Management Plan shall be prepared by the Department in conjunction with local governments and any other interested person; after a draft of a proposed Solid Waste Management Plan has been prepared, the Department shall provide public notice of the same and, upon request, circulate a copy of the proposed plan to any interested person for at least 90 days prior to submission of a final proposed Solid Waste Management Plan to the Board; during the 90-day period for receipt of comments on the draft plan, the Department shall hold at least three (3) public hearings on such draft plan; and,

(b) A final proposed plan shall be prepared based on the comments and objections

received at the public hearings and from the persons who have submitted comments on the draft Solid Waste Management Plan, which final plan submitted to the Board shall include a discussion of all comments and objections received and the reasons why recommendations for changes or amendments to the proposed plan were accepted or rejected; upon receipt, the Board shall consider the final proposed Solid Waste Management Plan after giving notice and holding at least one (1) public hearing pursuant to appropriate rulemaking procedures.

SECTION 46-2-2. User Fee Authorized.

In the event the revenues of a Solid Waste Management System are insufficient to pay the costs, the Department may levy a pro rata fee against the users, which pro rata fee may be based on a per ton, per pound, or volume assessment.

SECTION 46-2-3. Solid Waste Management Fee.

(a) The Department may prepare rules for adoption by the Board that set fees for the management and regulation of Solid Waste Facilities subject to regulation pursuant to this Chapter, and upon adoption by the Board, the Department may collect such fees which may include:

(1) a license application fee that reflects the cost of reviewing a new solid waste management system or a substantial change to an existing facility;

(2) a flat annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal and that is based upon the categorization of solid waste management systems into separate classes identified by the following criteria:

(A) the quantity of solid waste received by the solid waste management system;

(B) the nature of the solid waste received;

(C) the nature of the waste management occurring within the solid waste management system; and,

(3) a tonnage or volume-based fee on solid waste disposa;.

(b) All fees collected must be deposited in a Solid Waste Management Account to be established.

SECTION 46-2-4. Penalties For Failure To Pay.

A person who owns a Solid Waste Disposal Facility that is subject to fees under this Chapter and who fails to pay the fee in the manner provided by Department rule is subject to a fine of not more than $2,000 or imprisonment not to exceed six (6) months, or both, and shall reimburse the Department for the amount of the fee owed as well as interest calculated at the legal rate and any and all costs and expenses incurred, including reasonable attorney's fees.

SECTION 46-2-5. Solid Waste Management Account.

(a) There shall be established a Solid Waste Management Account;

(b) There must be deposited in such account:

(1) all revenue from the solid waste management fees; and,

(2) money received by the Department in the form of legislative appropriations, reimbursements, gifts, Federal funds, or appropriations from any source that is intended to be used for the purposes of the account; and,

(c) The account may be used by the Department only for the administration of this Chapter.

SECTION 46-2-6. Inspections.

The Department has continuing authority and responsibility to inspect a Solid Waste Management System, Solid Waste Management Facility, Resource Recovery System, Resource Recovery Facility, or any other facility authorized, licensed or permitted hereunder, which inspections may be conducted only during reasonable hours and only after presentation of appropriate credentials identifying the inspector as a duly authorized employee of the Department.

SECTION 46-2-7. Groundwater Monitoring.

(a) Owners and operators of a Solid Waste Management System, Solid Waste Management Facility, Resource Recovery System, or Resource Recovery Facility are required to monitor groundwater as specified by the Department;

(b) Based on site-specific information that owners and operators of a Solid Waste Management System, Solid Waste Management Facility, Resource Recovery System, or Resource Recovery Facility provide to the Department, the Department shall establish a priority compliance list that identifies those sites where there is the greatest risk that constituents from the sites may cause pollution of ground water, considering:

(1) proximity to current and potential drinking water supplies;

(2) site hydrologic and geologic characteristics; and,

(3) age and design of the site;

(c) Owners and operators of a Solid Waste Management System, Solid Waste Management Facility, Resource Recovery System, or Resource Recovery Facility shall submit proposed plans to the Department for accomplishing groundwater monitoring, consistent with requirements specified by Department rules, and the Department may approve the plans as submitted or require modifications to the plans as necessary to accomplish the purposes of this Chapter.

SECTION 46-2-8. Disposal.

(a) Unless the context indicates otherwise, or other provisions are made herein in this Chapter, all Solid Waste shall be prepared for collection or disposed of as follows for example:

(1) Solid Waste. A permitted commercial hauler shall provide residential containers approved by the Department, except that the Department or permitted hauler may furnish large dumpsters or containers to commercial or residential customers for the accumulation, storage, and collection of all solid waste; the containers shall be kept in good repair and sanitary condition; all solid waste of any nature must be suitably contained or properly prepared to be acceptable for collection;

(2) Garbage. Garbage shall be drained and wrapped and placed in a container so as not to attract flies, animals, or other organisms that transmit pathogens;

(3) Bulky Refuse. Bulky refuse and furniture shall be placed in containers or beside them or tied in bundles and set out for collection, however the weight of a loaded container or bundle shall not exceed sixty (60) pounds; discarded boxes and cardboard shall be flat when placed into a container or dumpster; and,

(4) Brush. Brush shall be cut and neatly stacked for disposal; brush may be placed in containers and dumpsters, but must readily fall out when such is emptied and shall not extend over the top edge of the container, be compacted, or wedged so as to result in impeding collection.

SECTION 46-2-9. Prohibited Disposal.

(a) No person may dispose of Solid Waste except as permitted under this Chapter;

(b) It shall be unlawful to dump or leave any Solid Waste, dead animal, or other debris or refuse:

(1) in or upon any lake, creek, river, pond, reservoir, highway, road, street, or alley;

(2) in or upon any public property;

(3) within 200 yards of any such lake, creek, river, pond, reservoir, highway, road, street, alley, or public property; or,

(4) in or upon any private property, provided this subsection shall not apply to the owner of such private property, his agents, or others having the owner's consent; however, such owner shall not permit any Solid Waste, dead animal, or other debris or refuse to be dumped or left in the places specified in subsection (2)(c) of this section;

(c) this Chapter may not be construed to prohibit a person from disposing of his own Solid Waste that is generated in reasonable association with his household or agricultural operations upon land owned by that person so long as such land ownership holding is in excess of five (5) contiguous acres and such disposal does not create a nuisance, public health or safety or natural environment hazard or violate any laws governing the disposal of hazardous or deleterious substances;

(d) It is expressly prohibited, and shall be unlawful, for any person to openly burn except as authorized by the Department; and,

(e) Any person in violation of this Section is absolutely liable and is subject to civil penalties;

SECTION 46-2-10. License Required.

(a) Except as provided under Section "Prohibited Disposal" herein, a person may not dispose of solid waste or operate a Solid Waste Management System, Solid Waste Management Facility, Resource Recovery System, or Resource Recovery Facility without a license from the Department;

(b) The Department shall provide application forms for a license as provided in this Chapter;

(c) As a minimum, the application must contain the name and business address of the applicant, the location of the proposed Solid Waste Management System, Solid Waste Management Facility, Resource Recovery System, or Resource Recovery Facility, a plan of operation, maintenance, and monitoring, and such other information as the Department may by rule require;

(d) The license provided for in this Section is for a period not to exceed twelve (12) months unless renewed by the Department;

(e) The Department may require submission of a new application if the Department determines that the plan of operation, maintenance, and monitoring, the management of the facility, or the geological, air, or groundwater conditions have changed since the license was initially approved.

SECTION 46-2-11. Revocation or Denial of License by Department.

The Department may deny or revoke a license issued hereunder after giving the applicant written notice and an opportunity to be heard before the Board, and the decision to deny or revoke a license may be made only after a finding that a Solid Waste Management System, Solid Waste Management Facility, Resource Recovery System, or Resource Recovery Facility cannot be operated or is not being operated in compliance with this Chapter, or a rule or order issued pursuant to this Chapter.

SECTION 46-2-12. Administrative Enforcement.

(a) When the Department believes that a violation of this Chapter, or a rule adopted pursuant to the authority of this Chapter, or a violation of an order issued pursuant to the authority of this Chapter, or a violation of a permit provision has occurred, it may serve written notice of the violation on the alleged violator or his agent, which notice must specify the provision of law, rule, order, or permit alleged to be violated and the facts alleged to constitute such violation, and may include an order to take necessary corrective action within a reasonable period of time stated in such order, which order shall become final unless, within twenty (20) days after the notice is served, the alleged violator, or his agent, requests in writing a hearing before the Board. On receipt of such request, the Board shall schedule a hearing. Service by mail is complete on the date of mailing;

(b) If, after a hearing, the Board finds that a violation has occurred, it shall either affirm or modify the Department's order, and an order by the Department or the Board may prescribe the date by which the violation must cease and may prescribe time limits for particular action, however, if after hearing, the Board finds no violation has occurred, it shall rescind the Department's order;

(c) This Section does not prevent the Board or Department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

SECTION 46-2-13. Civil Penalties.

(a) A person who violates any provision of this Chapter, a rule adopted under this Chapter, an order of the Board or Department, or a license or permit provision is subject to a civil penalty not to exceed $1,000, with each day of violation constituting a separate violation;

(b) The Department may institute and maintain in the name of the Omaha Tribe any enforcement proceedings under this Section, and upon request, the Omaha Tribal Attorney shall petition the Omaha Tribal Court to impose, assess, and recover the civil penalty;

(c) Fines and penalties collected for violations of this Chapter must be deposited in the Solid Waste Management Account.

SECTION 46-2-14. Actions.

The Department may, through the Omaha Tribal Attorney, institute and maintain in Omaha Tribal Court enforcement actions as provided in this Chapter, including actions to collect a civil penalty, a criminal penalty, or to enjoin the operation of a Solid Waste Management System, Solid Waste Management Facility, Resource Recovery System, or Resource Recovery Facility that is in violation of this Chapter, a rule adopted pursuant to the authority of this Chapter, an order issued pursuant to the authority of this Chapter, or a permit provision.

SECTION 46-2-15. Penalty For Violations.

(a) A person violating this Chapter, a rule adopted pursuant to the authority of this Chapter, an order issued pursuant to the authority of this Chapter, or a permit provision is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $5,000.

(b) Each day upon which a violation occurs is a separate violation.

CHAPTER 3. JUNK VEHICLES

SECTION 46-3-1. Shielding.

(a) A motor vehicle wrecking facility or graveyard may not be approved for use or licensed if the facility cannot be shielded from public view;

(b) Notwithstanding the provisions of this Chapter, any person owning or possessing one or more junk vehicles, regardless of ownership, shall shield the vehicles from public view or remove the vehicles to a licensed motor vehicle wrecking facility or to a licensed motor vehicle graveyard;

(c) Small accumulations of salvageable vehicles or component parts, none of which are offered for sale, retained by active farming or ranching operations for repair and maintenance of vehicles, or agricultural equipment used in their operations are exempted from this requirement.

SECTION 46-3-2. Motor Vehicle Wrecking Facility and Motor Vehicle Graveyard Licenses.

(a) A person may not conduct, maintain, or operate a motor vehicle wrecking facility or motor vehicle graveyard without a license issued by the Department;

(b) Application for the license must be made on forms furnished by the Department;

(c) An annual fee of $100 must be paid to the Department for the license, which fee may be quarterly prorated for new facilities;

(d) A license must be displayed in a prominent place in the licensed facility;

(e) A license expires on December 31 of the year issued;

(f) If a motor vehicle wrecking facility or motor vehicle graveyard ceases to do business, the license must be surrendered to the Department; and,

(g) A license in neither transferable nor refundable.

SECTION 46-3-3. Records Required of Facilities.

(a) Each motor vehicle wrecking facility shall maintain books or files in which are kept a record and description of every junk vehicle obtained by such facility, together with the name and address of the person from whom the vehicle was purchased;

(b) This record must also contain:

(1) the certificate of title, sheriff's certificate of sale, notarized bill of sale from the former owner or person selling the vehicle, release of ownership or interest in the motor vehicle, or sheriff's release;

(2) the name of the State where the vehicle was last registered;

(3) the make of the vehicle;

(4) the vehicle identification number (VIN), identification number, or serial number;

(5) the date purchased or otherwise obtained; and,

(6) the disposition of the vehicle;

(c) An authorized representative of the Department who presents credentials may also inspect, have access to, and copy records required under this Section.

SECTION 46-3-4. Disposal of Junk Vehicles – Records.

Quarterly, each motor vehicle wrecking facility shall provide to the Department, on a form approved by the Department, a list of all junk vehicles received by the motor vehicle wrecking facility during the quarter, stating the year, make, and complete identification number of each vehicle, as well as such other records, documents, and other information as may be requested by the Department.

SECTION 46-3-5. Denial, Suspension, or Revocation of License.

(a) The Department may deny or suspend a motor vehicle wrecking facility's license on

any of the following grounds:

(1) the applicant or licensee sold or otherwise disposed of a motor vehicle, or any component thereof, knowing the vehicle or component to be stolen or otherwise appropriated without the consent of the owner;

(2) the applicant or licensee committed forgery on a certificate of title covering a vehicle that has been reassembled from parts obtained from the disassembling of other vehicles;

(3) the applicant or licensee committed any illegal act or omission that has caused loss as the result of a sale of a motor vehicle, or component part;

(4) the applicant or licensee failed to comply with this Chapter or with a rule of the Department; or,

(5) the applicant or licenses obtained a license fraudulently;

(b) The Department may revoke a motor vehicle wrecking facility's license on the following grounds:

(1) the license was suspended pursuant to Department action and the facility failed to cure the defect or defects underlying the suspension during the period of suspension; or,

(2) the license was suspended and after suspension, the licensee performed an act that is grounds for suspension at any time during the remaining active life of the facility.

SECTION 46-3-6. Appeals.

A decision by the Department to issue, deny, or revoke a motor vehicle wrecking facility or motor vehicle graveyard license may be appealed to the Board within thirty (30) days after receipt of official notice of the Department's decision.

SECTION 46-3-7. Motor Vehicle Wrecking Facilities and Motor Vehicle Graveyards – Licensing Process.

(a) When an application for a motor vehicle wrecking facility or motor vehicle graveyard is filed with the Department, the Department shall notify by mail:

(1) each owner of property adjoining the proposed facility; and,

(2) a newspaper of general circulation in the area where the proposed facility is to be located;

(b) Within thirty (30) days of the notification in subsection (1), the Department shall conduct a public hearing to determine whether the proposed facility will significantly affect the quality of life of adjoining landowners and the surrounding community;

(c) In making its decision to grant or deny a license application, the Department shall consider the effect of the proposed facility on adjoining landowners and land uses.

SECTION 46-3-8. Disposal of Damaged Vehicle when Insurance Company Settles at Total Loss.

An insurance company settling an insurance claim on a damaged motor vehicle as a total loss less salvage may dispose of the motor vehicle at a motor vehicle wrecking facility only if it is licensed under the provisions of this Chapter.

SECTION 46-3-9. Inspections.

The Department, through its designated representative, shall inspect each licensed motor vehicle wrecking facility or motor vehicle graveyard, consistent with rules adopted by the Department.

SECTION 46-3-10. Administrative Enforcement.

(a) When the Department determines that a violation of this Section, a violation of a rule adopted under this Section, or a violation of a license provision has occurred, it may serve written notice of the violation on the alleged violator or the violator's agent, which notice shall specify the law, rule, or license provision alleged to be violated and the facts alleged to constitute a violation, and may include an order to take necessary corrective action within a reasonable period of time, and which order becomes final thirty (30) days after notice is served unless the person named requests, in writing, a hearing before the Board. On receipt of the request for a hearing, the Board shall schedule a hearing. Service by mail is complete on the date of mailing;

(b) If, after a hearing, the Board finds that a violation has occurred, it shall either affirm or change the Department's order, which order may prescribe the date by which the violation must cease and may prescribe time limits for particular action, and if, after a hearing, the Board finds that a violation has not occurred, it shall rescind the Department's order;

(c) The Department shall make efforts to obtain voluntary compliance through warning, conference, or any other appropriate means before issuing an order.

SECTION 46-3-11. Injunction – Action to Collect Civil Penalty – Authority of Department.

(a) The Department may sue to enjoin the operation or maintenance of a motor vehicle wrecking facility or graveyard either permanently or until compliance with this Chapter, rules of the Department, or an order issued pursuant to this Chapter has been demonstrated;

(b) The Department may sue in Omaha Tribal Court to collect a civil penalty;

(c) Upon request of the Department, the Omaha Tribal Attorney may petition the Omaha Tribal Court to enjoin further operation or maintenance of a motor vehicle wrecking facility or graveyard or to impose, assess, and recover a civil penalty, as appropriate;

(d) The Department, through the Omaha Tribal Attorney, may sue in Omaha Tribal Court to collect a civil penalty for violations discovered during Departmental inspections.

SECTION 46-3-12. Penalties.

(a) A person who violates this Section is guilty of a misdemeanor and upon conviction shall be fined not to exceed $500, imprisoned for a term not to exceed thirty (30) days, or both;

(b) A person who violates this Section, a rule of the Department adopted under this Section, or an order issued as provided in this Section shall be subject to a civil penalty of not more than $100, further provided that each day upon which a violation of this Section or a rule or order occurs is a separate violation.

SECTION 46-3-13. Disposition of Money Collected.

All money collected or otherwise received for motor wrecking facility license fees, fines or penalties must be deposited in the Solid Waste Management Account.

CHAPTER 4. CERCLA PARTICIPATION

The Omaha Tribal Council finds that the public health, safety, and welfare is appropriately protected through cooperation with the Federal government under the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510) to provide for the disposal and control of appropriate wastes and substances in a safe and environmentally sound manner, and provides that such cooperation is accomplished in another Tribal Code Section (hazardous wastes).

CHAPTER 5. INTEGRATED WASTE MANAGEMENT

SECTION 46-5-1. Solid Waste Reduction.

It is the goal of the Omaha Tribe to reduce the volume of solid waste that is either disposed of in a landfill or incinerated.

SECTION 46-5-2. Integrated Waste Management Priorities.

(a) It is the policy of the Omaha Tribe to plan for and implement an integrated approach to solid waste management, which must be based on the following order of priority:

(1) reduction of waste generated at the source;

(2) reuse of waste;

(3) recycling of waste;

(4) composting of biodegradable waste; and,

(5) landfill disposal or incineration.

SECTION 46-5-3. Solid Waste Management Plan.

(a) As a basis for developing an integrated waste management program and ensuring adequate disposal capacity, the Department shall prepare and implement a solid waste management plan in accordance with this Section;

(b) The plan must be comprehensive and integrated and must include at least the following elements:

(1) a capacity assurance element that identifies existing disposal capacity, estimates waste generation rates, and determines the disposal capacity needed for the future and that assesses the potential effect of off-Reservation disposal on capacity;

(2) an element that incorporates Federal Regulations 40 C.F.R. 257 and 258;

(3) an element that identifies the role of each of the components of the integrated waste management priorities in meeting solid waste reduction;

(4) a technology assessment element that assesses the availability and practicality of alternative technologies for solid waste management;

(5) an education and public information element that identifies existing education and information programs and describes how the Omaha Tribe will increase the awareness and cooperation of the public in environmentally safe solid waste management;

(6) a special waste and household hazardous waste element that identifies types and quantities of wastes that create special disposal problems and recommends methods for reducing, handling, collecting, transporting, and disposing of those wastes and that identifies existing and future strategies for managing those wastes;

(7) an element that identifies the needs of rural communities and management strategies to address those needs;

(8) an element that identifies mechanisms to ensure proper training of landfill operators; and,

(9) a timeline and implementation strategy for each of the plan elements;

(c) The plan must be developed with the involvement of officials, citizens, solid waste and recycling industries, environmental organizations, and others involved in the management of solid waste;

(d) The Department shall conduct hearings after notice;

(e) The plan shall be evaluated every five (5) years and updated as necessary.

CHAPTER 6. INFECTIOUS WASTE MANAGEMENT

SECTION 46-6-1. Purpose.

The purpose of this Section is to protect the public health, safety, and welfare and natural environment by developing and implementing infectious waste management policies that are reasonable, cost-effective, aesthetically pleasing, and environmentally acceptable.

SECTION 46-6-2. Prohibition.

No person may treat, store, transport, or dispose of infectious waste in a manner not authorized under the provisions of this Section or rules adopted under the provisions of this Section.

SECTION 46-6-3. Management Standards – Procedures.

(a) Infectious waste must be separated from ordinary waste at the point of origin and stored until the waste is rendered non-infectious in separate, distinct containers with biohazard warning labels in compliance with the following procedures:

(1) sharps must be contained for storage, transportation, treatment, and subsequent disposal in leakproof, rigid, puncture-resistant containers that must be taped closed or capped securely to prevent loss of contents; and,

(2) infectious waste other than sharps must be contained in moisture-proof disposable containers or bags of sufficient strength to prevent ripping, tearing, or bursting under normal conditions of use, such bags must be securely tied to prevent leakage or expulsion of solid or liquid wastes during storage;

(b) To inhibit the spread of infectious agents, infectious waste must be stored prior to treatment in a secured area that prevents access by unauthorized personnel and must be clearly marked or labeled as infectious;

(c) Handling of infectious waste must be done in a manner to prevent compaction or other mechanical manipulation that might cause the release of infectious agents;

(d)

(1) Treatment and disposal of infectious waste must be accomplished through the following methods:

(A) incineration with complete combustion that reduces infectious waste to carbonized or mineralized ash;

(B) steam sterilization that renders infectious waste non-infectious; or

(C) sterilization by standard chemical techniques or by any scientifically proven techniques approved by Federal authorities;

(2) Liquid or semi-solid infectious waste may be discharged into a sewer system that provides secondary treatment or into a primary treatment sewage system if waste is first sterilized by chemical treatment; a sub-surface disposal system installed and operated in accordance with sanitary regulations is, for the purposes of this subsection (b), a sewer system providing secondary treatment;

(3) fetal remains or recognizable body parts other than teeth must be disposed of by incineration or interment;

(e) If infectious waste has been rendered non-infectious by one of the methods listed in subsection (4) and is no longer biologically hazardous, it may be mixed with and disposed of with ordinary waste in the following manner:

(1) Steam sterilized waste must be labeled identifying it as such with heat sensitive tape or bagged in marked autoclavable bags;

(2) Chemically treated waste or waste otherwise treated under subsection (4)(a)(iii) must be appropriately labeled;

(f) Infectious waste may be transported by the generator or a regulated commercial hauler to an offsite treatment facility if the waste is confined in a leakproof, non-compacting, fully enclosed vehicle compartment;

(g)

(1) Infectious waste that has been treated by one of the methods in subsection (4) may be disposed of in a properly operated, licensed landfill;

(2) Untreated infectious waste may not be disposed of at a properly operated, licensed landfill;

(h) An employee who handles or manages infectious waste must receive training provided by the employer that is adequate to ensure safe performance of duties;

(i) Generators and transporters of infectious waste shall develop a contingency plan to handle spills and equipment failure.

SECTION 46-6-4. Licensing and Regulation.

(a) The Department shall license a profession, occupation, or health care facility that generates infectious waste and shall require each licensee to comply with this Section as a condition of licensure; further, the Department shall adopt rules to implement this Chapter and may impose and adjust annual fees commensurate with the costs of regulation;

(b) A profession, occupation, or health care facility that generates or transports infectious waste or that operates treatment, storage, or disposal facilities regulated by this Section must obtain a permit annually from the Department; further, the Department shall adopt rules to implement this Section and may establish an annual fee commensurate with the costs of regulation.

SECTION 46-6-5. Fees.

Fees collected under the provisions of this Section must be deposited in the Solid Waste Management Account.

CHAPTER 7. NOTICE OF MOTOR OIL RECYCLING CENTER

SECTION 46-7-1. Waste Oil Notice.

(a) Each retailer and wholesaler offering motor oil for sale shall visibly display at an appropriate location within the retail store or wholesale outlet a sign indicating the location of the nearest waste oil recycling collection center;

(b) The Department shall design an oil recycling sign to be used by retailers and wholesalers; the Department may establish the specifications for the sign by rule.

CHAPTER 8. SEPTAGE DISPOSAL

SECTION 46-8-1. Rulemaking Authority.

(a) Except as provided in subsection (4), the Department shall adopt rules governing the licensure of a person engaged in the business of cleaning cesspools, septic tanks, and privies or disposing of septage, which rules must provide:

(1) procedures for issuance, denial, renewal, and revocation of licenses;

(2) requirements that provide for the sanitary disposal of septage, including:

(A) application of septage to agricultural land, forest land, and reclamation sites;

(B) standards governing rates of application;

(C) land application standards and restrictions, including:

(i) pathogen restrictions and treatment requirements;

(ii) vector attraction reduction requirements;

(iii) frequency of monitoring; and,

(iv) recordkeeping requirements; and,

(3) surface disposal standards, including:

(A) the vector attraction reduction requirements for septage placed on an active sewage sludge unit;

(B) the frequency of monitoring required when septage is placed on an active sewage sludge unit;

(C) the recordkeeping required when septage is placed on a surface disposal site; and,

(D) requirements for the disposal of waste from:

(i) cesspools, septic tanks, portable toilets, and other similar treatment works that receive industrial wastewater or grease removed from grease traps; and,

(ii) grease traps.

SECTION 46-8-2. License Required.

(a) Except as provided in subsection (2), a person may not engage in the business of cleaning cesspools, septic tanks, or privies or dispose of septage unless licensed by the Department;

(b) An owner or lessee of property from which septage is removed may dispose of that septage on that person's property if:

(1) the person pumps the septage with the person's equipment or retains a person licensed pursuant to the provisions of subsection (1) to pump the septage; and,

(2) the disposal does not violate disposal restrictions or rules or create a nuisance of public health hazard.

SECTION 46-8-3. Application For License.

(a) An application for a license must be made to the Department on forms provided by the Department, which application must contain:

(1) the full name and business address of the applicant;

(2) a list of where the business is to be conducted and the location of the disposal sites that the applicant intends to use during the permit year;

(3) for each disposal site listed pursuant to subsection (2), a certification by the Department that the site meets all applicable requirements;

(4) written permission to use each proposed disposal site signed by the owner, manager, or other person authorized to give permission to use the disposal site; and,

(5) any additional information required by rule.

SECTION 46-8-4. License Term, Renewal, and Fees.

(a) A license expires on December 31 of each calendar year, provided however, a license is renewable in accordance with procedures established in adopted rules and upon receipt of the application provided for in subsection (2) of this Section, further provided however, a license is not transferable and if a person ceases to do business, the license terminates and the license must be returned to the Department;

(b) An application for renewal of a license must be made on a form provided by the Department, which application must contain:

(1) the full name and address of the licensee;

(2) a list of locations in which business is to be conducted during the renewal term;

(3) a list of disposal sites that the licensee intends to use during the term of the renewal;

(4) for each disposal site listed pursuant to subsection (2)(c) but not previously listed by the licensee for the year immediately preceding the renewal year;

(A) a certification that the site meets all applicable requirements; and,

(B) written permission to use the site signed by the owner, manager, or other person authorized to give permission to use the site; and,

(5) any additional information required by the Department by rule;

(c) The fee for a license, including renewal of a license, is $250, payable to the Department at the time of application for the license or renewal;

(d) In addition to the license fee required under subsection (3), the Department shall collect a late fee from any person that has failed to submit a license fee between January 31 and April 1 of a renewal year and that operates a business governed by this Section in the renewal year, which late fee is $250.

SECTION 46-8-5. Injunction.

(a) The Department may sue to enjoin the operation or maintenance of a septage collection or disposal operation until compliance with this Section, the rules of the Department, or an order issued pursuant to this Section has been demonstrated;

(b) Upon request of the Department, the Omaha Tribal Attorney may petition the Omaha Tribal Court to enjoin further operation or maintenance of the septage collection or disposal operation.

SECTION 46-8-6. Department Revocation or Denial of License.

The Department may deny or revoke a license after giving the applicant written notice and an opportunity for a hearing before the Board. The decision to deny or revoke a license may be made only after a finding that a business or disposal site cannot be operated or is not being operated in compliance with this Section or a rule or order issued pursuant to this Section.

SECTION 46-8-7. Administrative Enforcement.

(a) If the Department believes that a violation of this Section, a rule adopted under this Section, or an order issued under this Section has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent, which notice must specify the provision of this Section, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation; the notice must also include an order to take necessary corrective action within a reasonable period of time, which time period must be stated in the order; provided further that service is complete on the date of mailing;

(b) If the alleged violator does not request a hearing before the Board within thirty (30) days of the date of service, the order is final and failure to comply with a final order may subject the violator to further action;

(c) If the alleged violator requests a hearing before the Board within thirty (30) days of the date of service, the Board shall schedule a hearing, and after such hearing, the Board may:

(1) affirm or modify the Department's order issued under subsection (1) if the Board finds that a violation has occurred; or,

(2) rescind the Department's order if the Board finds that a violation has not occurred;

(d) An order issued by the Department under this Section may set a date by which the violation must cease and set a time limit for the violator to correct the violation;

(e) An action initiated by the Department under this Section may include an administrative penalty not to exceed $500 for each day of violation.

SECTION 46-8-8. Penalties and Fines.

(a) A person who disposes of septage in violation of this Section or of the standards adopted pursuant to the authority of this Section is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed $1,000;

(b) A person who violates this Section or a rule or order adopted pursuant to this Section is subject to a civil penalty of not more than $500, with each day that a violation of this Section, a rule of the Department, or an order issued pursuant to this Section occurs constitutes a separate violation, and the Department or the Omaha Tribal Attorney may file an action to collect the penalty.

SECTION 46-8-9. Fees.

Fees, penalties and fines collected under the provisions of this Section must be deposited in the Solid Waste Management Account.

CHAPTER 9. MISCELLANEOUS

SECTION 46-9-1. Compliance with other Laws and Regulations.

Compliance with this Chapter and rules, regulations, and orders promulgated or issued hereunder does not relieve a person or other entity of the obligation to comply with other applicable laws and regulations.

SECTION 46-9-2. Severability.

If any provision of this Chapter, or the application of this Chapter, or any rules, regulations, or orders promulgated or issued hereunder to any person or other entity or circumstance, is held invalid, the remainder of this Chapter and provisions hereof, and/or application thereof, to other persons or other entities or circumstances shall remain unaffected.

SECTION 46-9-3. Consensual Relations.

Any person who uses land anywhere within the exterior boundaries of the Omaha Indian Reservation and any person who enters into agreements or understandings with the Omaha Tribe or its members and residents by commercial dealings, contracts, leases, licenses, permits, intergovernmental agreements, or other arrangements, commercial or otherwise, shall be deemed to have entered into a consensual relationship with the Omaha Tribe or its members.

SECTION 46-9-4. Applicability.

Any person who is anywhere within the exterior boundaries of the Omaha Indian Reservation and other lands within the jurisdiction of the Omaha Tribe, whether on trust or non-trust lands, agrees to comply with, and is subject to this Chapter, and any rules or regulations promulgated hereunder, all tribal laws, and all orders of the Tribal Council, the Department, and the Tribal Court; and all such persons shall be deemed to have consented to the civil jurisdiction of the Omaha Tribal Court, and shall be subject to civil prosecution, civil penalties, civil damages, or any other civil remedies imposed or awarded by the rules, regulations or orders promulgated or issued hereunder.

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