

**TITLE 16**

**SOLID WASTE AND HAZARDOUS WASTE MANAGEMENT ORDINANCE**

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## CHAPTER 1. PRELIMINARY PROVISIONS

### Section 16-1-1. Purpose and Scope.

- (a) Name of Title. This Title will be known and may be cited as Volume V, Title 16 of the Flandreau Santee Sioux Tribal Law and Order Title and the Flandreau Santee Sioux Tribe (FSST) Solid and Hazardous Waste Management Title (FSST-SHWMT).
- (b) Purpose. To provide, within the jurisdiction of the Flandreau Santee Sioux Reservation and other lands within the Tribe's jurisdiction, for the establishment of a comprehensive solid and hazardous waste management program to protect the health, safety, and well-being of residents; to regulate the storage, collection, transportation, disposal, treatment, and management of solid and hazardous waste; to remediate any releases of a hazardous substance pollutant or contaminant to protect the human health, public sanitation, environment, and general aesthetics; and to inform and educate persons of the need to participate fully in efforts to reduce the generation of solid and hazardous waste.
- (c) Scope. This Title will apply to all individual persons, groups of individuals, households, commercial businesses, manufacturing, construction, schools, governmental, and other public facilities, and any persons engaged in the storage, collection, transfer, recycling, disposal, and treatment of solid and hazardous waste on land within the Tribe's jurisdiction. This Title applies to any entity that does business, or has business on land within the Tribe's jurisdiction, including all oil and gas exploration and development, and other types of mining and mineral extraction, processing, or other beneficiation activities.
- (d) Prior Inconsistent Ordinances Repealed. Any and all ordinances of the FSST which conflict in any way with the provisions of this Title are hereby repealed to the extent that they are inconsistent with or conflict with, or are contrary to the spirit and/or purposes of this Title. All prior ordinances and resolutions of the FSST Executive Committee (Executive Committee) dealing with the same subject matter as this Title and Title are repealed as of the effective date of this Title.
- (e) Severability. If any provision of these Regulations or the application thereof to any person or circumstances is held invalid, such invalidity will not affect any other provisions or applications of these Regulations that can be given effect without the invalid provision or application thereof, and to this end the provisions of these Regulations are severable.
- (f) Effective Date. This Title will be in full force and effect on the date of formal approval and adoption by the Executive Committee and review as required by the Constitution and will remain in effect until repealed or amended by the Executive Committee. Existing facilities or persons subject to the permitting or other requirements of this Title will comply with the requirements and deadlines for such existing facilities in this Title.
- (g) Appropriations. Nothing in this Title will cause the FSST elected officials or the Department of Natural Resources (DNR) Director to expend funds in excess of appropriations or other available funds.

## **Section 16-1-2. Authority, Jurisdiction and Applicability.**

- (a) Constitutional Authority. This Title is adopted pursuant to the authority vested in the Executive Committee under the Constitution of the FSST. The FSST is a Federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act with a Constitution and By-laws approved by the Secretary of Interior and Commissioner of Indian Affairs. Article III, Section 1 of said Constitution and By-laws provides that the governing body of the Tribe will be the Executive Committee and pursuant to Article VIII, Section 1(f) of said revised Constitution and By-laws, the Executive Committee to promulgate ordinances governing and regulating the conduct of all individuals on lands subject to FSST jurisdiction. The FSST possesses the inherent sovereign authority to enact this Title and no part of this Title constitutes a waiver of the sovereign immunity of the Tribe.
- (b) Jurisdiction. This Title will apply to all lands, air, surface water, and ground water within the Tribe's jurisdiction to the extent consistent with Federal law, including rights-of-way running throughout the Reservation and other lands under the jurisdiction of FSST.
- (c) Applicability. This Title will also be applicable to:
- (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 or member; or
  - (3) Any member where the conduct of the member threatens or has some direct effect on the political integrity, economic security, health or welfare of the Tribe or member; and
  - (4) Any person subject to FSST Civil Actions pursuant to the FSST Law and Order Title.
- (d) Other Laws.
- (1) *Applicable Law and Regulations*. Compliance with this Title and regulations promulgated hereunder does not relieve a person of the obligation to comply with other applicable laws and regulations. Where there is a gap in the Tribal law, regulations or Titles, the Federal regulations cited in this Title will be incorporated by reference, as determined applicable by the FSST or its designees. If any part of a Federal law, Title or regulation cited or adopted by reference in this Title is modified, any modifications are automatically incorporated by reference and become part of this Title, and supersede any of the provisions that were modified. The FSST reserves the right to be more stringent than the Federal regulations or laws cited or adopted in this Title.

- (2) *Citation or Use of Language from Other Laws.* Citation to statutory or administrative language, definitions, procedure, or provisions of Federal or State law in this Title does not establish jurisdiction, which otherwise does not exist, in such Federal or State government. Nothing in this Title may be deemed a waiver of the FSST sovereign immunity, and if any Court of competent jurisdiction construes this provision as conflicting with any other provision in this Title, then this express retention of sovereign immunity will control and prevail.
- (3) *Consistency with Other Laws.* This Title is intended to be consistent with the minimum Federal requirements provided by Federal law to include, but not be limited to, Clean Water Act; Safe Drinking Water Act; Resource Conservation and Recovery Act; Clean Air Act; Toxic Substances Control Act; Federal Insecticide, Fungicide, and Rodenticide Act; the Comprehensive Environmental Response, Compensation and Liability Act; and the National Environmental Policy Act.

### **Section 16-1-3. Organization and Duties.**

#### (a) Executive Committee.

- (1) *Solid Waste Management.* The Executive Committee will be responsible for the DNR and the oversight of the FSST Solid Waste Management Program (Program).
- (2) *Integrated Solid Waste Management Plan (Integrated Plan).* Upon recommendation of the DNR, the Executive Committee will commission and approve an Integrated Plan to implement this Title. The Executive Committee will review the Program and Plan on an annual basis and make amendments to the plan, as needed.
- (3) *Grant of Franchises.* Upon recommendation of the DNR, the Executive Committee may grant and regulate franchises for the purpose of collection, transfer and disposal of solid waste for those lands and facilities subject to the jurisdiction of the FSST. Such franchises may be granted for a specific area or facility(s). Such franchise may not be granted for a longer period than ten years.
- (4) *Agreements with other political subdivisions and persons.* The Executive Committee may enter into agreements with counties, municipalities, townships, governmental agencies, private persons, trusts, or with any combination thereof to provide a solid waste management services for all lands or facilities subject to FSST jurisdiction or any portion thereof.
- (5) *Fees, Charges, and Permit Requirements.* The Executive Committee may levy and collect fees and charges and require permits, as recommended by the DNR and Brownfields Program for the implementation, oversight, permitting, compliance and enforcement of this Title. The fees, charges, and permits will be based on a fee schedule set forth in a FSST Resolution and the Integrated Plan.

All fees will be reviewed annually during the review of the Program and Integrated Plan.

- (6) *Acceptance of funds for solid waste or recycling facility or system.* The Executive Committee may accept and disburse funds derived from grants from the Federal or state governments, from private sources, from moneys that may be appropriated from the general fund, or a combination thereof for the installation and operation of a solid waste management system or facility, recycling facility, or any portion of such a system or facility.
- (7) *More Restrictive Standards.* The Executive Committee may by ordinance or resolution adopt standards for the location, design, construction, and maintenance of solid waste disposal sites and other waste management facilities more restrictive than those in this Chapter, the Federal standards in the US Title of Federal Regulations (CFR).

(b) Department of Natural Resources (DNR)

- (1) *Organization of the DNR.* The DNR is led by a Director, or in the matters of solid and hazardous waste, the Brownfields Program Director, as appointed by the Executive Committee. The DNR and Brownfields Program will manage all aspects of the Program, ensuring compliance and enforcement of this Title, carrying out the directives of the Executive Committee, and preparing the annual report. The Brownfields Program will make quarterly reports to DNR, the Executive Committee, and the U.S. EPA on the status of the program.
- (2) *Assistance and Coordination.* The DNR will assist and may receive assistance from other Tribal departments or programs in the execution of their duties, ensuring the compliance with this Title and in protection of the health, welfare and environment of the residents of the FSST lands and members of the FSST. The DNR will cooperate with state (as appropriate) and Federal agencies in the development, implementation and maintenance of the Program activities, such as permitting, inspection, compliance, enforcement, training, and regulatory programs. The DNR may advise, consult, and cooperate with other agencies and instrumentalities of the state, other states, and the Federal government and with affected groups and industries in the implementation of solid waste disposal programs.
- (3) *Power to administer grants and loans.* Upon direction by the Executive Committee, the DNR will administer such loans and grants from the Federal government and from other sources as may be available to the program in fulfillment of this Title and Chapter.
- (4) *Integrated Solid Waste Management Plan (Integrated Plan).* The DNR will be responsible for drafting, implementing and updating, as needed, the Integrated Plan. The DNR will submit the draft Integrated Plan to the Land Committee and Executive Committee for initial approval. Once approved, the DNR will provide

the Land Committee and Executive Committee an annual report on the Program and recommend amendments, as needed, to the Integrated Plan. The DNR may engage other agencies or consultancies to assist in the preparation and updates of the Integrated Plan.

- (5) *Solid Waste Training and Information.* The DNR will collect, prepare, and disseminate information and conduct educational and training programs that assist in the implementation of this Title and Chapter. The work plan for training and information dissemination will be outlined in the Integrated Plan, the annual report will provide information on all the training and informational programs conducted in fulfillment of the Program.

#### **Section 16-1-4. Integrated Solid Waste Management Plan (Integrated Plan).**

- (a) Contents of Integrated Plan. The Integrated Plan is intended to guide current and future waste management practices, evaluate priorities and options, and identify resources for the Program. The Integrate Plan will include the following information:
  - (1) Introduction
  - (2) Community Service Area, including population, demographics, community assets/resources, households, population projections, economy, climate, geography, and geology and natural resources
  - (3) Solid Waste Management Program Structure and Administration
  - (4) Current and Proposed Waste Management Practices, including current waste generators; amount and composition of waste; estimated future waste generation growth; public awareness, training and information; unmanaged waste sites; collection, transfer, disposal of solid, household, special and hazardous waste; waste reduction and recycling practices; facilities; partnerships; and proposed waste management practices
  - (5) Funding, Sustainability, and Long-Term Goals
  - (6) Approval of the Plan by the Executive Committee
- (b) Approval of Plan. The Integrated Plan will be submitted to the Executive Committee by the DNR for approval.
- (c) Maintenance of Plan. The DNR will review, implement, and maintain the Integrated Plan. The DNR will prepare an annual report to the Executive Committee, including recommendations for amendments to the Integrated Plan, as needed.

## **Section 16-1-5. Definitions.**

As used in this Title, the words and terms below will have the following meanings (Note: the singular includes the plural and vice versa and the masculine includes the feminine and vice versa):

### **(a) Tribal Organizational Definitions.**

- (1) “Brownfield Program” means the FSST Brownfields Program provided for under Section 128(a) of 42 U.S.C. § 9601 et seq. (CERCLA). The FSST Brownfields Program mission is to empower Tribal community and other stakeholders in environmental protection working together in a timely manner to educate, prevent, assess, safely cleanup and safely reuse brownfields. This program includes the Tribal Response Program.
- (2) “Department of Natural Resources” (DNR) means the Department responsible to provide and ensure the proper management of all Tribal lands held in trust by the United State Government. Through optimal resource management improve the overall conditions and values of Tribal lands, whereby increasing the economic and general welfare of all Tribal people. This DNR ensures that Tribal lands held in trust are protected from waste and degradation, and environmental hazards. In fulfillment of these responsibilities, the DNR manages the Solid Waste Management Program or Program.
- (3) “Executive Committee” means the Executive Committee of the Flandreau Santee Sioux Tribe.
- (4) “FSST” means the Flandreau Santee Sioux Tribe including any department or agency thereof, or any business entity owned and operated by the FSST.
- (5) “General Assistance Program (GAP)” means the Environmental Protection Agency GAP, which has enabled Tribes to achieve significant progress in establishing their environmental programs and have facilitated productive government-to-government partnerships for Tribes and EPA, including the establishment of baseline technical, administrative, and legal capacity for Tribal environmental protection programs that respond to environmental issues affecting Tribal lands.
- (6) “Responsible authority” means the Director of a Tribal program or department with authorities and responsibilities as delineated in this Title or the Executive Committee.
- (7) “Reservation” means the lands subject to the jurisdiction of the Flandreau Santee Sioux Tribe.
- (8) “Solid Waste Management Program (Program)” is a program within the DNR. It is the Program responsible to provide and ensure the proper management of all solid waste, including the collection, storage, and disposal of solid waste. It is



responsible for providing technical support and recommendations to the DNR Director, that is consistent with the requirements of this Title and the Integrated Plan.

(9) “Tribal Response Program” means the FSST Program office 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 as provided for in this Title, in coordination with other Tribal programs and as provided for under Section 128(a) of 42 U.S.C. § 9601 et seq. (CERCLA). This program includes the Brownfields Program.

(10) “Tribe” means the Flandreau Santee Sioux Tribe.

(b) General Definition of Terms. All general terms used in this Title, unless the context otherwise plainly requires, will be defined in the Integrated Plan.

## **CHAPTER 2. SOLID WASTE MANAGEMENT AND PROHIBITED ACTIVITIES.**

### **Section 16-2-1. Solid Waste Management Policy.**

The protection of the health, safety, and welfare of the FSST members and other residents and the protection of the environment require the safe and sanitary disposal of solid waste. An effective and efficient solid waste disposal program protects the environment and the public and provides the most practical and beneficial use of the material and energy values of solid waste. While recognizing the continuing necessity for the existence of landfills, alternative methods of managing solid waste and the reduction in the reliance upon land disposal of solid waste are encouraged. To promote these goals, the following solid waste management hierarchy, in descending order of preference, is established as the solid waste management policy of the FSST:

- (a) Volume reduction at the source.
- (b) Recycling and reuse.
- (c) Use for energy production, if appropriate.
- (d) Disposal in landfills or combustion for volume reduction outside the exterior boundaries of the reservation. No solid waste may be disposed of or combusted on lands subject to the jurisdiction of the FSST.

In the implementation of this solid waste management policy, the FSST will establish and maintain a cooperative Federal, state and local program to encourage comprehensive solid waste management.

### **Section 16-2-2. Unauthorized or Prohibited Activities.**

- (a) Illegal or Open Waste Dumping. It is unlawful to dispose of solid waste in a manner inconsistent with the provisions of this Title. No person may dump, deposit, drop, throw, discard, leave, cause or allow such activities, leaving litter or waste upon any public or private property or upon or into any river, lake, pond, or other stream or body of water subject to the jurisdiction of the FSST. No person may transport by any means garbage or refuse from any dwelling, residence, place of business, farm, or other site to and deposit such material in, around, or on top of trash barrels or other receptacles placed at roadside rest areas or recreation areas.
- (b) Littering. Littering from a motor vehicle, or any other method of transportation, is prohibited. No person may dump, deposit, drop, throw, discard, or otherwise dispose of litter from any motor vehicle or any other method of transportation, upon any public highway, upon any public or private property or upon or into any river, lake, pond, stream, or body of water within the jurisdiction of the FSST except as permitted by law.
- (c) Waste Burning. No person may burn solid waste without a Permit from the Program and approved by the Executive Committee. The Permit will be consistent with the provision of this Title.

- (d) Waste Accumulation. No person may allow litter to accumulate upon real property, of which the person charged is the owner or tenant in control, in such a manner as to constitute a public nuisance or in such a manner that the litter or waste may be blown or otherwise carried by the natural elements onto the property of another person or the FSST.
- (e) Wrecked, Junked or Unserviceable Vehicles. No person or business may conduct, maintain, or operate a motor vehicle wrecking or recycling facility, or junkyard, or store, process or recycle inoperative or unused motor vehicles of a type required to be licensed, or parts of such, without a Permit. Every person or business which processes or recycles such inoperative or unused automobiles, trucks or other motor vehicles or parts will obtain a business license from the FSST as required.
- (1) Possession of unregistered or unserviceable vehicles at a single location in excess of three (3) vehicles of a type required to be licensed is presumed to operate a motor vehicle wrecking, recycling or salvage facility, requiring a Permit.
  - (2) No person may establish, operate, or maintain a motor vehicle storage, wrecking or salvage facility, any portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of any interstate, state or U.S. highway, county, BIA or Tribally maintained road, except:
    - i. Those that are screened by natural objects, planting, fences or other appropriate means satisfactory to the Program, so as not to be visible from the main traveled way of any such road; and
    - ii. Those that not visible from the main-traveled way of any such road.
- (f) Unauthorized Waste Management Facilities. Unauthorized construction or operation of a commercial waste management, storage, treatment or disposal site or facility is prohibited.
- (g) Unauthorized Waste from Outside the Reservation or Other FSST Lands. No person or entity may dispose waste of any kind from outside the reservation on reservation lands or other FSST lands.
- (h) Misleading Representations. It will be a violation of this Title for any person to knowingly omit material information or make any false statement or representation in any label, record, report, or other document filed maintained or used for purposes or application or compliance with this Title or permits issued there under.

## **CHAPTER 3. SPECIAL AND INDUSTRIAL WASTES MANAGEMENT.**

### **Section 16-3-1. Designation of Special and Industrial Wastes.**

A specific type of solid waste may be designated as a Special or Industrial Waste by the Executive Committee upon recommendation of the DNR and Brownfields Program. The Special or Industrial Waste will be subject to the requirements of this Title, or other specific storage, management or disposal requirements. Every person, commercial establishment, government agency or facility or industrial facility who generates, treats, manages or stores Special or Industrial Waste as described below within the lands subject to the jurisdiction of the FSST will obtain applicable Permits and comply with this Title.

### **Section 16-3-2. Management of Special and Industrial Wastes.**

The following Special and Industrial Wastes, that are not hazardous waste as defined in Chapter 4, will be managed as specified below and may be not stored, transferred, treated, disposed of or discharged within the lands subject to the jurisdiction of the FSST except at a designated and authorized transfer, treatment, storage or recycling facility specifically approved and permitted by the FSST. No Special or Industrial Wastes may be disposed of on lands subject to the jurisdiction of the FSST.

All Permits will be approved by the Executive Committee upon recommendation of DNR and will be required for Special and Industrial Waste collection, transportation, management or storage, whether the activity is a Tribal, personal or commercial enterprise.

### **Section 16-3-3. Types of Special and industrial Waste and Management Requirements.**

- (a) Septic Tank Pumping's and Sewage Sludge. Such waste and other sanitary wastes are designated as a special waste. A Permit is required for the commercial management, transportation and disposal of such wastes.
- (b) Used or Waste Oil. Used or waste motor or lubrication 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 Title. A Permit is required for intermediate storage and recycling of these materials and all such materials are appropriately segregated for recycling.
- (c) Major Appliances. When discarded or deemed a waste, appliances (also known as “white goods”) such as stoves, dish washers, refrigerators, washing machines, clothes dryers, water heaters, are designated as Special Wastes. The owner or resident of a residential property is responsible for proper storage or disposal of such item(s) as required under this Title. A Permit is required for the commercial collection, transportation, and disposal of Major Appliances Special Wastes. 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 or recycling. A Permit is required for the temporary storage, including segregation for recycling, of such wastes. All activities concerning such waste must be in compliance with the Title.

(d) Lead-acid batteries. When discarded or deemed a waste, such batteries are designated as a Special Waste. Disposal of lead acid batteries on land subject to the jurisdiction of the FSST is prohibited. Batteries must be recycled in accordance with this Title or disposed of by delivery to an automotive battery retailer or wholesaler, or to a collection or recycling facility authorized under this Title or the State of South Dakota. A Permit is required for an automotive battery retailer or wholesaler to manage the waste batteries within lands subject to the jurisdiction of the FSST. An automotive battery retailer may not 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 Title or the laws of the State of South Dakota, or to a secondary lead smelter permitted by the U.S. Environmental Protection Agency. Each battery improperly disposed of will constitute a separate violation.

A person selling lead acid batteries at wholesale, retail or offering lead acid batteries for retail sale within lands subject to the jurisdiction of the FSST will:

- (1) Apply for and successfully obtain a permit from the Executive Committee, upon recommendation of the DNR; and
- (2) 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
- (3) Post written notice which will be at least eight and one-half (8 1/2) inches by eleven (11) inches in size and will contain the universal recycling symbol and the following language:
  - i. “It is illegal to discard a motor vehicle battery or other lead acid battery”;
  - ii. “Recycle your used batteries”;
  - iii. “Tribal Laws require us to accept used motor vehicle batteries or other lead acid batteries for recycling in exchange for new batteries purchased.”
- (4) Failure to post the required notice will be a violation of this Title.
- (5) Any person accepting batteries in transfer from an automotive battery retailer will be allowed a period not to exceed one hundred twenty (120) days to remove batteries from the retail point of collection.

(e) Infectious institutional wastes, medical wastes, laboratory wastes and surgical operating room pathological specimens and disposal fomites. Such wastes are designated as Special Waste. Disposal of such wastes on land subject to the jurisdiction of the FSST is prohibited. A Permit must be obtained to handle such waste. These Special Wastes may be generated by a medical service provider, any authorized health professional, emergency rooms, or mortuary service provider. This Special Waste must be bagged in Bio/Medical Waste bags or containers obtained from the Indian Health Service, other authorized medical provider, or FSST that are clearly marked with the appropriate

symbols and warnings. Regulated infectious waste may not be subject to mechanical stress or compaction during loading, unloading, and transit.

- (f) Farm and Ranch Wastes, including Pesticide and Herbicide Wastes. No provision of this Title may be construed so as to prohibit a farmer or rancher from disposing of solid waste from normal farming operations or ordinary domestic activities upon his own land, provided such disposal does not create a nuisance or a hazard to public health, does not violate a local ordinance, will not unlawfully pollute ground or surface waters or does not violate the water or air pollution control laws of the United States.

Agricultural waste and products will be managed and stored as to minimize nuisance, flies, rodents and odor, and will not result in the contamination of ground or surface water sources. Such wastes that create a public nuisance or threaten the quality of ground or surface waters may be designated as a Special Waste by the DNR and may require a Permit.

Surplus agricultural pesticides or herbicides and/or pesticide or herbicide containers intended for disposal are designated as a Special Waste if not regulated as a hazardous waste pursuant to this Title. Every person, commercial or industrial facility who handles surplus agricultural pesticides or herbicides and/or pesticide or herbicide containers will:

- (1) Comply with this Title and 40 CFR Part 262. Surplus pesticides or herbicides may not be discarded within the exterior 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
  - (2) A farmer or rancher disposing of waste pesticides from his own use which are hazardous wastes will triple rinse each emptied pesticide container in accordance with 40 CFR 261.7(b)(3) and may dispose of the pesticide residues on his own farm or ranch in a manner consistent with the disposal instructions on the pesticide label in a manner that does not endanger human health or the environment. The DNR may impose additional restrictions or requirements or prohibit such disposal to protect human health and the natural resources and environment of the lands subject to the jurisdiction of the FSST.
- (g) Dead Animals. Dead animals, to include livestock are designated as a Special Waste. A Permit is required to dispose of more than 10 head at one time. Such waste must be removed in a timely manner and be managed by renderers, disposed of at an authorized or permitted solid waste landfill or at an alternative location designated by the DNR AND BROWNFIELDS PROGRAM Director. Small pets will be buried or taken to an FSST 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 FSST may issue an emergency Permit in coordination with and at the recommendation of the Program or DNR, for one-time disposal events based on various practical factors during emergency conditions. The FSST 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 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.

- (h) Used and Scrap Tires. Used or scrap tires are designated as a Special Waste. No such tires may be disposed of at any location other than at a facility or site approved or permitted under this Title or by the State of South Dakota. Tires may not be delivered to a facility or location within the lands subject to the jurisdiction of the FSST that is not in compliance with this Title 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 Title 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 also be liable for cleanup costs.
- (1) Individual persons may store outside up to a maximum of 4 tires for up to 90 days for personal use on their own property or residence.
  - (2) 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 must obtain a Permit for the management of used and scrap tires. The Permit will address the location of temporary storage of tires, transportation, and information about an end-user who will process, recycle and/or dispose the materials in a manner that complies with the laws of the FSST.
- (i) 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 Special Waste by the DNR and must be managed accordingly and in full compliance with this Title. The property owner will be provided a Warning Letter by the DNR to properly repair, remove and/or dispose of the mobile home or trailer and any other applicable Tribal, state or Federal regulations within 30 days of such declaration. Failure to comply with this Warning Letter will result in further action by the Executive Committee. 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.
- (j) Construction and Demolition Wastes. All construction or demolition wastes, and debris are considered a Special Waste and must be properly disposed in an approved Construction and Demolition Fill. A Permit must be obtained and the 1% fee on the gross cost of the project must be paid by the private or commercial entity, conducting the construction/demolition. Demolition of a structure over 100 square feet is subject to the Permit requirements of this Title.
- (k) Petroleum Contaminated Soils. Such wastes are considered Special Wastes. Petroleum-contaminated soils include wastes from petroleum operations, such as above or below ground storage tanks, saltwater, crude oil, waste oil, or other oil or gas field exploration

or production or liquid wastes may not be disposed of on lands subject to the jurisdiction of the FSST. Any individual or commercial entity removing petroleum-contaminated soils must obtain a Permit. All such wastes must be disposed in a solid waste management facility which accepts petroleum-contaminated soils, to include soils from removal of underground storage tanks, above ground or underground storage tanks or related piping or systems leakage or spills, or oil and gas exploration or production facilities for storage prior to treatment or disposal are subject to the requirements of this Title.

- (1) Misleading Representations. It will be a violation of this Title for any person to knowingly omit material information or make any false statement or representation in any label, record, report, or other document filed maintained or used for purposes or application or compliance with this Title or permits issued there under.



## **CHAPTER 4. HAZARDOUS WASTE AND BROWNFIELDS MANAGEMENT.**

### **Section 16-4-1. Hazardous Waste Disposal.**

No hazardous waste disposal will be conducted within lands subject to the jurisdiction of the FSST.

### **Section 16-4-2. Hazardous Waste Management and Treatment Requirements.**

All hazardous waste, as defined in this Title, and not excluded from regulation as a hazardous waste under 40 CFR § 261.4(b) and that exhibits any of the characteristics of hazardous waste identified in 40 CFR Part 261 Subpart C to include: ignitability; corrosivity; reactivity; or toxicity; or 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 will be generated, managed, stored, treated or transported in compliance with this Title and 40 CFR Parts 262 thru 273.

### **Section 16-4-3. Tribal Hazardous Waste Standards.**

The FSST reserves the right to be more stringent than the Federal regulations cited above to include any Federal statutory or regulatory exemptions from the above regulations.

### **Section 16-4-4. Types of Hazardous Waste.**

- (a) Asbestos and Asbestos Containing Materials. Asbestos and asbestos-containing materials are considered a Special Waste. Handling of regulated asbestos-containing material must be performed by certified asbestos personnel, as certified by the State of South Dakota. No disposal of asbestos and asbestos containing materials is allowed on lands subject to the jurisdiction of the FSST. A Permit must be obtained and the 1% fee on the gross cost of the project and must be paid by the commercial entity contracted for the removal, transportation and disposal of asbestos and asbestos containing materials, conducted in compliance with the applicable requirements of this Title, the Clean Air Act (42 U.S. C. §§ 7401-7671) and U.S. EPA guidelines.

Asbestos disposal must be coordinated with the landfill approved to receive asbestos and asbestos containing materials. 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.

- (b) Coal Combustion Ash or Fly Ash. Large quantities (over nine (9) cubic feet) of wastes generated primarily from the combustion of coal or other fossil fuels is considered a Special Waste. A Permit will be required to store, treat, dispose, or used for solidification or other treatment processes on lands subject to the jurisdiction of the FSST. This Special Waste designation will also include Cement Kiln Dust.

- (c) Radioactive Wastes or Technically Enhanced Naturally Occurring Radioactive Materials (TENORM). Wastes that are or contain radioactive materials or are Technically Enhanced Naturally Occurring Radioactive Materials (TENORM) at concentrations greater than 185 becquerel per kilogram (5 pico-Curies/gram or pCi/g) may not be dumped, spilled, leaked, burned or otherwise stored or disposed of within the lands subject to the jurisdiction of the FSST. TENORM includes naturally occurring radioactive material whose radionuclide concentrations are increased by or as a result of past or present human practices. TENORM does not include background radiation or the natural radioactivity of rocks or soils. TENORM does not include "source material" and "byproduct material" as both are defined in the Atomic Energy Act of 1954, as amended (AEA 42 USC §2011et seq.) and relevant regulations implemented by the NRC. Such wastes will be collected and/or transported for disposal off lands subject to the jurisdiction of the FSST. All radioactivity levels will be measured using methods and procedures approved by the DNR.

#### **Section 16-4-5. Brownfields Tribal Response Program (“Brownfields Program”).**

The Brownfields Program is part of the DNR and as such, may investigate, assess, respond 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 or oil and gas exploration or production activity materials that may pose a threat to public health, welfare or the environment. This may include the verification of the performance and results of a response or remedial action and the certification of the results or completion of such action.

#### **Section 16-4-6. Remedial Actions by the Brownfields Program in Circumstances Posing an Imminent Threat.**

If a release of a hazardous substance, pollutant or contaminant result from the management, handling, treatment, storage, transportation or disposal of a solid, special or hazardous waste, hazardous material, petroleum product, controlled substance or from mining or oil and gas exploration or production activity poses an imminent threat to life or public health, the Brownfields Program may:

- (a) Perform such activities as are necessary to address the threat in cooperation with any other Tribal, state, or Federal department agency;
- (b) Conduct inspections and investigations as provided for in this Title; and
- (c) Expend any available funds to perform any assessment, cleanup, abatement, and/or remedial activities required to mitigate the threat, subject to the approval of the Executive Committee.

#### **Section 16-4-7. Remedial Actions by the Brownfields Program for Failure to Perform.**

Remedial action may be taken by the Brownfields Program 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 department or agency in the event that the activities subject to a Tribal Order or Voluntary Remediation Agreement are not satisfactorily performed or completed or where the Brownfields Program 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.

#### **Section 16-4-8. Liability of Owners, Operators and Other Persons.**

Whenever the Brownfields Program 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, the Brownfields Program 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.

#### **Section 16-4-9. Recovery of Expenditure of Tribal Funds.**

In any case under this Section where the Brownfields Program expends funds to investigate, assess, remediate, conduct oversight or contain contamination resulting from a spill or a release, and where the Brownfields Program has identified a responsible party, the responsible party will reimburse the Brownfields Program. 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 Brownfields Program as described above, the person or persons who committed or allowed the improper disposal, action or release will be liable to Brownfields Program for the reasonable costs actually incurred in cleaning up any solid or special waste, hazardous waste or hazardous material, abating the effects thereof, monitoring , implementing engineering controls or taking other remedial action. The amount of such costs will be recoverable in a civil action in Tribal Court, together with the costs of suit incurred by FSST in recovering such monies. A judgment ordering the payment of these costs to FSST may bear interest.

Funds generated as a result of enforcement proceedings will be used to carry out environmental education in classrooms, Tribal programs, and local agencies on FSST. Educational materials may include information on reuse, reduce, recycle and requirements for the management and disposal of solid and hazardous waste. Materials may also include information on the Brownfields Program. Funds may be used to retain additional training by attending meetings/trainings directly related to Brownfields, Solid, and Hazardous Waste Management.

#### **Section 16-4-10. Remedial Action and Enforcement Orders.**

Whenever the Brownfields Program 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 the Executive Committee upon

recommendation of the DNR and Brownfields Program may issue an Order, pursuant to this Title and Chapter, 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 will, upon such order, 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 the Brownfields Program pursuant to this Section.

#### **Section 16-4-11. 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 lands subject to the jurisdiction of the FSST 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:

- (a) 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 Brownfields Program may result in enforcement action pursuant to this Title and other Tribal Laws or Titles and/or referral to appropriate state or Federal agencies.
- (b) Notification Requirements. Notification to the U.S. EPA is required where an accidental spill or release of a hazardous substance, pollutant or contaminant has occurred within the lands subject to the jurisdiction of the FSST; and
  - (1) The release poses a potential threat to the public health, welfare or the environment; or
  - (2) The release exceeds 25 gallons or causes a sheen on surface water; or
  - (3) It exceeds any Tribal or Federal U.S EPA groundwater, surface water or drinking water quality standards; or
  - (4) The release is required to be reported according to Superfund Amendments and Reauthorization Act (SARA), Title III, § 304 (1986); or
  - (5) The Brownfields Program requires a notification of a release to be made.
- (c) Responsibility 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 Brownfields Program, Tribal Police and appropriate Federal authorities within twenty-four hours (24).
- (d) Notification Information Required. All notifications and reports of an accidental release or spill of any hazardous substance or pollutant will contain the following information, at a minimum, to the best of the reporting person's ability:

- (1) Name and telephone number of the reporting person;
  - (2) Name and address of the facility (or location of the spill or accident);
  - (3) Name of facility/vehicle owner contact if different than reporting person;
  - (4) Time and type of incident, for example spill, release, fire;
  - (5) Name, description and quantity of materials involved, to the extent known;
  - (6) The extent of any injuries, if known;
  - (7) The possible hazard to human health or the environment outside the facility or to the nearby area;
  - (8) Description of actions taken to mitigate the release or spill; and
  - (9) Other authorities notified.
- (e) Additional Reports. Subsequent to the initial report, the responsible person will immediately notify the Brownfields Program of information that changes the accuracy of the initial report. As directed by the Brownfields Program, the responsible person will make additional reports verbally or in writing.
- (f) 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 Title and the Brownfields Program 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.

#### **Section 16-4-12. Remediation Standards.**

Any voluntary or involuntary remedial action conducted by an owner, operator or responsible party or a state or Federal government agency or by the Brownfields Program, will:

- (a) Be protective of human health, safety and the environment. A remedy will be considered to be protective of human health if it reduces risk to humans of acute and chronic toxic exposures to contaminants to levels that do not pose a significant risk to human health. A remedy will be considered to be protective of the environment if it adequately reduces risk of significant adverse impacts to the ecology 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 or Federal 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 or Federal institutional controls must also be approved by the Executive Committee pursuant to this Title;

- (b) Attain Standards Established by the FSST. A remedy will attain standards established under this Section for air, soil, water and ground water affected by the release, unless the Brownfields Program sets an alternate standard. No standard set under this Section for a contaminant will be set at a level or concentration lower than the background level for that contaminant. A remedy must attain standards or alternate standards by the end of the remediation period set forth in an Order or a Remediation Agreement. A remedy will be considered to attain Tribal standards for air, soil water and ground water if it:
- (1) Meets any applicable media standards established under Tribal or Federal act, law, Title, rule or regulation; or
  - (2) Meets site-specific, risk-based standards approved by the Executive Committee upon recommendation of the DNR and Brownfields Program for the eligible site based on exposure factors. Exposure factors for hazardous substances, pollutants or contaminants in groundwater will assume that groundwater may be used as a drinking water source, provided that no standard set under this Section for a contaminant will 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 Brownfields Program will assume uses consistent with the class of use prior to contamination of the groundwater. Exposure factors for soils may take into consideration current and future land use.
- (c) Maintain Source Control. The remedy will 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 will be considered to control sources of releases if it controls the release of contaminants from sources to any media in concentrations that:
- (1) exceed applicable standards set by the Executive Committee upon recommendation of the DNR and Brownfields Program under this Section, or the soil standards under this Section; and
  - (2) comply with any applicable Federal or Tribal standard for management of wastes generated as a consequence of the remedy.
- (d) Remedy Waste Management. A remedy will 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 Title and any applicable state or Federal requirements.
- (e) Remedy Selection. The Brownfields Program will choose a remedy, or combination of remedies, from among those remedies that meet the requirements of this Section, as applicable. In choosing a remedy, the Brownfields Program will 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

Brownfields Program will 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 Brownfields Program has made a determination of technical impracticability. Monitored natural attenuation will be deemed effective if there is clear and convincing 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 will take into consideration:
  - i. The gravity of any projected impact and the cost and availability of measures to mitigate the impact;
  - ii. The extent and nature of contamination and practicable capabilities of remedial technologies, and whether achieving standards is technically impracticable;
  - iii. Reasonably anticipated future land uses or use restrictions in a Tribal institutional control area;
  - iv. Consistency of remedies with the nature and complexities of releases of contaminants;
  - v. Consistency of the remedies with cultural and traditional values of the FSST; and
  - vi. 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.

#### **Section 16-4-13. Public Participation.**

For any FSST conducted or required Remedial Action the Brownfields Program will implement a public participation plan. In implementing the plan, the Brownfields Program will 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. The FSST residents will be notified thru public notice

in appropriate locations and local publications of remedial actions planned and conducted under this Section.

The Brownfields Program the Brownfields Program will provide an opportunity for a public meeting on a planned Remedial Action and the meeting will be held if the Brownfields Program finds sufficient public interest.

#### **Section 16-4-14. Public Record.**

The Brownfields Program will establish and maintain a Public Record of response actions conducted by the Brownfields Program, or conducted by another party, or Tribal or government agency, with oversight by the RP, that is updated at least annually. The contents are found in the Integrated Solid Waste Management Plan. The Public Record will include, at a minimum:

- (a) A record of sites 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 Brownfields Program or the FSST as part of the remedy;
- (d) Other such information as deemed appropriate by the Brownfields Program; and
- (e) The public will have access to all documents and related materials that the owner/operator of a site or property and/or the Brownfields Program are relying upon to make response action decisions or conduct the site activities to include the:
  - (1) Notification of a Release
  - (2) Spill Reports
  - (3) Assessment Report(s)
  - (4) Remedial Agreement or Action Plan and related documents
  - (5) Notification of Completion of a Response Action
  - (6) Certification of Completion of a Response Action; and
  - (7) Post Response Action/Monitoring Plan (if required).

#### **Section 16-4-15. Verification and Documentation of Completion.**



The Brownfields Program may review any reports or documentation or conduct any necessary site investigations, to include site sampling and analysis, to verify that the response or remedial action has met the requirements and standards of this Title and the FSST. The Brownfields Program may issue either of two (2) letters to a responsible party, person or government agency to document that a response action is complete: A Certificate of Completion; or A No Further Action (NFA) letter. Both assurances may 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 Brownfields Program will record a notice of such action in the appropriate office of the FSST, the BIA and/or the County with the deed or other official document(s) of record for the site or property and will file such notice no later than ten (10) business days after the date of issuance.

- (a) 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 will be the duty of any successor in property interest to maintain such bond or financial assurance.
- (b) No person or entity will change any engineering or institutional controls contained in a Remediation Agreement, NFA letter or Certificate of Completion without the prior written consent of the Executive Committee upon recommendation of the DNR and Brownfields Program. Before a change may be made, the Brownfields Program will review the contamination at the site and any new requirements will 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 Executive Committee upon recommendation of the DNR and Brownfields Program will modify or terminate any prior Remediation Agreement, NFA letter or Certificate of Completion.

#### **Section 16-4-16. Certification of Completion.**

Certificates of Completion must be requested from FSST in writing. A Certification of Completion may be issued by the Brownfields Program for sites that have been remediated according to the terms and conditions in an approved Voluntary Remediation Agreement, Order or Permit. 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 Brownfields Program currently has no plans to further evaluate the site or to impose additional remediation requirements. In addition, a Certificate of Completion does not limit the DNR and Brownfields Program ability to undertake enforcement actions or to impose penalties for violations of this Title.

- (a) a Certificate of Completion does not relieve the responsible party from applicable Tribal, state or Federal environmental permitting requirements;
- (b) 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 DNR and Brownfields Program ability to require additional remediation is not limited for other areas, contaminants, or media;

- (c) if a Certificate of Completion is requested because the responsible party believes no cleanup is necessary, information must be provided to the DNR and Brownfields Program 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;
- (d) The Brownfields Program may reopen a Certificate of Completion based on the provisions in the certificate and/or:
  - (1) The site owner fails substantially to comply with the terms and conditions of the certificate; or
  - (2) Contamination is discovered that was present on the site but was not known to the owner/responsible party or the DNR and Brownfields Program on the date the certificate was issued; or
  - (3) An imminent and substantial endangerment to human health or the environment is discovered; or
  - (4) The Brownfields Program determines that the site remedy has failed to meet remediation objectives; or
  - (5) The Brownfields Program determines that the certificate was based on fraud, material misrepresentation, or failure to disclose material information.
- (e) The Brownfields Program may issue a Conditional Certificate of Completion where:
  - (1) A monitored natural attenuation remedy is approved and DNR and Brownfields Program 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;
  - (2) 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
  - (3) A technical impracticability determination is made for cleanup of soil or water in accordance with this Title, provided the volunteer achieves alternative cleanup levels established by the Brownfields Program. 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.

**Section 16-4-17. Covenant not to Sue.**

Consistent with the re-openers and termination clauses in the Remediation Agreement, the Brownfields Program may, upon request, provide the property owner or prospective purchaser a covenant not to sue subject to the review and approval of the Executive Committee and legal counsel. Any covenant not to sue will extend to subsequent owners.

**Section 16-4-18. No Further Action Letter ("NFA").**

If the Brownfields Program determines that no further remediation is required on a property or site; the DNR and Brownfields Program may, upon request, issue a No Further Action (NFA) Letter to a responsible party, person or government agency and/or a prospective purchaser or lessee to document that a response action is complete pursuant to this Title 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 Brownfields Program currently has no plans to further evaluate the site or to impose additional remediation requirements. The DNR and Brownfields Program may reopen a No Further Action determination at any time if an imminent and substantial endangerment to human health or the environment is discovered; or the DNR and Brownfields Program determines that the monitored natural attenuation remedy is not effective in meeting the standards for a No Further Action letter under this Section. 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.

**Section 16-4-19. Institutional Controls.**

An institutional control area or site to establish long-term restrictions or controls on the use of the site or property may be created or modified by a resolution of the Executive Committee and/or a responsible government agency in order to provide temporary or long-term protection of public health and the environment. The DNR and Brownfields Program, an owner or lessee of a site or property or a government agency responsible for a site or property or the Executive Committee may propose long-term restrictions or controls on the use of a site or property.

- (a) Any affected party, the Brownfields Program or any appropriate governmental entity or entities, as appropriate, may petition for the creation of such an institutional control area. Such petitioner for creation or modification of an institutional control area will:
- (1) Provide data, information, reports and any other information required in a Remediation Assessment Agreement and/or Remediation Agreement under this Section;
  - (2) Document written notice of the petition to all property owners of record of land contiguous to the site; and
  - (3) 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 will identify the property, generally describe the petition and proposed use restrictions, direct that comments may be submitted to the Executive Committee 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 will be held no sooner than thirty (30) days after the first publication of the notice.
  - (4) The Executive Committee will approve or deny such petition for an institutional control area in accordance with applicable Tribal policies, rules, regulations and procedures.
  - (5) The Executive Committee may condition its approval of the petition upon the determination by the DNR and Brownfields Program that a remedy can be selected that meets the requirements of this Section and is consistent with the petition.
  - (6) Before a voluntary remediation, applicant and the DNR and Brownfields Program may enter into a Remediation Agreement that includes long-term restrictions on the use of a site or property, the owner or lessee of the site or property must obtain an institutional control designation for the site as provided for in this Section.
  - (7) The restrictions in an institutional control area are enforceable by the Executive Committee or the DNR and Brownfields Program Director by injunction, mandamus or abatement, in addition to any other remedies provided by Tribal law or Title.
  - (8) Institutional controls or use restrictions will run with the land and be binding upon successors in land ownership and/or leases.
  - (9) A violation of any use restriction or institutional control will be deemed a violation of this Title, and the DNR and Brownfields Program Director or Executive Committee may bring any action for such violation against the owner or lessee 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.

- (10) Nothing in this Section will contravene or limit the authority of any Tribal, Federal, county, city or government agency to regulate and control the property under their jurisdiction.

**Section 16-4-20. Re-openings or Terminations of Agreements.**

- (a) Re-openings. The Executive Committee upon recommendation of the DNR and Brownfields Program may reopen a Remediation Agreement, covenant not to sue, No Further Action Letter or Certificate of Completion at any time if:
- (1) 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;
  - (2) An imminent and substantial endangerment to human health or the environment is discovered;
  - (3) Contamination is discovered that was present on the site but was not known to the owner, responsible party or the DNR and Brownfields Program on the date of the Remediation Agreement or when the Brownfields Program issued a covenant not to sue, NFA letter or certificate of completion; or
  - (4) The remedy fails to meet the remediation objectives that are contained in the Remediation Agreement, NFA letter or Certificate of Completion; or
  - (5) The monitored natural attenuation remedy is not effective in meeting the standards under this section.
- (b) Terminations. The Executive Committee upon recommendation of the DNR and Brownfields Program may terminate a Remediation Agreement, covenant not to sue, Certificate of Completion or No Further Action letter if:
- (1) It is discovered that any of these instruments were based on fraud, material misrepresentation or failure to disclose material information; or
  - (2) 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.
- (c) Notice of Action. If a Remediation Agreement, covenant not to sue, Certificate of Completion or No Further Action letter is reopened or terminated, the DNR and Brownfields Program will record a notice of such action in the appropriate Tribal, BIA and/or county office with the deed for the site or other appropriate official land document and will file the notice 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.

**Section 16-4-21. Disputes and Appeals.**

If a person and the Brownfields Program are unable after good faith efforts to resolve a dispute arising under this Chapter pursuant to the provisions of an agreement, the person may request a hearing to appeal the Brownfields Program's decision to the Executive Committee. The Executive Committee decision may be appealed to the Tribal Court. All hearings conducted under this Section will be conducted pursuant to the FSST Law and Order Code and applicable Administrative Procedures.

**Section 16-4-22. Remediation Fees Assessment.**

- (a) The Executive Committee may implement a fee system and schedule of fees, subject to the approval of the Executive Committee, 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 will cover all reasonable direct and indirect costs of the Brownfields Program.
- (b) The DNR and Brownfields Program will give written notice of the amount of the fee assessment to the applicant.
- (c) The applicant for the Remediation Assessment Agreements, Remediation Agreements, Certificates of Completion and No Further Action letters authorized under this Section may appeal the fee assessment to the Executive Committee within thirty (30) days of receipt of the notice.

## **CHAPTER 5. WASTE STORAGE, COLLECTION, TRANSFER AND TRANSPORTATION.**

### **Section 16-5-1. Waste Storage.**

Solid waste will be deposited and stored in the following manner:

- (a) There will be provisions for storage which will accommodate the volume of solid waste anticipated which may be easily cleaned and maintained, and which will allow for efficient, safe collection and prevent spillage and littering.
- (b) All solid wastes (or materials which have been separated for the purpose of recycling) will be stored in such a manner that they do not constitute a fire, health, or safety hazard or provide food or harborage for vectors and will be contained or bundled so as not to result in spillage.
- (c) Solid waste will be stored in an approved waste collection service or FSST provided container or in a manner that will confine the waste in one area, and not create a public nuisance or attract vectors.
- (d) Bulky rubbish such as tree trimming, newspaper, weeds and large cardboard boxes will be handled as directed by the DNR.
- (e) Storage of bulky wastes will include, but is not limited to, removing all doors from large household appliances or storing or covering the item(s) to reduce the problems of an attractive nuisance, and the accumulation of solid waste and water in the bulky items.

### **Section 16-5-2. Waste Containers and Receptacles.**

- (a) The owner, agent or occupant of every dwelling, business establishment or other premises where refuse accumulates will provide a sufficient number of suitable and FSST approved containers for receiving and storing of refuse and will keep all refuse therein or use such containers provided by the Waste Collection Service. The owner, agent or occupant of every dwelling, business establishment or other premises where refuse accumulates, will be responsible for the safe and sanitary storage of all solid waste accumulated at that premise until it is removed;
- (b) Approved and provided containers will be maintained in a manner consistent with this Title and acceptable to the DNR. Containers that are broken or otherwise fail to meet the requirements of this Title will be replaced;
- (c) Drop-box containers will be periodically disinfected and will be steam cleaned and painted as deemed necessary by the DNR.
- (d) Approved individual containers will be stored off the ground on racks or stands or in designated locations and easily accessible for collection by the collection service or authorized franchisees or representatives.

- (e) A property which is available to the public or for the transaction of business to include commercially operated parks, campgrounds, drive-in restaurants, automobile service stations, business parking lots, car washes, shopping centers, marinas, boat launching areas, industrial parking lots, boat moorage and fueling stations, piers, beaches and bathing areas, airports, roadside rest stops, drive-in movies, and shopping malls will provide receptacles for wastes. This will also apply to property available to the public for assemblage or recreation to include any property that is Tribally owned or operated.
- (f) In order to assist the public in complying with this Chapter, the owner or person in control of any property which is available to the public as a place for assemblage, the transaction of business, recreation, or as a public way will cause to be placed and maintained receptacles for the deposit of litter, of sufficient volume and in sufficient numbers to contain the litter which can be expected to be generated by the numbers of people customarily coming on or using the property. A receptacle will be maintained in a manner to prevent overflow or spillage of litter from the receptacle.
- (g) A temporary site or location may be designated by the FSST, the DNR or any of its agencies or departments, for the collection of waste and placement of waste containers or receptacles. Such a site will be used for less than 90 days and be:
  - (1) Located at a site or location that does not create a public health or safety hazard, a public nuisance, or a fire hazard;
  - (2) Approved by proper Tribal officials;
  - (3) Managed by the responsible Tribal agency or department, or land owner/leasee, who will remove and properly dispose of all waste when the emergency or temporary situation no longer exists.

### **Section 16-5-3. Solid Waste Collection Services and Practices.**

- (a) Collection Service. All Tribal residents will be required to subscribe to a refuse collection service or its Collection Service Provider, permitted by FSST, or Tribal residents may take their own trash to an FSST designated and approved collection, transfer or disposal site if available. A collection or disposal fee may be charged by the FSST.
- (b) Collection Schedules.
  - (1) The collection of solid waste will be on a timely basis but no less than once every seven (7) days barring adverse weather conditions or other conditions or equipment failure beyond the control of the collection service.
  - (2) All FSST operated solid waste collection or transfer sites will be open during days and hours set by the DNR and will remain open on special occasions such as Pow Wows, for disposal of waste, debris and refuse as allowed by this Title.



- (c) Collection Service Fees. All private service collection fees will be determined through an open competitive bidding process, recommended by DNR, and approved by the Executive Committee.
- (d) Non-payment of Collection Fees. Non-payment of waste collection or transfer fees resulting in a termination of waste collection services will be a violation of this Title and may result in action being taken by the DNR. Action may include the discontinuation of other utilities provided by the Tribe or other civil penalties.
- (e) Collection Standards. Solid waste will be deposited, stored and collected in a manner that prevents spillage and littering. Should spillage and/or littering occur, the waste will be cleaned up by the responsible person(s) within 24 hours and returned to the vehicle, appropriate facility or container. Property owners, lessees, residents and home owners are the responsible party for releases, littering or spillage of solid waste from their residence or property until such wastes are collected by the authorized collection service.
- (f) Waste Rejection. The Collection Service Franchisee(s) reserves the right to refuse any and all materials at the pick-up point, collection sites, transfer stations, or any other solid waste facility based upon the characteristics of the waste or the generator's failure to properly screen the waste for hazardous or special waste as defined under this Title.
- (g) Material Separation. The DNR and Brownfields Program or the Collection Service Franchisee(s) reserves the right to require screening and separation of any waste materials deemed necessary to identify and separate hazardous or special waste prior to collection or acceptance at a solid waste management or transfer facility.
- (h) Site Access. All Tribal, community or commercial solid waste collection sites must be provided with an all-weather access road, suitable for travel by loaded vehicles; and must be fenced with access provided only through one control entry point.

#### **Section 16-5-4. Waste Transportation.**

- (a) Containment During Transport. All vehicles used for collection and transportation of refuse, to include private vehicles, will 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 will be covered with a tarp or other covering while in transit on public roads to ensure load security and prevent the release of any debris or liquids. Any releases, littering or spillage from such vehicles are the responsibility of the vehicle owner or operator and the generator and must be cleaned up within 24 hours of such release or spillage.
- (b) Commercial Waste Haulers. Commercial vehicles used for the collection and transportation of solid waste, including refuse or garbage, will have covered, watertight, metal bodies of easily cleanable construction, and will be cleaned frequently to prevent a nuisance, and will be maintained in good repair.

## **CHAPTER 6. GENERAL SOLID WASTE MANAGEMENT REQUIREMENTS, PERMITS, AND FEES.**

### **Section 16-6-1. Commercial Waste Management.**

No commercial solid or hazardous waste management, storage, treatment, transfer or disposal facilities will be located within the jurisdiction of the FSST.

### **Section 16-6-2. Waste Management Permits.**

- (a) A Permit from DNR is required for the following activities or facilities pursuant to this Title. Procedures in obtaining a Permit and the applicable Permit Fee is in the Integrated Plan. If a Permit is denied by DNR, it will be referred to the Executive Committee for final action:
- (1) Commercial Motor Vehicle Salvage Yard
  - (2) Commercial waste Collection and Transportation
  - (3) Construction Waste Management
  - (4) Demolition Waste Management (structures greater than 100 sq. ft.)
  - (5) Waste/Used Oil Collection and Storage
  - (6) Open Burning
  - (7) Septic Waste Pumping and Hauling
  - (8) Used or Scrap Tire Storage
  - (9) Prime Contractor Waste Management Permit Fee

### **Section 16-6-3. Waste Management Permit Fees.**

- (a) The Executive Committee, upon recommendation of DNR, will set fees by resolution, which will be published in the Integrated Plan, which is reviewed annually by the Land Committee and Executive Committee. The fees will be commensurate with costs to issue and monitor activities undertaken by the Permit.
- (b) The Executive Committee may exempt fixed income, disabled or other persons from such fees for solid waste management and/or determine alternative ways for such persons to pay for Permit.
- (c) The DNR may declare free days for the collection and disposal of waste, debris and refuse in furtherance of clean-up days and other civic purposes.
- (d) Each Permittee will keep complete and accurate records in such form as the Executive Committee may require.

#### **Section 16-6-4. Prime Contractor Waste Management Permit Fee.**

The FSST will charge a Permit Fee for “Prime Contractors” for demolition or construction projects. The Permit Fee will be payable to the FSST and will be for the sum of 2% of the total gross amount of the contract. Such a Permit Fee will be noticed as part of the request for bids process. For the purposes of this requirement a “Prime Contractor” is the prime contractor for construction or demolition projects funded by a Federal agency, Tribal Government, or other commercial construction. This does not apply to private residential or agricultural property construction or demolition.

#### **Section 16-6-5. Non-payment of Permit Fees.**

Non-payment of any required FSST Permit fee may be grounds for denial or revocation of a Permit and/or a contract. Non-payment of required fees will be a violation of this Title and permittee may be subject to civil penalties. The Executive Committee will have the primary jurisdiction to hear matters regarding the non-payment of fees established pursuant to this Title.

#### **Section 16-6-6. Revenues from Permit Fees.**

- (a) Fees collected under this Chapter will be deposited in a special account established for the Program for the permitting, inspection, code enforcement and oversight of solid waste management and facilities as well as response to environmental hazards and emergencies.
- (b) The expenditure of all above revenues from fees will be subject to the review and oversight of the Executive Committee.

#### **Section 16-6-7. Emergency Permits.**

The Executive Committee, upon recommendation by DNR, may issue an emergency permit for one-time waste management or disposal events based on various practical factors during emergency conditions. Application for such permits will be made pursuant to this Title. The Executive Committee, DNR, and other Tribal, local, state and Federal agencies will work together 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.

#### **Section 16-6-8. Waste Management Siting.**

The Executive Committee may declare by resolution, or find in a specific case, that a specified geographical area of Tribal lands possesses special or unique characteristics subject to specific requirements, and the Executive Committee may prohibit the installation or establishment of specific types or sizes of solid waste collection, storage or other facilities in these specified geographical areas based on these findings.

#### **Section 16-6-9. Perpetual Responsibility for Solid Waste and Liability for Pollution.**

Any nation, Tribe, state, municipality, county, or other political subdivision which has solid waste generated within its boundaries stored, treated or otherwise managed in lands subject to the jurisdiction of the FSST will be responsible in perpetuity for the solid waste and liable in perpetuity for any pollution or other deleterious effect caused by it.

## **CHAPTER 7. COMPLIANCE AND ENFORCEMENT.**

### **Section 16-7-1. Authority, Duties and Responsibilities.**

The Brownfields Program, under the direction of DNR or the Executive Committee, is hereby designated as the lead Tribal Agency for all purposes under this Title and will administer and enforce these Codes. As appropriate, the DNR, Brownfields Program, and Executive Committee will have and may exercise the following authorities, duties and responsibilities in assuring compliance with and enforcement of this Title:

- (a) Take all administrative action necessary as provided for in this Title related to civil enforcement of the provisions of this Title;
- (b) Investigate alleged violations of any provisions of this Title and take administrative or civil enforcement actions described in this Chapter;
- (c) Upon complaint by any person, which establishes reasonable grounds, or upon its own motion, the Brownfields Program will investigate the activities of any person or permittee to ensure compliance with this Title.
- (d) The Brownfields Program may at reasonable times enter onto any solid waste management facility, open dump or property where solid waste is present for investigating any potential violation of this Title and Chapter. The Brownfields Director may request the Tribal Police lead the investigation. In conducting these investigations, the Brownfields Director may take samples of the waste, soils, air, or water or may, upon issuance of an Order, require any person to take and analyze samples of such waste, soil, air, or water.
- (e) In conducting an investigation of a FSST permittee or permitted activity, the Brownfields Director will refer to Tribal Police, requesting them, without reasonable notice, if necessary, to enter into the permittee's place of business, operation, or facility, to inspect any books or records of the permittee, to inspect any of the permittee's property, or sites of possible pollution, and to take samples;
- (f) If Brownfields Program finds that any violation of this Title by a person knowingly made any false statement, representation or certification, or knowingly falsified, tampered with or rendered inaccurate any required monitoring device, the Brownfields Program may refer the matter to the DNR, Executive Committee, U.S. EPA, Tribal Police, or Federal law enforcement officials;
- (g) Any authority vested in the DNR and Brownfields Program by this Title may be delegated to such FSST officers, agents, departments or other staff as the DNR and Brownfields Program may designate; and such individuals may have all other authorities, duties and responsibilities as stated herein.
- (h) The DNR and Brownfields Program will communicate with the Executive Committee, the public, and the U.S. EPA as appropriate, regarding compliance and enforcement

activities in a manner and containing such information as the Executive Committee approves, excluding any confidential or privileged information.

**Section 16-7-2. Enforcement Actions.**

The Executive Committee, upon recommendation of the DNR and Brownfields Program, may initiate and execute the following enforcement actions to ensure compliance with this Title:

(a) Informal Compliance Actions. The Executive Council, upon recommendation of the DNR and Brownfields Program, may initiate informal actions to inform a party of violations of this Title, and how to correct such violations, where such violations are minor and do not pose an imminent risk to public health or the environment or are not habitual in nature. Such informal actions may include a verbal warning, an informal compliance conference and/or a written Warning Letter. Failure of a party or person to take timely action or achieve complete compliance with this Title, may result in a formal enforcement action pursuant to this Chapter.

(b) Formal Enforcement Actions.

(1) *Notice of Non-Compliance or Citation for Minor Violations*. A “minor” violation poses or may pose a relatively low risk of exposure of humans or other environmental receptors to hazardous substances, pollutants or contaminants; and/or the actions have or may have a small adverse effect on the regulatory purposes of this Title. In the event of a minor violation(s), the Executive Committee, upon recommendation of the DNR and Brownfields Program, will request the Tribal Police to serve the alleged violator, in person or by certified mail, with a Notice of Non-Compliance or a Citation. The Notice of Non-Compliance or Citation will further state:

- i. the alleged violator of the Title;
- ii. which provisions of this Title are allegedly not being complied with;
- iii. the action(s) that must be taken to correct such non-compliance; and
- iv. the time frame or deadline for taking such action(s).

In the event of non-compliance with any Notice of Non-Compliance or Citation, the Executive Committee, upon recommendation of the DNR and Brownfields Program, may issue a Notice of Violation (NOV) and/or Order the Cessation of such activity without additional notice to the alleged violator.

(2) *Notice of Violation (NOV) for Moderate or Major Violations*. A “moderate” violation poses or may pose a potential risk of exposure of humans or other environmental receptors to hazardous substances pollutants or contaminants; and/or the actions have or may have a significant adverse effect on the regulatory purposes of this Title. This may also include repeated minor violations. A “major” violation poses or may pose a substantial risk of exposure of humans or other

environmental receptors to hazardous substances, pollutants or contaminants; and/or the actions of the violator have or may have a substantial adverse effect on the regulatory purposes of this Title. This may also include repeated moderate violations.

- i. In the case of an apparent moderate or major violation of this Title the Executive Committee, upon recommendation of the DNR and Brownfields Program, will direct the Tribal Attorney to issue a NOV to the person(s) apparently responsible for the violation. The Executive Committee may request assistance from the U.S. EPA or other Federal authorities. Both a NOV and a Cease and Desist Order may be issued for a single incident. A NOV and/or a Cease and Desist Order should also contain how the violation can be remedied.
  - ii. Should no action be taken from the NOV and/or Cease and Desist Order within ten (10) working days, or the time specified in the NOV or Order, the Executive Committee will direct the Tribal Attorney to issue a Summons to appear at an administrative hearing conducted by the Executive Committee at a specified time and date. The Executive Committee may request assistance from the U.S. EPA or other Federal authorities.
- (3) *Administrative Orders.* In the event of any non-compliance with this Title, with any non-compliance with a Notice of Non-Compliance, Citation or NOV, the DNR and Brownfields Program may issue an Administrative Order for such non-compliance. The Executive Committee may request assistance from the U.S. EPA or other Federal authorities.
- i. An Administrative Order will state with reasonable specificity the nature of the violation(s), a time frame for compliance if applicable, outline specific remediation actions, if appropriate, and the right to a hearing before the Executive Committee.
  - ii. An Administrative Order will be hand delivered by the Tribal Police to the alleged violator or delivered via Certified U.S. Mail. An Administrative Order issued by Tribal Attorney will become final unless an appeal is filed with the Executive Committee for a hearing within thirty days of receipt of the order.
  - iii. A person subject such an Administrative Order will have all procedural rights at any administrative hearing held before the Executive Committee including the right to judicial review by the Tribal Court. The Executive Committee through the Tribal Attorney may file an action in Tribal Court to enforce Administrative Orders issued under this Title.

The U.S. EPA may execute an order depending on the severity of a “moderate or major” violation.

- (4) *Cease and Desist Orders.* If the Executive Committee has reason to believe that any person is in violation of any provision of this Title, any condition of any permit issued under this Title, or that any person is creating an imminent and substantial endangerment to the public health or the environment, the Tribal Attorney may file an action in Tribal Court requesting a Cease and Desist Order, a Temporary Restraining Order, a preliminary injunction or any other relief necessary to protect the public health or the environment.
- (5) *Abatement and Remedial Action Orders.* Any person who intentionally or accidentally allows or causes or any pollution or release of hazardous substances, pollutants or contaminants will, by Order of the Executive Committee, cease and desist from any improper action or violation(s), clean up any release, abate any hazard, pollution, or nuisance and otherwise comply with any directive, or corrective or remedial action order issued by the Tribal Attorney.

### **Section 16-7-3. Civil Fines and Penalties.**

Any person who fails to comply with any provision of this Title may be subject to civil fines or penalties as well as any other remedies set forth herein or by the DNR and Brownfields Program in implementing this Title.

- (a) Any person failing to obtain a Permit as required in this Title, will be subject to a fine ten (10) times the amount of the Permit Fee.
- (b) The Executive Committee may assess any person violating any provision of this Title a civil fine and/or impose an alternate penalty or remedy for each violation. A person against whom the Executive Committee assesses a fine may appeal in Tribal Court.
- (c) Any person found violating this Title may be subject to civil penalties of up to Five Thousand Dollars (\$5,000.00) per day for each day of such violation or continued violation of an Order to cease activity. Each day of noncompliance constitutes a separate violation for purposes of penalty assessments.
- (d) Any civil fines will be based upon the policies of the Tribe and the FSST Civil Penalty Policy, the potential for harm that has been or could be caused by the violation and the extent of deviation from the requirements of this Title.
- (e) The Tribal Police will personally, or via certified United States mail, first class, serve the alleged violator with notice of the penalty. The penalty will be due and payable to the DNR and Brownfields Program within twenty calendar (20) days of such notice. Failure to pay any penalties imposed will be considered an additional violation of this Title.
- (f) The Tribal Attorney, as directed by the Executive Committee, is authorized to file an Administrative Order against a person on behalf of the Tribe in the Tribal Court for civil penalties, including reasonable attorney's fees and costs. Any Administrative Orders or other civil action with penalties concerning moderate or major violation(s), as defined in the FSST Civil Penalty Policy, will be heard in the Tribal Court, and the alleged violator will be served and have an opportunity to be heard.



#### **Section 16-7-4. Alternate or Other Civil Penalties or Remedies.**

- (a) The Executive Committee, Tribal Attorney, or Tribal Court, at its discretion, may consider additional penalties or alternatives to an assessed civil fine such as:
- (1) Community service;
  - (2) Work for the benefit of the Tribe;
  - (3) Restitution;
  - (4) Public publication and notice of the violations and the violator; and/or
  - (5) Other administrative action.
- (b) Such community service or work for the benefit of the Tribe will be not less than eight (8) hours, but not more than two hundred (200) hours.
- (c) The Executive Committee or the Tribal Court, at its discretion, may also consider additional penalties or alternatives to an assessed civil fine such as:
- (1) *Exclusion.* Any person who is found by the Tribal Court to have committed any violation(s) under these Regulations may be excluded from the Reservation by the Court.
  - (2) *Suspension of Commercial Dealings and Consensual Activities.* Any person who commits any of the above prohibited acts, or whose employees or agents, during their employment, are found to have committed any violation(s) under this Title may have its rights to engage in commercial dealings or consensual activities with the FSST suspended or terminated.
- (d) In the event an alleged violator fails to act in accordance with an Administrative Order served pursuant to this Title, the Executive Committee may pursue one or more of the following remedies:
- (1) Request the Secretary of the Interior to serve notices of intent to cancel any relevant lease pursuant to Federal law for using the leased premises for unlawful conduct or for an unlawful purpose, specifying the basis for the notice; and/or
  - (2) Take any other action deemed appropriate so long as the rights of due process guaranteed by the Indian Civil Rights Act, 25 U.S.C. §§ 1301 et seq., and the Constitution of the FSST not infringed upon.
- (e) Remedies Not Exclusive. The rights of the FSST with respect to a person under this Title, including the right to issue compliance orders, recover civil penalties, or civil damages for cleanup, abatement, corrective or remedial costs against a person, are not intended to be exclusive, and the Tribe reserves all other legal rights which it otherwise has against

any person, including the right to seek injunctive relief or seek relief in any court of competent jurisdiction.

#### **Section 16-7-5. Removal of Improperly Disposed Solid Waste.**

Any person cited for a violation of this Title for improper disposal or dumping will, in addition to any other penalty, remove the solid waste from where it was improperly disposed and will dispose of such solid waste in a manner consistent with this Chapter. However, at the direction of the Executive Committee, the DNR and Brownfields Program may provide for an alternative means of disposal if such disposal is consistent with the provisions of this Chapter. In addition, the DNR and Brownfields Program may employ special monitors to supervise such removal and disposal and may assess the costs of such supervision as costs against the person so cited.

#### **Section 16-7-6. Civil Damages.**

The Tribal Attorney, as directed by the Executive Committee, is authorized to bring a civil action on behalf of the Tribe or its members in the Tribal Court, or any other court of law, against any person who has committed any violation of these regulations, for all civil damages caused, including damages to the land or natural resources of the Tribe or its members, and for the reasonable costs actually incurred or to be incurred by the Tribe for cleaning up any pollutant or abating the effects thereof, together with the costs of suit, including reasonable attorney's fees. The Tribe's Legal Counsel must approve the filing of any civil action for damages before such action is filed. All civil damages will be paid to the Tribe. This includes any property, which is forfeited to the Tribe for payment of civil damages.

#### **Section 16-7-7. Payment and Disposition of Civil Fines.**

- (a) Non-payment of required civil fines will be a violation of this Title. Non-payment of any required FSST civil fine may be grounds for denial or revocation of a permit or a contract. The Executive Committee will have the primary jurisdiction to hear matters regarding the non-payment of civil fines established pursuant to this Title.
- (b) Revenues collected pursuant to this Title from fines and/or penalties, not including court costs, will be deposited in a DNR and Brownfields Program Special Account for the exclusive use of the DNR and Brownfields Program. Such funds will be designated for paying costs of ensuring compliance and enforcement of this Title to include public outreach and education, compliance assistance and remedial responses to environmental emergencies occurring on lands subject to the jurisdiction of the FSST and will only be expended for such purposes. This includes any property, which is forfeited to the Tribe for payment of civil penalties. The Executive Committee will provide oversight of the use of such funds.
- (c) Reasonable attorney's fees awarded in any civil action will be paid to the Tribe, if the attorney(s) is/are an employee(s) of the Tribe or will otherwise be paid according to the provisions of any retainer agreement. All costs of suit awarded in any civil action will be paid to the FSST.

**Section 16-7-8. Liability of Person(s) for Remedial Costs.**

- (a) If a release of a pollutant, contaminant or hazardous substance is not cleaned up in a timely manner, the effects thereof not abated, or any other necessary remedial action is taken by the DNR and Brownfields Program or the FSST, the person who committed such release or violation(s), will be liable to the Tribe for the reasonable costs actually incurred in cleaning up any pollutant, abating the effects thereof, or taking other corrective or remedial action, including all damages to the natural resources of the Tribe or its members.
- (b) The person who committed such release or violation(s) will be liable to the Tribe for the reasonable costs incurred in the immediate response and oversight of cleaning up any pollutant, contaminant or hazardous substance by the responsible party, their contractor or any other third party. The amount of such costs will be recoverable by the Tribe in a civil action brought by the Tribal Attorney at the direction of the Executive Committee, filed in the Tribal Court, together with the costs of suit, including reasonable attorney's fees. Any judgment ordering the payment of these costs to the FSST will bear interest at the rate of ten percent (10%) per annum.

**Section 16-7-9. Criminal Enforcement.**

All potential criminal violations of Tribal, state or Federal laws or regulations will be referred to the appropriate Tribal, or Federal agencies for investigation and appropriate action. The DNR and Brownfields Program will cooperate with such agencies as needed. The Executive Committee will be notified of all such referrals.

## **LEGISLATIVE HISTORY**

This Title was approved by the Flandreau Santee Sioux Executive Committee through Tribal Resolution 19-47 on July 23, 2019.

# Flandreau Santee Sioux Tribe

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## RESOLUTION NO. 19-47

**WHEREAS,** The Flandreau Santee Sioux Tribe (the “Tribe”) is a federally-recognized Indian Tribe organized pursuant to the Constitution and By-laws approved by the Secretary of Interior and Commissioner of Indian Affairs on April 24, 1936, amended February 7, 1941, further amended November 16, 1967, further amended November 14, 1984, and further amended May 17, 1997; and

**WHEREAS,** Article III of the Tribe’s Constitution and By-laws provides that the governing body of the Tribe shall be the Executive Committee; and

**WHEREAS,** Article VIII Section 1(e) of the Constitution vests the Executive Committee with the power to acquire, lease, or otherwise manage all lands or other assets, either real or personal, for the benefit of the Tribe as authorized by law except that where lands or assets are under the jurisdiction of the Federal government; and

**WHEREAS,** Article VIII Section 1(f) of the Constitution vests the Executive Committee with the power to promulgate and enforce ordinances governing and regulating the conduct of all persons on the reservation; and

**WHEREAS,** Article VIII Section 1(h) of the Constitution vests the Executive Committee with the power to adopt resolutions consistent with such Constitution and By-laws, regulating the procedure of the Executive Committee itself and of other tribal agencies, tribal officials or tribal organizations of the Tribe; and

**WHEREAS,** the Tribe owns and manages parcels of real property throughout South Dakota, with some property being held in trust by the United States Government and other property owned in fee-simple by the Tribe; and

**WHEREAS,** the preservation of Tribal Lands for the Tribal Membership and future generations is a priority of the Executive Committee, thereby prompting it to approve the attached “Solid Waste and Hazardous Waste Management Ordinance” under Title 16 of the FSST Law and Order Code; and

**WHEREAS,** Title 16 is intended to provide, within the jurisdiction of the Flandreau Santee Sioux Reservation and other lands within the Tribe’s jurisdiction, for the establishment of a comprehensive solid and hazardous waste management program to protect the health, safety, and well-being of residents; to regulate the storage, collection, transportation, disposal, treatment, and management of solid and hazardous waste; to remediate any releases of a hazardous substance pollutant or contaminant to protect the human health, public sanitation,

environment, and general aesthetics; and to inform and educate persons of the need to participate fully in efforts to reduce the generation of solid and hazardous waste; and

**NOW THEREFORE BE IT RESOLVED** that the Flandreau Santee Sioux Tribe Executive Committee hereby approves the content of the attached Title 16 entitled "Solid Waste and Hazardous Waste Management Ordinance"; and


**BE IT FURTHER RESOLVED** that the Legal Department is directed to make formatting changes so that this code is consistent with the FSST Law and Order Code, and to publish the code upon completion.


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**CERTIFICATION**

The foregoing Resolution was duly enacted and adopted on this 25<sup>th</sup> day of July, 2019, by the Executive Committee of the Flandreau Santee Sioux Tribe during a duly called meeting with a quorum was present of 6 In Favor, 0 Opposed, 0 Abstaining, and 1 Not Voting, as follows:

Vice President, Andrew Weston:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Secretary, Donalda Montoya:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee I, Kristie Bietz:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee II, David Kills-A-Hundred:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee III, Kenny Weston:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee IV, John Jason Armstrong:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
President, Anthony Reider ( <i>If Required</i> ):	YES	NO	ABSTAIN	NOT PRESENT

  
Donalda Montoya., Tribal Secretary

  
Anthony Reider, Tribal President