



CSKT TRIBAL WATER QUALITY MANAGEMENT ORDINANCE 89B

*CONFEDERATED SALISH AND KOOTENAI TRIBES OF
THE FLATHEAD RESERVATION*

*CSKT Natural Resources Department
Environmental Protection Division
Water Quality Program*

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**ORDINANCE 89B
OF THE TRIBAL COUNCIL OF THE
CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION**

BE IT ENACTED BY THE TRIBAL COUNCIL OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION that the quality of the water resources of the Flathead Reservation be protected, restored, and maintained as provided in the following Ordinance, which may be referred to as the Tribal Water Quality Management Ordinance and which may be codified as Title I of the Tribal Water Code.

CHAPTER 1: GENERAL PROVISIONS

PART I. POLICIES AND PROCEDURES

1-1-101. Policy and Purpose

It is the policy of the Tribal Council and the purpose of this Ordinance to:

1. Restore and maintain the chemical, physical, and biological integrity of the waters of the Flathead Reservation to preserve and enhance the Reservation environment as the permanent homeland of the people of the Confederated Salish and Kootenai Tribes and to implement the rights reserved by the Tribes and guaranteed to them by the United States in the 1855 Treaty of Hellgate (Treaty with the Flatheads, etc., 12 Stat. 765);
2. Conserve Reservation waters by protecting, maintaining, and improving the quality of water for public water supplies, wildlife, fish and aquatic life, recreation, agriculture, industry, and other beneficial uses;
3. Prohibit the discharge of toxic pollutants and, by the year 2000, eliminate the discharge of all unpermitted pollutants into Reservation waters;
4. Achieve a quality of all surface waters of the Reservation by the year 2000 adequate to provide for the protection and propagation of indigenous populations of fish and wildlife and to provide for water-based recreation;
5. Provide for public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, or plan established under this Ordinance;
6. Cooperate with, and, where appropriate, enter into agreements with federal, state, regional, and local agencies, private organizations, and individuals to improve or restore the quality of Reservation waters; and to
7. Provide a comprehensive program for the prevention, abatement, and control of water pollution within the Flathead Reservation.

1-1-102. Definitions

Unless the context otherwise requires, the following definitions will apply throughout this Title:

1. "Agency" means any executive department, division, bureau, or other unit of the federal, state, or Tribal government, or political subdivision of the state, or a regional water quality

entity, which has been granted lawful authority to enter into contracts or agreements and which has been assigned or is subject to legal obligations to restore, maintain, or protect water quality in the drainage of the Flathead River or its tributaries.

2. "Best management practices" ("BMP's") means schedules of activities, operational practices, maintenance procedures, and other management practices adopted by rule or incorporated by an agency as a condition of a permit or contract to prevent or reduce the pollution of Reservation waters. BMP's may also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
3. "Concentrated animal feeding operation" means a confined commercial facility containing livestock or birds fed by means other than grazing, and which facility is a point source subject to effluent standards and limitations as provided by rule.
4. "Concentrated aquatic animal production facility" means a fish hatchery, fish farm, beaver farm, or other facility which may be designated by rule as a point source upon determining that it is a significant contributor of pollution to Reservation waters.
5. "Contamination" means impairment of the quality of Reservation waters by pollutants, creating a hazard to human health.
6. "Construction" means any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at the site.
7. "Department" means the Tribal Natural Resources Department.
8. "Discharge of a pollutant" or "discharge" means any addition of a pollutant or combination of pollutants to Reservation waters from any point source.
9. "Disposal system" means a system for disposing of sewage, industrial wastes, or other pollutants and includes sewage systems and treatment works.
10. "Effluent limitation" means any restriction or prohibition established under this Title or by the Environmental Protection Agency on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into Reservation waters, including, but not limited to, standards of performance for new sources, and schedules of compliance.
11. "Industrial waste" means any waste substance from processes used by business or industry or from the development of any natural resource, together with any sewage that may be present.
12. "Irrigation return flow" means tailwater, drainage water, or surfaced groundwater flow from irrigated land

13. “New source” means any source the construction of which is commenced after the publication of proposed Tribal rules establishing an applicable standard of performance or any source which is defined as a new source by federal law.
14. “Nonpoint source” means any activity of man which contributes or may contribute pollutants to Reservation waters by drainage, diffuse flows, erosion, diversion, or pumping and which is not a point source. Nonpoint sources include, without limitation: agricultural, silvicultural, and timber harvesting activities, including runoff from fields and crop and forest lands; mining activities, including runoff and siltation from new, currently operating, and abandoned surface and underground mines; all construction activity, including runoff from the facilities resulting from such construction; the disposal of pollutants in wells or in subsurface excavations; salt water intrusion resulting from reductions of fresh water flow from any cause, including extraction of groundwater, irrigation, obstruction, and diversion; and changes in the movement, flow, or circulation of any surface waters or groundwaters, including changes caused by the construction of dams, levees, channels, or flow diversion facilities.
15. “Owner or operator” means any person who owns, leases, operates, controls, or supervises;
 - (a) a source, or
 - (b) real property, the operation or maintenance of which is subject to the application of best management practices.
16. “Permit” means a permit issued pursuant to Chapter 3 of this Title.
17. “Person” means an individual, association, partnership, corporation, commercial or professional establishment, firm, agency, or any agent or employee thereof.
18. “Point source” means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, dam gate or spillway, well, discrete fissure, container, rolling stock, or vessel or other floating craft from which pollutants are or may be discharged.
19. “Pollutant” means dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, municipal, or agricultural waste.
20. “Reservation waters” means all the waters, surface or subsurface, arising upon, occurring within or flowing through the Flathead Indian Reservation including, without limitation, geothermal waters, irrigation return flows, diffuse surface water, and the waters of wetlands.
21. “Schedule of compliance” means a schedule of remedial measures and times including an enforceable sequence of actions or operations leading to compliance with any Tribal or federal regulation of discharges by point sources or pollution by nonpoint sources.

22. “Sewage” means water-carried waste products from residences, public buildings, institutions, commercial establishments, or other buildings, including discharge from human beings or animals, together with groundwater and surface water present.
23. “Sewage system” means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.
24. “Source” means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.
25. “Standard of performance” means a standard adopted by rule for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.
26. “Treatment works” means works or facilities installed for treating or holding sewage, industrial wastes, or other wastes.
27. “Water quality standard” means any standard adopted pursuant to Section 1-2-204.

1-1-103. Public Participation — Administrative Procedures

1. Except as otherwise provided in this Title, the Tribal Administrative Procedures Ordinance (TAPO), Ordinance No. 86A, will apply to all information, rulemaking, and contested cases arising under this Title.
2. For purposes of public notice, hearings, and participation, the rulemaking provisions of TAPO in Part IV will apply to the proposal, adoption, and revision of stream classifications, water quality standards, effluent limitations, and management plans under this Title, as well as to the proposal, adoption, modification and revocation of rules.(3) A public hearing shall be electronically recorded and a transcript made available to any interested person upon payment of the costs of transcription, or, if already transcribed, upon payment of a reasonable per-page copying cost.

1-1-104. Public and Confidential Records

1. Except as otherwise provided in subsections (2) and (3) of this Section, information acquired by the Department under this Title will be subject to the information and privacy provisions of TAPO, Part III, Section 6.
2. (a) Any information concerning sources of pollution, costs or methods of pollution prevention or control, and data describing the physical, chemical, biological, radiological, or thermal properties of Reservation waters, including wastewaters, discharges, and runoff, which is furnished to the Department or obtained by it is a matter of public record and open to inspection and copying, except as provided in subsection (3).

(b) The Department may use any information in compiling or publishing analyses or summaries relating to water pollution if such analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information which is otherwise made confidential by subsection (3).

(3) Any information unique to the owner or operator of a source of pollution which would, if disclosed, reveal methods or processes entitled to protection as trade secrets shall be maintained as confidential if so determined by the Tribal Court. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if he wishes such information to enjoy confidential status. The Department shall be served in any such action and may intervene as a party therein.

1-1-105. Cooperation and Agreement with Agencies and Private Organizations

1. In planning and implementing plans for the prevention or reduction of water pollution, the Department will exchange information and cooperate with all agencies with responsibilities affecting water quality upstream and downstream of Reservation waters.
2. The Department may participate in the activities of any intergovernmental organization producing or implementing water quality management plans affecting the drainage of the Flathead River or its tributaries and coordinate and harmonize its proposed water quality management plans with any regional management plan heretofore or hereafter adopted by such intergovernmental organization.
3. With the approval of the Tribal Council, the Department may enter into contracts or agreements with agencies or with private, nonprofit organizations to prevent or reduce water pollution and attain relevant standards in the drainages of the Flathead or Clark Fork Rivers and their tributaries.
4. As necessary, but no less often than quarterly, the Department will report to the Tribal Council on developments, progress, and problems in the process of intergovernmental cooperation, coordination, and information exchange.

1-1-106. Severability

The provisions of this amending Ordinance are severable, as are the provisions of the Ordinance which is purpose to amend, and a finding of invalidity of one or more provisions of either shall not affect the validity of the remaining provisions.

1-1-107. Effective Date

This Ordinance and each provision hereof according to its terms shall take effect 90 days after its enactment or upon its approval by the Secretary of the Interior or his designee, whichever date shall earlier occur. With the exception of the Department's authority under Section 1-2-104, no permit, regulatory order or notice of violation shall be issued, nor any

appealable agency action taken, until rules respecting the same are promulgated as provided in this Ordinance and in accordance with the Tribal Administrative Procedures Ordinance. Where such rules are subject to review and approval by the Environmental Protection Agency, such rules may not be deemed final rules on which a Departmental action may be based until such time as said rules are approved by the Environmental Protection Agency.

1-1-108. Repealer

Upon adoption and approval of this Ordinance by the Tribal Council and approval by the Secretary of the Interior or his designee, Tribal Ordinance 89A is repealed.

PART II. POLLUTION CONTROL REVOLVING FUND (RESERVED)

CHAPTER 2: ADMINISTRATION

PART I. ORGANIZATION

1-2-101. Natural Resources Department

The provisions of this Ordinance will be primarily administered and enforced by the Natural Resources Department, which is hereby designated as the Tribal Water Pollution Control Agency for all purposes of the Federal Water Pollution Control Act (hereafter "Act").

1-2-102. Powers of the Department

The Department shall have the following powers:

1. To recommend to the Council the adoption, modification, or repeal of rules to implement the provisions of this Title pursuant to Section 1-2-201 through 1-2-403;
2. To enter and inspect at any reasonable time and in a reasonable manner any property, premise, or place for the purpose of investigating any activity causing, threatening or allowing water pollution, or ascertaining compliance or noncompliance with any rule or order promulgated under this Title. Such entry is also authorized for the purpose of inspecting and copying records required to be kept concerning any effluent source;
3. If such entry is denied or not consented to, to obtain from the Tribal Court a warrant to enter and inspect such property, premise, or place, prior to entry and inspection;
4. To issue emergency orders pursuant to Section 1-2-104 of this Title, and to bring or defend lawsuits in Tribal Court to enforce the provisions of this Title;
5. To conduct or cause to be conducted studies, research, and demonstrations with respect to the reduction or prevention of water pollution;
6. To furnish technical advice and services relating to water pollution problems and control techniques;
7. To advise, consult, cooperate, and, with Council approval, to enter into agreements with agencies, private nonprofit corporations, and owners or operators affected by the provisions of this Title; but any agreement involving, authorizing, or requiring compliance within the Flathead Reservation with any standard, rule or regulation of another jurisdiction shall not be effective unless or until the Department and the Council have followed rulemaking requirements, including the holding of a hearing, and adopted rules in compliance with this Title;

8. To certify, in accordance to the provisions of Section 1-3-118, facilities or activities subject to federal licensing requirements;
9. To issue, modify, or revoke permits pursuant to Chapter 3 of this Title, and to grant or deny variances.

1-2-103. Duties of the Department

The Department shall have the following duties:

1. To collect, compile, and analyze information relating to the physical, chemical, biological, radiological, and thermal properties of Reservation waters and each distinguishable segment thereof;
2. To monitor the quality of Reservation waters by sampling and testing for the presence of pollutants and for compliance with water quality standards. As a result of such sampling, the Department shall attempt to determine the nature and amount of each pollutant, the source of each pollutant, the place where each such pollutant enters the water, and the names and addresses of each person responsible for or in control of such entry. As to each separate pollution source identified, the Department shall:
 - (a) determine what rules, if any, are applicable;
 - (b) determine whether the discharge is covered by a permit and whether or not any condition of the permit is being violated, and
 - (c) determine what further control measures, if any, are practicable, including whether to recommend the adoption of a new or revised water quality standard for that water segment.
- (3) To inspect, from time to time, but no less often than annually, records of owners or operators of point sources, to assure compliance with permit conditions;
4. To initiate and maintain a continuous planning process to attain water quality standards, to reduce or prevent pollution of Reservation waters, and, where necessary to enhance water quality in order to attain water quality standards;
5. No later than September 30, 1993, the Department shall produce a comprehensive water quality management plan public hearing and for the consideration of the Tribal Council. The first such plan need not include a nonpoint source management plan but shall otherwise meet the substantive requirements of Sections 1-2-402 and 1-2-403 with respect to content but not with respect to due dates. All other provisions of the foregoing subsection remain unchanged;(6) To produce and submit to the Council and to the Environmental Protection Agency, by July 1, 1992, the first report assessing Reservation water quality. At a minimum, the report will include a description of the operation of wastewater treatment plants, the identification and classification of pollution point sources,

an assessment of the degree of eutrophication or other condition of Reservation lakes, an identification and classification of Reservation wetlands, and the projected attainment or non-attainment of water quality standards in classified water bodies. Such report shall include, with respect to wastewater treatment works serving 10 households or 40 or more persons, the following information:

- (a) An identification and description of such works, including the ownership, size, number of users or connections to the system, the location of outflow and identification of the receiving waters, the type of treatment undertaken, and the name of the certified operator;
 - (b) If the treatment works are operating under a federal or state permit, the conditions of the permit, including any pretreatment standards, standards of performance, or effluent limitations;
 - (c) If the treatment works are not operating pursuant to a permit, a description of any self-imposed restraints on the operations and a description of the physical, chemical, biological, radiological, and thermal characteristics of the discharges;
 - (d) Whether there is current planning for upgrading, enlarging, or renovating the treatment works or the disposal system with which the works are connected, and, if so, a copy of the plans;
 - (e) A priority ranking of the treatment works by the severity of the pollution discharged into receiving waters;
 - (f) The source(s) of funding for the construction of each facility, the proportionate mix of funds, the amount of any remaining obligation, and the method of repayment of any remaining obligation; and
 - (g) The rates paid by users and the method by which the rates are determined and assessed.
7. To recommend to the Council the classification of Reservation waters. The types of classes and the particular class into which any discrete segment of Reservation waters is placed shall be promulgated by rule pursuant to Sections 1-2-201 and 1-2-202 of this Title;
 8. To recommend water quality standards to the Council for adoption as rules, pursuant to Sections 1-2-203 through 1-2-210;
 9. To recommend to the Tribal Council rules controlling discharges by point sources in accord with Sections 1-2-301 through 1-2-303;
 10. To recommend to the Council by April 1, 1994, a nonpoint source management plan pursuant to Section 1-2-403 to be incorporated into the comprehensive water quality management plan; and(11) To recommend to the Tribal Council rules to describe procedures and processes to control or prevent the pollution of lakes and wetlands.

1-2-104. Emergencies

Whenever the Department determines, after investigation, that any person is engaged in an activity causing, threatening, or allowing the discharge of a pollutant into Reservation waters, which pollution, in the opinion of the Department, constitutes a clear, present, and immediate danger to human health or to the livelihood of Reservation residents, the Department shall issue its written order to said person that he must immediately cease or prevent the discharge of such pollutant into such waters and thereupon such person shall immediately discontinue such discharge. Concurrently with the issuance of such order, the Department may seek a restraining order and injunction.

PART II. CLASSIFICATION AND STANDARDS

1-2-201. Classification of Reservation Waters

1. Within one year of the effective date of this Ordinance, the Department may recommend to the Council the adoption, by rule, of an interim classification of Reservation waters, based upon the best information available to the Department at the time of proposing the interim classification. If such interim classification is proposed and adopted by rule, such rules shall expire one year from the date of adoption, and, prior to such expiration, the Department shall recommend to the Council for adoption a revised classification, based upon such information as that described in subsection (2).
2. The types of classes of Reservation waters, except waters discharged from point sources, and the assignment of a particular water body or segment thereof into a particular class shall be promulgated by rule and may be based upon any relevant characteristic, such as:
 - (a) the extent of existing pollution or the maximum extent of pollution to be tolerated as a goal,
 - (b) whether or not pollution arises from natural sources,
 - (c) present beneficial uses of the water, or the beneficial uses that may be reasonably expected in the future for which the water is suitable in its present condition, or the beneficial uses for which it is to become suitable as a goal,
 - (d) the character, uses, and status of the riparian lands or, in the case of subsurface water, of the overlying lands,
 - (e) the need to protect or enhance the quality of the water for public water supplies, for the propagation of fish and wildlife, for recreation, and for other existing beneficial uses, such as domestic, agricultural, and industrial uses and the need to minimize negative impacts on existing water uses, and(f) the type and character of the water,

such as surface or subsurface, and, if surface, lake, stream, or wetland, together with volume, flow depth, stream gradient, temperature, surface area involved, and daily or seasonal variability of any such characteristics.

1-2-202. Reconsideration and Revision of Classification

After the adoption of rules classifying Reservation waters, which are not an interim classification, the Department shall review and reconsider the classifications and their application to particular water bodies or segments from time to time, but not less often than every three years, in light of the best available information then available to it, and recommend to the Council any amendments or revisions to the classifications that it deems necessary or desirable, or report to the Council that no revisions to the classifications are needed, together with the reasons therefore.

1-2-203. Scope of Water Quality Standards

Water quality standards may be promulgated by rule for use in connection with any one or more of the classes of Reservation waters established pursuant to Section 1-2-202, and may be made applicable to any designated portion of Reservation waters or to all Reservation waters.

1-2-204. Interim Standards

Within one year of the effective date of this Ordinance, the Department may recommend to the Council the adoption, by rule, of interim water quality standards for Reservation waters, based upon the best information available to the Department at the time of recommending the interim standards, including, but not limited to, standards adopted by the State of Montana. If interim standards are adopted, they will not necessarily form the bases for permanent standards, and the rules reflecting such interim standards shall be temporary in nature and shall expire two years from the date of adoption. Prior to such expiration, the Department shall recommend to the Council permanent standards based upon the Department data base as provided in Section 1-2-207 and the considerations described in Section 1-2-208.

1-2-205. Discharge of Toxic Pollutants Prohibited

The discharge of toxic pollutants into Reservation waters is prohibited. The Department shall not recommend, nor shall the Council adopt, a standard, either interim or final, permitting or limiting the discharge of toxic pollutants.

1-2-206. Antidegradation Policy

1. The Department shall develop and recommend to the Council for adoption as a part of the water quality standards an antidegradation policy and methods implementing the same for all Reservation surface waters.
2. At a minimum, the antidegradation policy and implementing methods shall include the following:
 - (a) The maintenance and protection of existing instream uses and a level of water quality necessary to protect existing instream uses;
 - (b) Where the quality of the waters exceed levels necessary to support propagation of fish and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Department and the Council finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Tribal continuing planning process (Section 1-2-402) that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. Moreover, in allowing any degradation or lower water quality, the Department and the Council shall assure water quality adequate to protect existing uses fully, and assure the highest requirements for all new and existing point sources and all cost-effective and reasonable best management practices for point source and nonpoint source control.
 - (c) Where high quality waters constitute an outstanding Tribal resource, such as waters of ecological, recreational, or cultural significance, that water quality shall be maintained and protected.

1-2-207. Standards to be Based on Measurable Characteristics

The Department shall propose to the Council water quality standards which describe measurable, numerical, characteristics of Reservation waters or the permissible parameters for the pollution of Reservation waters, or both. Water quality standards are not limited to, but may include, such characteristics as:

1. suspended solids, colloids, and combinations of solids with other suspended substances;
2. bacteria, fecal coliform, fungi, viruses, and other biological constituents and characteristics;
3. dissolved oxygen, and the extent of oxygen-demanding substances;
4. phosphates, nitrates, and other dissolved nutrients;
5. pH and hydrogen compounds;

6. chlorine, heavy metals, and other chemical constituents;
7. salinity or alkalinity;
8. trash, refuse, oil and grease, and other foreign material;
9. taste, odor, color, and turbidity; and
10. temperature.

1-2-208. Considerations in Recommending Water Quality Standards

In recommending permanent water quality standards, the Department shall consider:

1. The need for standards which regulate specified pollutants, other than toxic pollutants;
2. Such information as may be available to the Department as to the degree to which any particular type of pollutant is subject to treatment or to reduction through the initiation of best management practices; the availability, practicality, and technical and economic feasibility of treatment techniques and best management practices; the impact of treatment upon water quantity; and the significance of the discharge or nonpoint source in relation to the degree of pollution in the water body or segment thereof;
3. The continuous, intermittent, or seasonal nature of the pollutant to be controlled;
4. The existing extent of pollution;
5. Whether the pollutant arises from natural sources;
6. The beneficial uses to be made of the water;
7. Such information as may be available to the Department regarding the persistence, cumulative effects, and degradability of a pollutant in the food chain of aquatic biota, and the parameters of the biological risk associated with the presence of a pollutant in a water body or segment; and
8. The compatibility of the standards with the water quality standards adopted by the State of Montana for the waters in drainages upstream and downstream from the Flathead Reservation and with regional or intergovernmental water quality management plans.

1-2-209. Recommendations for Standards Based on Statistical Methods

In recommending water quality standards based upon or using statistical methodologies for deriving numerical data for pollutants, the Department shall not rely upon statistics or statistical methodologies which are not demonstrably compatible with Reservation water quality data.

1-2-210. Review and Revision of Standards

After the adoption of permanent water quality standards and upon petition of any interested person, or upon its own motion, but not less often than every third year, the Department shall review the water quality standards for consistency with the policies set forth in this Title and in the federal Act and with any additional information gathered by the Department. If the Department determines that an inconsistency exists or that there is a need for clarification, the Director of the Department shall recommend appropriate revision of the standards to the Council.

PART III. REGULATIONS CONTROLLING DISCHARGES

1-2-301. Scope of Control Regulations

The Department may recommend to the Council the adoption of rules controlling discharges from point sources as follows:

1. Establishing prohibitions, concentrations, and effluent standards or limitations on the extent of specifically identified pollutants, including, but not limited to, those mentioned in Section 1-2-207, that any person may discharge into any specified class of Reservation waters;
2. Establishing pretreatment requirements, prohibitions, concentrations, and effluent standards or limitations on wastes any person may discharge into any specified class of Reservation waters from any type of facility, process or activity; and
3. Establishing precautionary measures, both mandatory and prohibitory, that must be taken by any person owning, operating, or maintaining any facility, process, activity, or waste pile that does cause or could reasonably be expected to cause pollution of Reservation waters in violation of controlling rules or that does cause the quality of Reservation waters to be in violation of any applicable water quality standard.

1-2-302. Consideration in Recommending Rules to Control Discharges

In the formulation of a recommendation to the Council to adopt rules controlling discharges, the Department shall consider the following:

1. The need for rules controlling discharges of specified pollutants that are the subject of water quality standards for the receiving waters;
2. The need for rules specifying treatment requirements for various types of discharges;
3. The degree to which any particular type of discharge is subject to treatment, the availability, practicality, and technical and economic feasibility of treatment techniques, and

the significance of the discharge in relation to the pollution of the receiving waters;

4. Pretreatment standards, effluent limitations, and other control requirements promulgated by federal agencies;
5. The continuous, intermittent, or seasonal nature of the discharge to be controlled; and
6. The need for promulgation of safety precautions that should be taken to protect water quality including, but not limited to, requirements for the keeping of logs and other records, requirements to protect subsurface waters in connection with mining and the drilling and operation of wells, and requirements as to settling ponds, holding tanks, and other treatment facilities for wastewaters that will or may enter Reservation waters.

1-2-303. Rules for Wasteload Allocations and Total Maximum Daily Loads.

Maximum wasteload allocations and total maximum daily loads developed in connection with the continuous planning process and with the preparation and adoption of a comprehensive water quality management plan as provided in Sections 1-2-402 and 1-2-403 shall be recommended by the Department to the Council for incorporation, as appropriate, into the rules controlling discharges from point sources.

PART IV. ASSESSMENT REPORTS, CONTINUOUS PLANNING PROCESS AND MANAGEMENT PLANS

1-2-401. Assessment Reports

In addition, to the first report, as provided in Section 1-2-103(6), the Department shall prepare subsequent reports, no less often than biennially, assessing Reservation water quality. The reports shall be submitted to the Tribal Council, and, after public notice and an opportunity for oral or written comment by any interested person, to the Environmental Protection Agency. The reports shall include, at a minimum:

1. Surface water quality generally:
 - (a) A description of the quality of all Reservation surface waters during the preceding biennium, taking into account seasonal and other variations, and correlated with the Tribal water quality standards and with the analysis required in (b)below;
 - (b) An analysis of the extent to which Reservation surface waters provide for public drinking water supplies, for the protection and propagation of indigenous fish and wildlife populations, and for recreation on and in the water;

- (c) A description of the progress made in eliminating the pollution of Reservation waters and recommendations for additional steps to be taken toward the goals established by the water quality standards; and(d) An estimate of the environmental impact and economic and social costs necessary to achieve the objectives of this Title and of the federal Act and the economic and social benefits of achievement.
2. Lakes and wetlands:
- (a) An identification and classification, according to water quality conditions, of all Reservation lakes;
 - (b) A description of the procedures, processes and methods, both in use and proposed, to control sources of lake and wetland pollution;
 - (c) A description of current and proposed methods and procedures, undertaken in conjunction with appropriate federal and state agencies, to restore lake and wetland quality;
 - (d) A description of the degree of acidity of lakes and any measures taken or to be taken to mitigate the acidity;
 - (e) A list of lakes and wetlands with uses impaired, including those lakes and wetlands that do not meet water quality standards or that require control programs to meet the standards; and(f) An assessment of the status and trends of lake and wetland quality and of any net loss or gain of natural or artificial wetlands;
3. Nonpoint sources:
- (a) A description of the nature and extent of nonpoint source pollution of Reservation surface and subsurface waters, together with recommendations for controlling such pollution and an estimate of the cost of implementing such recommendations;
 - (b) An identification of Reservation surface waters which, without action to control nonpoint sources, cannot be expected to attain or maintain Tribal water quality standards;
 - (c) An identification of categories and subcategories of nonpoint sources which add significant pollution to surface waters in amounts which contribute to any failure to meet Tribal water quality standards;
 - (d) A description of the process, including intergovernmental cooperation and public participation, for identifying the best management practices to control each category and subcategory of nonpoint source pollution to the maximum extent possible; and
 - (e) An identification and description of Tribal or intergovernmental programs to control nonpoint source pollution, including any programs receiving federal assistance for nonpoint source management or for protecting the quality of subsurface water.

1-2-402. Continuous Planning Process

The continuous planning process to be carried out by the Department pursuant to Section 1-2-103(4) includes provisions for rulemaking, for development and revision of the comprehensive water management plan, for revision of surface water classifications and water quality standards, for the preparation and submission of assessment reports, and for, without limitation:

1. Effluent limitations and schedules of compliance for point sources by category or for individual point sources at least as strict as those promulgated by the Environmental Protection Agency;
2. The incorporation of any areawide wastewater treatment management plan;
3. The identification and revision, as necessary, of wasteload allocations and total daily maximum loads to be included in the comprehensive management plan;
4. Provision for an inventory and ranking of wastewater treatment works and for controls over the disposition of sewage sludge and other waste from water treatment processing; and
5. Provision for revision of classifications, standards, and management plans, and for implementation of and compliance with water quality standards and with the comprehensive management plan, including the nonpoint source management plan.

1-2-403. Comprehensive Water Quality Management Plan

Within one year of the first recommended comprehensive water quality management plan as provided in Section 1-2-103(5), and at least every third year thereafter, the Department shall recommend such revisions, deletions, or additions to the plan as may appear necessary or desirable in the course of the continuous planning process. Implementation measures, as well as limitations and standards, contained in the recommended plan shall be in the form of recommended rules, and any comprehensive plan or revision thereof shall be available to the public, who shall be supplied with notice of the availability and an opportunity to be heard on any or all aspects of the plan. The plan must contain, but is not limited to, the following elements:

1. An identification of Reservation waters where present limitations on discharges from point sources and publicly owned treatment plants are insufficient to meet water quality standards and the priority of these according to the severity of the pollution and the uses to be made of the waters, and, for these waters, in accord with their priority ranking, the establishment of a total daily maximum load of pollutants that are not toxic pollutants listed by the Environmental Protection Agency, with seasonal variations and margins of safety.

2. An identification of Reservation waters where controls on thermal pollution are insufficient, and the establishment, for these waters, of a maximum thermal load to protect a balanced indigenous population of fish and wildlife;
3. An identification of all other Reservation waters, and for each, an estimate of the maximum daily load of pollutants that are not toxic pollutants listed by the Environmental Protection Agency, with seasonal variations and margins of safety sufficient to insure balanced indigenous populations of fish and wildlife;
4. Nonpoint source management:
 - (a) An identification of the best management practices and measures to be undertaken to reduce pollutant loading from each category and subcategory of nonpoint source pollution in each Reservation watershed, taking into account the impact of best management practices on groundwater quality;
 - (b) An identification of programs to achieve best management practices;
 - (c) A schedule, with milestones, for the implementation of best management practices in each Reservation watershed;
 - (d) Sources of federal funding and other funding available to assist in controlling nonpoint source pollution for four years; and
 - (e) A description of the involvement in nonpoint source pollution control of local public and private agencies and organizations which have experience in control of nonpoint source pollution.

CHAPTER 3: PERMITTING, PENALTIES & REMEDIES

PART I. PERMITTING AND CERTIFICATION

1-3-101. Permits Required for the Discharge of Pollutants

Except as otherwise provided in this Chapter, no person shall discharge any pollutant into Reservation waters without having first obtained a permit from the Department for such discharge. Neither a permit issued pursuant to this Chapter nor an application therefore creates or recognizes a right in the permittee or applicant to use Reservation waters for beneficial purposes or any other property right or interest.

1-3-102. Administration of Permits

The Department shall examine applications for and may issue, suspend, revoke, modify, deny, and otherwise administer permits for the discharge of pollutants into Reservation waters.

1-3-103. Relationship to Federal NPDES Permits

To the extent authorized by the federal Act, the Department may provide by agreement with the Environmental Protection Agency or by other intergovernmental agreement, as appropriate, for Departmental administration of National Pollution Discharge Elimination System (NPDES) permits issued to owners or operators of point sources under the Act. Any such agreement shall include provision for the authority and responsibility to enforce NPDES permit conditions to remain with the federal agency or agencies, but the Department may be authorized to investigate any alleged violation of an NPDES permit.

1-3-104. Application for Permits

1. A complete and accurate application for all discharges shall be filed with the Department.
 - (a) for all existing point sources, within one year after the Department receives notice from the Environmental Protection Agency that all preconditions to the exercise of Tribal permitting authority are satisfied, and publication of said notice in a newspaper of general circulation; and
 - (b) for all new sources to be constructed after the publication of the notice referred to in subsection (1)(a) above, within 180 days prior to the date proposed for commencing the discharge.

3. The application shall contain such relevant plans, specifications, water quality data, and other information relating to the existing or proposed discharge as the Department may reasonably require.
4. Owners or operators of new point sources may request, and if so requested the Department shall grant, a planning meeting with the applicant. At such meeting, the Department shall advise the applicant of the applicable permit requirements, including the information, plans, specifications, and the data required to be furnished with the permit application.

1-3-105. Incomplete Applications

An applicant shall be advised not more than 45 days after the receipt of an application by the Department if, and in what respects, the application is incomplete. If additional information is requested by the Department within the 45 day period, the Department shall have 15 days from the date the additional information is submitted to determine whether the additional information which was submitted satisfies the request and to advise the applicant if, and in what respects, the additional information does not satisfy the request. A decision that an application is not complete is appealable administratively and judicially pursuant to the Tribal Administrative Procedures Ordinance. A petition for review of such decision shall be given administrative and judicial priority.

1-3-106. Review, Notice, and Comment on Applications for Discharges by New Sources

1. The Department shall evaluate complete permit applications to determine whether the proposed discharge will comply with all applicable federal and Tribal statutes and rules.
2. Public notice of a complete permit application and the Department's preliminary analysis thereof shall be given by publication in a daily newspaper of general circulation within the Reservation and shall be mailed to any person upon request. The notice shall advise of the opportunity for interested persons to submit written comments on the permit application and on the Department's preliminary analysis.
3. If a public meeting is requested and the Department, in its discretion and for good cause shown, grants such request, the Department shall hold such meeting not more than 60 days after the initial public notice. The Department shall provide notice as provided in subsection (2) of this Section of the public meeting not less than 15 days prior to the date of such meeting.(4) The period for public comment shall close 30 days from the date of notice of the permit application, or, if a public meeting is held, 60 days from the date of notice of the application.

1-3-107. Review, Notice, and Comment on Applications of Existing Sources

Notice of applications and opportunity for comment on applications submitted by owners and operators of point sources existing on the Reservation on the effective date of this Title will be made available only to interested persons upon request, unless the Department determines that a variance to permit conditions should be issued. In the event of such a determination, the review, notice, and comment provisions applicable to new sources shall be followed by the Department.

1-3-108. Time for Issuance or Denial of Permit

The Department shall issue or deny a permit within 120 days after receipt of a complete application unless the time limit is waived or extended by the applicant or by the operation of the federal Act.

1-3-109. Permit Rules and Conditions

1. The Department shall recommend to the Council such rules as may be necessary and proper for the discharge of pollutants by point sources. Such rules shall be consistent with the provisions of this Title and with federal requirements.
2. Such rules may pertain to and implement, among other matters, permit and permit application contents, procedures, requirements, and restrictions with respect to the following:
 - (a) Identification and address of the owner and operator of the activity, facility, or process from which the discharge is to be permitted;
 - (b) Location and quantity and quality characteristics of the permitted discharge;
 - (c) Effluent limitations and conditions for treatment prior to discharge to a publicly owned treatment works;
 - (d) Monitoring as well as record-keeping and reporting requirements consistent with standard procedures and methods established by the Department;
 - (e) Schedules of compliance;
 - (f) Procedures to be followed by Department personnel for entering and inspecting premises;
 - (g) Submission of pertinent plans and specifications for the facility, process, or activity which is the source of a waste discharge;
 - (h) Restrictions on transfers of the permit;

- (i) Procedures to be followed in the event of expansion or modification of the process, facility, or activity from which the discharge occurs or the quality, quantity, or frequency of the discharge;
- (j) Duration of the permit, not to exceed five years, and renewal procedures;
- (k) Authority of the Department to require changes in plans and specifications for control facilities as a condition for the issuance of a permit;
- (l) Identification of control regulations over which conditions of a permit may take precedence and a similar identification of rules over which permit conditions may never take precedence;
- (m) Notice requirements of any intent to construct, install, or alter any process, facility or activity that is likely to result in a new or altered discharge; and
- (n) For treatment works, such terms and conditions as the Department deems necessary or desirable to assure continuing compliance with applicable control regulations. Such terms and conditions may require that the permittee shall:
 - (i) Require pretreatment of effluent from industrial, governmental, or commercial facilities, processes, and activities before such effluent is received into the gathering and collection system of the permittee;
 - (B) Prohibit any connection to any permittee's interceptors and collection system that would result in receipt by the permittee of any effluent other than sewage;
 - (ii) Initiate engineering and financial planning for expansion of the treatment works whenever effluent put through the works and treatment reaches eighty percent (80%) of capacity;
 - (iii) Commence construction of treatment works expansion whenever effluent put through the works and treatment reaches ninety-five percent (95%) of design capacity;
- (o) Inclusion of the requirements authorized by paragraphs (C) and (D) of subsection (2)(n) of this Section shall be presumed unnecessary to assure compliance upon a showing that the area served by the treatment works has a stable or declining population; but this provision shall not be construed as preventing periodic review by the Department if there is reason to believe that growth is occurring or will occur in the area.

1-3-110. Permit Issuance

The Department shall issue a permit in accordance with the rules promulgated under this Part and with the federal Act and the regulations thereunder when the Department determines that the application and the proposed permit meet all requirements of this Title and of the federal Act.

1-3-111. Runoff and Return Flows

Runoff from agricultural lands, storm runoff, and irrigation return flows are not point sources and are not, therefore, subject to the permitting system, provided, however, that the owner or operator of any system of works which stores, collects, conveys, or discharges such flow shall comply with the water quality standards established for the receiving waters in accordance with rules recommended by the Department and adopted by the Council. Such compliance shall include protection of agricultural, domestic, industrial, public drinking water, and instream uses made of the waters stored, collected, or conveyed prior to the construction of the system of works.

1-3-112. Limitations on Permit Issuance

1. No permit shall be issued which is inconsistent with any duly promulgated land use or water quality management plan or with any portion of any approved regional wastewater management plan unless all other requirements and conditions of this Title have been met or will be met pursuant to a schedule of compliance or a variance specifying treatment requirements as determined by the Department.
2. No permit shall be issued which allows a violation of a control regulation unless the permit contains effluent limitations and a schedule of compliance or a variance specifying treatment requirements as determined by the Department.
3. No permit shall be issued which allows a discharge that by itself or in combination with other pollution will result in pollution of the receiving waters in excess of the pollution permitted by an applicable water quality standard unless the permit contains effluent limitations and a schedule of compliance specifying treatment requirements. Effluent limitations designed to meet water quality standards shall be based on application of appropriate physical, chemical, and biological factors reasonably necessary and feasible to achieve the levels of protection required by the standards.
4. No permit shall be issued prior to its review and approval by the Environmental Protection Agency where such approval is required by the federal Act or by regulations adopted thereunder.

1-3-113. Procedures upon Modification or Denial of Permit

If the Department denies an application for a permit or modifies a permit during its term, the Department shall give written notice of its action to the applicant or permittee, who may appeal the decision as provided by the Tribal Administrative Procedures Ordinance. If a permittee does not appeal the decision to modify a current permit, the modification shall take effect 30 days after receipt of notice by the permittee unless the Department specifies a later date. If the permittee appeals a modification, the modification shall be effective 20 days after the permittee has received the decision of a hearings officer ordering such modification.

1-3-114. Variances

- (1) The Department may grant a variance from otherwise applicable requirements only to the extent authorized in the federal Act or implementing regulations. Variances may be granted for no longer than the duration of the permit.
- (2) (a) Any request for a variance with respect to a permit condition shall be made within 30 days after issuance by the Department of the final permit. Requests for variances from any other application of a control regulation shall be made within 30 days of public notice by the Department of the proposed regulation or prior to operation of any new or expanded facility which would be affected by the control regulations. A variance may also be sought within 30 days of facts becoming available which had not been reasonably available to the applicant prior to that time.
- (b) The Department shall approve or disapprove any variance request and shall issue the Director's decision within 90 days after receipt of the variance request. Notice of a variance request shall be sent to anyone who has requested such notice. In the case of a variance being granted prior to the final permit being issued, the Department shall publish for public notice and comment the entire draft permit with the variance incorporated therein. In the case of a variance granted after a final permit has been issued, the Department shall publish for public notice and comment the variance as a proposed modification to the permit. Variance decisions of the Director of the Department shall be subject to review as a part of any challenge to the conditions of a final discharge permit, to the modification of a permit, or to the application of a control regulation.

1-3-115. Permit Fees

The only fee the Department may assess is an annual fee to be paid by the owner or operator of a permitted point source discharge. Fees collected shall be paid into the Tribal general fund. The Department shall recommend to the Council a schedule of fees to be adopted by rule. The recommended schedule shall be organized by categories and subcategories of point sources and shall be reasonably related to:

1. the estimated cost to the Department of monitoring permit compliance,
2. the rate and volume of the discharge, and
3. the physical, chemical, or biological properties of the pollutants discharged.

1-3-116. Prohibition of Discharge of Sewage from Vessels

The Department may recommend to the Council for adoption rules prohibiting the discharge of sewage from vessels into the southern half of Flathead Lake. No such prohibition shall become effective until the Environmental Protection Agency determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels on the south-

ern half of Flathead Lake are reasonably available. For purposes of this Section, “vessel” means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on Flathead Lake.

1-3-117. Marine Sanitation Devices on Houseboats

The Department may recommend for adoption by the Council rules regulating the design, installation, or use of any marine sanitation device on a houseboat if such rules are more stringent than the standards and rules promulgated by the Environmental Protection Agency under the federal Act. For purposes of this section, the term “houseboat” means a vessel which, for a period of time determined by rule, is used primarily as a residence and is not used primarily as a means of transportation.

1-3-118. Underground Fuel Storage. (Reserved)

1-3-119. Certification

1. Upon fulfillment of all federal conditions for approval of its certification program, the Department may certify compliance with all applicable water quality requirements by an applicant for a federal license or permit to conduct any activity within the exterior boundaries of the Reservation which may result in a discharge into Reservation waters. Such activity may include, but is not limited to, the construction or operation of facilities pursuant to such federal license or permit.
2. The Department shall recommend to the Council for adoption rules providing for public notice of all applications for certification and, as it may deem appropriate, for procedures for public hearings in connection with specific applications.

PART II. PROHIBITION, CIVIL PENALTIES, AND REMEDIES

1-3-201. Prohibited Activity

1. It is unlawful to:
 - (a) cause pollutants as defined in Section 1-1-102 to be introduced into any Reservation waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any Reservation waters;

- (b) violate any provision set forth in a permit, including but not limited to limitations, standards, and conditions contained therein;
 - (c) violate any order issued pursuant to this Title; or
 - (d) violate any provision of this Title or any control regulation or implementing rule promulgated pursuant to this Title.
2. It is unlawful to carry on any of the following activities without a current permit from the Department:
- (a) construct, modify, or operate a disposal system which discharges into any Reservation waters;
 - (b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any Reservation waters; or
 - (c) discharge sewage, industrial wastes, or other wastes into any Reservation waters.

1-3-202. Notification of Unpermitted Discharges — Penalty.

- 1. Any person engaged in an operation or activity which results in a spill or discharge of any substance which may cause pollution of the waters of the Reservation contrary to the provisions of this Title shall, as soon as he has knowledge thereof, notify the Department of such spill or discharge. If the immediate notification is verbal, it shall be followed by written notification within three calendar days of the unpermitted discharge. The Department shall recommend to the Council rules specifying the content and form of such written notice.
- 2. Failure to so notify as soon as practicable is a violation of this Title, and the Department shall bring a civil action for failure to notify against the person whose operation or activity resulted in the discharge. If the failure to notify is proved, the Tribal Court may assess the discharger a penalty not to exceed \$25,000, exclusive of cleanup costs.

1-3-203. Spill Contingency Plan

The Department shall develop a spill contingency plan in conformity with 33 U.S.C. Section 1321 and rules promulgated pursuant thereto and in consultation with the Environmental Protection Agency and such other agencies as may be necessary or appropriate. The plan may take the form of an intergovernmental agreement or rules recommended to the Council for adoption, or both. Nothing in this section affects or diminishes the Department’s responsibilities or authority, as provided in Section 1-2-104, 1-3-202, and 1-3-204 of this Title, to deal with emergencies arising from spills or unpermitted discharges.

1-3-204. Cleanup Orders

1. The Department may issue an order to any person to clean up any material which he, his employee, or his agent has accidentally or purposely dumped, spilled, or otherwise deposited in or near Reservation waters which may pollute them.
2. If a cleanup order is not complied with as soon as equipment and supplies needed for the cleanup can be brought to the site, or if the cleanup is not conducted in a manner satisfactory to the Department, the Department may undertake the cleanup, restoration of the site, and mitigation of any environmental damages and assess the costs of the same, including administrative costs, against the noncomplying person.

1-3-205. Action by Other Parties

1. Any person may apply to the Department to investigate and take action upon any suspected or alleged violation of any provision of this Title or of any order, permit, or rule issued or promulgated under authority of this Title.
2. The factual or legal basis for proceedings or other actions that result from a violation of this Title or of any permit, order, or rule issued hereunder inure solely to the Confederated Salish and Kootenai Tribes for the benefit of the people of the Reservation, and it is not intended by this Title to create new private rights or to enlarge existing private rights. A determination that water pollution exists or that any standard has been disregarded or violated, whether or not a proceeding or action may be brought by the Department, shall not create any presumption of law or finding of fact which shall inure to or be for the benefit of any person other than the Confederated Salish and Kootenai Tribes.
3. Nothing in this Section abridges or alters rights of action or remedies existing on or after the effective date of this Title, nor shall any provision of this Title or anything done by virtue of this title be construed as stopping persons from the exercise of their right to suppress nuisances.

1-3-206. Notice of Alleged Violation

1. Whenever the Department has reason to believe that violation of a provision of this Ordinance, or an order, permit, or control regulation issued or promulgated under the authority of this Title has occurred, the Department shall cause written notice to be served personally or be certified mail, return receipt requested, upon the alleged violator or his agent designated for service of process. The notice shall state the provision alleged to be violated and the facts alleged to constitute a violation, and it may include the nature of any corrective action proposed to be required.
2. Each cease and desist or compliance order issued pursuant to Sections 1-3-208 or 1-3-209 respectively shall be accompanied by or have incorporated in it the notice provided for in subsection (1) of this Section unless such notice has been given prior to issuance of such cease and desist or compliance order.

1-3-207. Hearing Procedures for Alleged Violations

1. In any notice given under Section 1-3-205, the Department shall require the alleged violator to answer each alleged violation and require the alleged violator to appear at a public hearing before a hearing officer to provide such answer. Such hearing shall be held no sooner than 15 days after service of the notice, except that the hearings officer may set an earlier date for hearing if it is requested by the alleged violator.
2. Hearings held pursuant to this Section shall be conducted in accordance with the contested case provisions of the Tribal Administrative Procedures Ordinance.

1-3-208. Suspension or Revocation of Permit

Upon a finding and determination, after hearing, that a violation of a permit provision has occurred, a hearings officer may suspend or revoke the permit and determine the civil penalties, if any, for which the violator shall be liable pursuant to Section 1-3-211.

1-3-209. Cease and Desist Orders

If the Director of the Department determines that a violation of any provision of this Title or of any order, permit, or control regulation issued or promulgated under authority of this Title exists, the Department may issue a cease and desist order. Such order shall set forth the provision alleged to be violated, the facts alleged to constitute the violation, and the time by which the acts or practices complained of must be terminated. The operation of a cease and desist order shall not be stayed by a hearings officer pending the hearing provided for in Section 1-3-206.

1-3-210. Compliance Orders

A person violating a condition, limitation, standard, or other requirement established pursuant to this Title may be served with a compliance order issued by the Department. The order must specify the condition, limitation, standards, or other requirement violated and must set a time for compliance. In establishing a time or schedule for compliance, the Department shall take into account the seriousness of the violation and any good faith efforts that have been made to comply with condition, limitation, standards, or other requirements that have been violated. A compliance order shall be served either personally or by certified mail.

1-3-211. Injunctions Authorized

1. The Department is authorized to commence a civil action in Tribal Court seeking appropriate relief, including a permanent or temporary injunction, for a violation which would be subject to a compliance order under Section 1-3-209.
2. The Department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit or any rule or effluent standard promulgated under the Title or against a person who fails to comply with an emergency order under Section 1-2-104. The Tribal Court may issue a temporary injunction if it finds that there is reasonable cause to believe that the allegations of the Department are true,

and it may issue a temporary restraining order pending action on the temporary injunction.

1-3-212. Civil Penalties Remedies Cumulative

A person who violates this Title or a rule, permit, effluent standard, or order issued under the provisions of this Title shall be subject to a civil penalty not to exceed \$10,000 for each parameter violated. Each day of violation constitutes a separate violation. Action under this section does not bar enforcement of this Title or rules or orders issued under it by injunction or other appropriate remedy. All remedies under this Part are cumulative. All monetary penalties assessed under this Section or Section 1-3-203 are to be paid into the Tribal general fund.

1-3-213. Costs and Expenses — Recovery by the Department

In a civil action initiated by the Department under this Part, the Department may ask for and the Tribal Court is authorized to assess a violator for the cost of the investigation or monitoring survey which led to the establishment of the violation and any expense incurred by the Department in removing, correcting, or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants.

1-3-214. Intervention

Any person interested in a final decision or order of the Department may intervene, for good cause shown, in any proceeding stemming from such decision before a hearings officer or before the Tribal Court if the cause was not heard by a hearings officer.

CERTIFICATION

The foregoing Ordinance was adopted by the Tribal Council on the 23rd day of October 1990, with a vote of 7 for, 1 opposed, and 0 not voting pursuant to authority vested in it by Article VI, Section 1 (a), (1), (n), and (u) of the Tribes' Constitution and Bylaws; said Constitution adopted an approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.

CHAIRMAN, TRIBAL COUNCIL

ATTEST:

EXECUTIVE SECRETARY