

PAWNEE NATION OF OKLAHOMA

Law and Order Code



TITLE XII

NATURAL RESOURCE PROTECTION ACT

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TITLE XII PAWNEE NATION NATURAL RESOURCE PROTECTION ACT

GENERAL PROVISIONS

Section 001. Codification.

This Chapter shall be codified as the Pawnee Nation Natural Resource Protection Act and supersedes and supplements all conflicting provisions or laws of the Pawnee Nation.

Section 002. Purpose

The purpose of the Pawnee Natural Resource Protection Act is to provide for the administration of natural resource protection functions, which will:

- (a) Establish the Department of Environmental Conservation and Safety and the Environmental Regulatory Commission and their perspective duties and responsibilities;
- (b) Provide for the protection of natural resources of the Pawnee Nation; and
- (c) Ensure the natural resource and environmental regulatory protection concerns of industry, the public, and the Pawnee Nation will be addressed in an expedient manner.

Section 003. Severability

The provisions of this Title are severable, and if any part hereof shall be held void, the decision of any court so holding shall not affect or impair any of the remaining parts or provisions of this Title.

Section 004. Applicability

- (a) This Act shall apply to all causes within the territorial jurisdiction of the Pawnee Nation and shall apply to all Indian persons violating its provisions within the territorial jurisdiction of the Pawnee Nation, provided, that the provisions of Chapter Four of Title VI of this Law and Order Code shall apply to all members of the Tribe and all Indian residents of the jurisdiction of the Tribe where ever such violations may occur, if such violation has any actual or intended effect upon the political integrity or the political or economic security of the Tribe
- (b) This Act shall apply to non-Indians to the extent not inconsistent with federal law and to the extent that any person found to have violated any provision of this Title may be banished from the jurisdiction of the Pawnee Nation for a period of not more than ten years, or for such term and/or penalty or fine as may be imposed by the Section violated, in a civil proceeding brought by the prosecutor. The non-Indian, in such cases shall have all the same procedural rights of a criminal defendant, and such cases shall be tried by the same rules of criminal procedure.

Section 005. Personal Jurisdiction; Territorial Jurisdiction

- (a) For the purposes of enforcement of this Act, the Pawnee Nation shall have jurisdiction over all persons, who by their actions or negligence, violates any provision of this Act.
- (b) For the purpose of enforcement of this Act, the Pawnee Nation shall have jurisdiction in the territorial boundaries of the Pawnee Nation and other places determined to be Indian Country within the Pawnee Nation jurisdiction as provided in Title I, Section 3 of this Law and Order Code. Because any violations of this Code, its Acts, laws, or any rules or

regulations adopted there-under will demonstrably and seriously impact the environment, natural resources, public health, safety, welfare, cultural and/or political integrity, and economic security of the Tribe, the Pawnee Nation shall have jurisdiction to regulate and enforce the provisions of this Act with respect to any activity conducted on trust land (Tribal and/or individual allotment) , fee land, and in Indian Country within the Pawnee Nation to the fullest extent allowed by law.

Section 006. Sovereign Immunity

- (a) Neither this Law and Order Code, its Acts, Laws, Regulations, or prescribed services, nor the Tribal programs established for implementation of said Acts, laws, regulations, or services, nor any action or agreement of the Environmental Regulatory Commission, the Department of Environmental Conservation and Safety or its Programs shall be construed as, or is intended to be, a waiver or modification of any sovereign immunity now enjoyed by the Pawnee Nation, or a consent by the Tribe to jurisdiction or suit against it.
- (b) The Tribe reserves the right to contest the jurisdiction of the Federal Court in any citizens' suit filed against it (IE, under Section 7002 of the SWDA), except only as such jurisdiction may be expressly waived by the Pawnee Nation in such suit.
- (c) The Pawnee Nation, the Pawnee Business Council and its members; the Pawnee Nation Environmental Regulatory Commission and its members; the Pawnee Nation Department of Environmental Conservation and Safety and its Director and employees; and all other Tribal officers, employees, representatives, or agents thereof, who are performing their duties by implementing or enforcing any provision of the Law and Order Code, are immune from suit for monetary damages in any court of law, and they do not waive any of their sovereign rights or immunities; executive privileges or right to privacy or confidentiality.
- (d) The Pawnee Nation, its Environmental Regulatory Commission, and/or Department of Environmental Conservation and Safety may enter into such contracts as are authorized by the Pawnee Business Council, for the purpose of implementing and/or enforcing provisions of this Code or its Acts therein; provided that such contracts shall not be construed to be a waiver of the sovereign rights or immunities of the Pawnee Nation, or any commission, board, agency, entity, officer, employee, representative, or agent thereof.

Section 007. Definitions

In this Act:

- (a) "Clean Water Act" means the federal Water Pollution Control Act, 33 U.S.C., Section 1251 et seq., as amended;
- (b) "Commission" means the Pawnee Nation Environmental Regulatory Commission;
- (c) "Department of Environmental Conservation and Safety" hereinafter "DECS" means the Pawnee Tribal Department of Environmental Conservation and Safety;
- (d) "Director" means the Director of the Pawnee Nation Department of Environmental Conservation and Safety;
- (e) "Discharge" includes but is not limited to a discharge of a pollutant, and means any addition of any pollutant to waters within or affecting the Tribe's jurisdiction from any point source;

- (f) "Environment" includes the air, land, wildlife, natural resources, and waters within the Tribe's jurisdiction;
- (g) "Environmental Regulatory Commission" hereinafter "ERC" or "Commission" means the Pawnee Nation Environmental Regulatory Commission;
- (h) "Indian" means those persons who are citizens or are eligible for citizenship in a federally recognized Indian tribe or Nation;
- (i) "Indian Country" means lands within the jurisdiction of the Pawnee Nation;
- (j) "Natural Resources" means any resource, material, or process on the landscape whether extracted or left in place
- (k) "Non-point source" means the contamination of the environmental with a pollutant for which the specific point of origin may not be well defined;
- (l) "N.P.D.E.S." or "National Pollutant Discharge Elimination System" means the system for the issuance of permits under the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., as amended;
- (m) "Officer" means any recognized law enforcement officer of the Pawnee Nation;
- (n) "Pawnee Nation Code" hereinafter "PNC" means the Pawnee Nation of Oklahoma Law and Order Code as established in Constitution and Laws of the Pawnee Indians of Oklahoma;
- (o) "Pawnee Nation" means the Pawnee Nation of Oklahoma or Pawnee Nation or Tribe;
- (p) "Pawnee Tribal District Court" means the trial court of the Pawnee Nation of Oklahoma;
- (q) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, federally recognized Indian Tribe, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;
- (r) "Point source" means any discernible, confined and discrete conveyance or outlet including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure container, rolling stock or vessel or other floating craft from which pollutants are or may be discharged into waters within the Tribe's jurisdiction. The term "point source" shall not include agricultural storm water discharge and return flows from irrigated agriculture;
- (s) "Pollutant" includes but is not limited to dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agribusiness waste;
- (t) "Pollution" means the presence in the environment of any substance, contaminant or pollutant, or any other alteration of the physical, chemical or biological properties of the environment or the release of any liquid, gaseous or solid substance into the environment in quantities which are or will likely create a nuisance or which render or will likely render the environment harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property;
- (u) "Schedule of Compliance" means schedule of remedial measures including but not limited to an enforceable sequence of actions or operations leading to compliance with any regulated limitation, prohibition, or standard;
- (v) "Source" means any and all points or origin of any wastes, pollutants or contaminants whether publicly or privately owned or operated;

- (w) "Storm water" means rain water runoff, snow melt runoff, and surface runoff and drainage;
- (x) "Tribe" means the Pawnee Nation;
- (y) "Waste" means any liquid, gaseous or solid or semi-solid substance, or thermal component, whether domestic, municipal, commercial, agricultural or industrial in origin, which may pollute or contaminate or tend to pollute or contaminate, any air, land or waters of the Tribe;
- (z) "Wastewater" includes any substance, including sewage, that contains any discharge from the bodies of human beings or animals, or pollutants or contaminating chemicals or other contaminating wastes from domestic, municipal, commercial, industrial, agricultural, manufacturing or other forms of industry; and
- (aa) "Waters of the Tribe" means all streams, lakes, ponds, marshes, navigable and non-navigable watercourses and waterways, wells, springs, irrigation systems, drainage systems, storm sewers, wetlands as defined by the Tribe, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon the jurisdiction of the Pawnee Nation or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon the Tribe or any portion thereof.

CHAPTER ONE – DECS and ERC Establishment

Section 101. Pawnee Nation Department of Environmental Conservation and Safety

- (a) There is hereby created the Pawnee Nation Department of Environmental Conservation and Safety, hereinafter referred to as the "DECS," which shall be comprised of one Program Director and the support staff, adequate for sustainable program activity and initiatives. The Director shall have executive authority and control of the Department and its employees to the end that the policies of the Pawnee Business Council shall be carried out in accordance with the laws, resolutions, and proclamations of the Pawnee Business Council. The Director is empowered to investigate and determine the facts relative to the condition of any and all natural resources within the Pawnee Nation. Upon determination of those facts, the Director shall effectuate all policy, laws and regulations of the Pawnee Nation and work toward the preservation, protection, conservation, perpetuation, and management of the natural resources within the Pawnee Nation
- (b) The DECS is hereby authorized to:
 - (1) Act as lead agency for natural resource and environmental management and enforcement including programs and/or services within its areas of jurisdiction ;
 - (2) To negotiate cooperative agreements with federal, state, local and tribal authorities on matters dealing with environmental and/or natural resource management, provided that, all such negotiations are approved by the President of the Pawnee Business Council, with final agreements requiring approval of the Pawnee Business Council;
 - (3) Utilize the information, facilities, personnel, and other resources of federal agencies and Pawnee Nation departments as long as it is not in conflict with funding or service authorizations;
 - (4) Develop enforcement authority and capacity within the DECS and/or Pawnee Nation and/or enter cooperative agreements for enforcement of this chapter with federal or state authorities with approval of the Pawnee Business Council.
 - (5) Pursue assistance from the federal government and from other sources as may be available to the Pawnee Nation for the planning, development, and operation of environmental protection, natural resource conservation, and/or regulatory programs or functions established under this Act;
 - (6) Develop, propose, and implement environmental and natural resource laws, rules, regulations, and standards for the Pawnee Nation;
 - (7) Engage in the environmental and natural resource permitting and certification process as authorized by this Act and/or other Laws of the Pawnee Nation;
 - (8) Direct the examination and approval of plans and specifications for environmental facilities and sites and to inspect construction remediation, operation, and closing of said facilities and other environmentally sensitive site operations, or designate a qualified agent to do so;
 - (9) Take complaints, investigate, and enforce the provisions of this Act and other laws and regulations of the Pawnee Nation including but not limited to environmental and natural resource laws and regulations, and other of the Pawnee Nation;

- (10) Conduct environmental and/or natural resource assessments, surveys, and monitoring activities;
- (11) Direct inspections of closed or abandoned regulated sites, and determine compliance rules and regulations for proper protective measures;
- (12) Seek injunction against any person in violation of this Act in the Courts of the Pawnee Nation, and/or in other court of appropriate jurisdiction;
- (13) Conduct regulatory inspection and monitoring activities for the Environmental Regulatory Commission and present its findings and regulatory complaints to the Commission;
- (14) Establish Tribal Implementation Programs (Tribal Authorization) to the extent allowed by federal law and may, where appropriate, establish programs for which there is no corresponding federal law or program;
- (15) Enforce the laws of the Pawnee Nation regarding the protection of natural resources, including but not limited to the issuance, modification or revocation of permits, establish enforcement procedures, investigate, search, seize, detain, issue citations and/or Notice to Appear, arrest (with/with out warrant), refer complaint for prosecution or enforcement to the appropriate Tribal, state, and/or federal agency as applicable to activities and persons subject to the jurisdiction of the Pawnee Nation as they may deem appropriate to protect the environmental and natural resources, and public health and welfare.
- (16) Issue "Compliance Order/Settlement Agreement" (COSA) as non-judiciary action to enforce provisions of this Act. The COSA is voluntary and is without appeal. The order to comply and associated agreement to settle such violation is applicable to all persons. Failure to comply with the terms of the COSA may result in formal adjudicated enforcement of the same violation.
- (17) Review and propose changes to this Act to the ERC as necessary.
- (18) Provide implementation of policy, laws, and regulations concerning the preservation of life and safety for the use of natural resources for the purpose of recreation, boating, and harvesting.

Section 102. Pawnee Nation Environmental Regulatory Commission

- (a) There is hereby created the Pawnee Nation Environmental Regulatory Commission, hereinafter referred to as the "ERC".
- (b) The ERC shall be governed by a Board of Commissioners, which shall be composed of three (3) Commissioners all of whom shall be citizens of the Pawnee Nation.
- (c) The Commissioners shall be appointed by the President of the Pawnee Nation. Each Commissioner shall serve for a term of four (4) years, provided that, in order to stagger the term of office, one of the original Commissioners shall be appointed for a term of two (2) years, one for a term of three (3) years, and one for a term of four (4) years. Any vacancy on the Board, howsoever caused, will be filled by appointment by the President of the Pawnee Nation with the consent of the Pawnee Nation Business Council, provided that the replacement serves only the amount of time remaining in the term of the original appointee.
- (d) The Director of the Pawnee Nation Department of Environmental Conservation and Safety will serve as the Commission Administrator, and may act as a commissioner in the event that only one or no Commissioners are seated.
- (e) The ERC shall elect a Chairperson from among their members.

- (f) The business of the Board shall be conducted at a meeting of the Board duly called and noticed and at which a quorum is present.
- (g) A quorum shall consist of two (2) Commissioners. Any substantive action of the ERC must be approved by affirmative vote of at least two Commissioners and must be recorded in writing.
- (h) The Environmental Regulatory Commission is hereby authorized to:
 - (1) Act as lead agency for Tribal water quantity allocation, permitting and enforcement, including, but not limited to, water rights, surface water and underground water allocation and distribution, planning, contracts, and interstate stream compacts;
 - (2) Review and propose changes in this Act to the Pawnee Business Council including maintaining the natural resource regulations of the Pawnee Nation to meet or exceed federal regulations.
 - (3) Act as lead agency for all regulatory functions requiring administrative review, authorizations, and/or enforcement as specified by this Act.
 - (4) Consult, cooperate, and coordinate its operations with the DECS;
 - (5) Assist the DECS to develop enforcement authority within the Pawnee Nation and/or enter cooperative agreements for enforcement of this Act with final approval made by the Pawnee Business Council;
 - (6) Seek injunction against any person in violation of any regulation authorized under this Act in the Courts of the Pawnee Nation, or court of appropriate jurisdiction;
 - (7) Direct the examination and approval of plans and specification for waste disposal facilities and to inspect construction, remediation, operation, and closing of waste disposal sites, facilities, and other environmentally sensitive site operations, or designate a qualified agent to do so;
 - (8) Direct investigations which the ERC deems necessary to ensure compliance with provisions of this Act and its implementing regulations;
 - (9) Issue, continue in effect, revoke, amend, modify, condition, deny, renew or refuse to renew permits, licenses, certifications and other authorizations as specified under implementing regulations;
 - (10) Promulgate Rules and Regulations and issue, modify, or revoke orders requiring other actions such as the ERC may deem necessary to enforce the provisions of this Act and its implementing regulations.
 - (11) The ERC may, pursuant to resolution or written approval in a regular or special meeting of the ERC, delegate any authority to the Director of the DECS.
 - (12) Enact the implementing regulations of this Act including but not limited to the issuance, modification or revocation of permits, establish administrative enforcement procedures and hold hearings, issue orders or directives, and promulgate rules applicable to activities and persons subject to the jurisdiction of the Pawnee Nation as they may deem appropriate to protect the environmental resources and public health and welfare.
- (i) The Environmental Regulatory Commission shall not have administrative authority over operations and functions of the Pawnee Nation Department of Environmental Conservation and Safety and/or its staff.

Section 103. Review of Commission Actions

Any affected party may seek review in the District Court of the Pawnee Nation of any final order or decision of the ERC pursuant to the Administrative procedures Act.

Section 104. Removal of Commissioners

Commissioners may be removed for cause by the Pawnee Business Council.

Section 105. Duties and Responsibilities of the Director and Commission

In addition to the above listed duties and responsibilities, both the DECS Director and the Commission shall:

- (a) Seek to develop relationships between state, Tribal, regional, local and federal environmental planning, development, and management programs;
- (b) Seek to facilitate cooperation across jurisdictional lines of authority with state, Tribal, and federal environmental and natural resource agencies to resolve environmental problems;
- (c) Seek to cooperate with all state environmental agencies, other state agencies, local, Tribal, and federal governmental entities to protect, foster, and promote the general welfare, and the environmental and natural resources of the Tribe and the surrounding jurisdictions;
- (d) Have the authority to engage in environmental and natural resource information dissemination and education activities within but not limited to their respective areas of jurisdiction.

Section 106. Regulations

- (a) Adoption of Rules and Regulations

The Director and Commission are hereby authorized and directed to promulgate and publish rules and regulations which are deemed necessary to carry out, implement and enforce the goals, purposes and provisions of this Act. Said rules and regulations may include, without limitation, standards, tests, methods and procedures to be followed in permitting, permit renewal, inspection, permit revocation or suspension proceedings, and other enforcement actions pursuant to this chapter; the establishment of fines and/or penalties which may be imposed by the DECS or ERC for violations of this Act, including the revocation and/or suspension of any permit issued here under; the regulations authorized by this section, orders of the DECS and ERC, and/or the conditions of any permit issued hereunder; and the rules and procedures to be followed in any hearings conducted before the DECS and ERC. The rules and regulations adopted by the DECS and ERC pursuant to this section may be amended, modified or replaced from time to time in the discretion of the DECS and ERC as relevant, subject to the provisions of subsection (b) of this section.

- (b) Consistency with Act; Approval of Implementing Regulations

The rules and regulations, and any amendments, modifications or replacements thereof, shall be consistent with the goals, purposes and provisions of this Act and the Constitution of the Pawnee Nation. Provided, however, that prior to becoming effective, such rules and regulations shall be first submitted to and approved by Resolution of the Pawnee Business Council.

Section 107. Applications for Permits or other Authorizations

For permits or other authorizations required pursuant to the Pawnee Nation Natural Resource Protection Act, applicants shall file applications in the form and manner established by the DECS and/or ERC. The applications shall be reviewed as filed and subsequently amended or supplemented. Any permit issued or authorization granted may include conditions and fees.

Section 108. Assumption of Authority

- (a) The Tribe shall assume regulatory and enforcement authority over all environmental and/or conservation licenses, permits, certifications or registrations valid and existing within the Pawnee Nation's jurisdiction as soon as practicable after the effective date of this Act, as well as all such documents to be issued after the effective date of this Act;
- (b) Unexpired or un-revoked licenses, permits, certifications or registrations issued prior to the effective date of this Act shall remain valid for stated terms and conditions until otherwise provided by Pawnee Nation law. Such licenses, permits or registrations shall be subject to the laws and rules of the Pawnee Nation;
- (c) Nothing in the Pawnee Nation Natural Resource Protection Act shall operate to bar or negate any existing order, claim or cause of action available to any state environmental agency or the Tribe as its respective predecessor, nor shall it operate to affect enforcement action undertaken by any program, division or service of the state prior to such transfer to the DECS or ERC. Violations of provisions of law now contained in this title, and violations of rules, permits or final orders which occurred prior to the transfer of jurisdiction and authority to the DECS or ERC shall be subject to penalties available and existing at the time of violation.
- (d) Any application pending on the date of activation of this Act before the Oklahoma Department of Environmental Quality, Oklahoma Water Resources Board or the Oklahoma State Department of Health for a permit or license over which the DECS or ERC has assumed jurisdiction is hereby transferred to the DECS or ERC, as relevant, and shall be subject to the requirements of this Code.
- (e) All permit applications filed with the Oklahoma Department of Environmental Quality or Oklahoma Water Resources Board on or before the effective date of this Act, for which no permit has yet been issued by the Oklahoma Department of Environmental Quality or Oklahoma Water Resources Board shall be subject to the requirements of this Law.

Section 109. Customer Services and Response

The DECS and the ERC may engage in timely customer servicing and response. The DECS and ERC may:

- (a) Establish and maintain an information and referral system to assist the public in understanding and complying with the Tribe's requirements concerning the use of natural resources and protection of the environment. The system shall provide a telephone information service and disseminate printed materials;
- (b) Coordinate permitting efforts to standardize permits;
- (c) Provide for the posting of the relevant telephone numbers at all relevant public information centers; and
- (d) Maintain copies of all current rules of the DECS and ERC for public dissemination upon request.

Section 110. Complaint Resolution

The DECS and the ERC should develop, implement, and utilize their own complaint investigation and response process that will ensure complaint resolution. Complaints received which are not in the jurisdiction of the Pawnee Nation or are shared with another jurisdiction should be referred to such jurisdiction.

Section 111. Hearing Moderator

The ERC may engage one or more Hearing Moderators to conduct individual hearings, proceedings, preside over rulemaking and perform such other duties as are assigned to them by the ERC which are not inconsistent with their statutory duties.

Section 112. Schedules of Fees

- (a) The DECS and ERC shall establish schedules of fees to be charged for applications for, or the issuance of, new, modified or renewed permits, certificates, and other authorizations and for such other environmental or conservation services as are involved in the management or regulation of programs authorized by the provisions of this Act. Such fees shall be subject to the following limitations:
 - (1) The DECS and ERC shall follow the procedures required by the Pawnee Tribal Constitution for promulgation of rules in establishing or amending any such schedule of fees;
 - (2) The schedule of fees for each environmental function or program shall be based upon the reasonable costs of operating such environmental functions or programs, including, but not limited to, the costs of administration, personnel, office space, equipment, training, travel, inspection and review rendered in connection with each such function or program;
 - (3) Any facility exempt from the requirement to obtain a permit based on date of construction or start-up may be assessed an annual permit renewal fee equivalent; and
 - (4) Monies received from permit, license and certification programs, including but not limited to application, review, inspection, monitoring and operating fees, shall be expended only on the direct or indirect costs of the specific programs from which such monies originate.
- (b) The DECS and ERC shall establish a schedule of fees to be charged for services including, but not limited to, searches, compilations, certifications or reproduction of maps and publications, transcripts, blueprints, computer data, electronic recordings or documents. Such fees shall be based on the actual cost of materials and labor to the DECS and ERC for the provision of such services.
- (c) The authority to establish fee schedules by rule shall extend to all programs administered by the DECS and ERC.

CHAPTER TWO – Natural Resource Protection Policy

Section 201. Purpose

The purpose of this chapter is to establish and implement a Pawnee Nation Natural Resource Protection Policy which will encourage productive and enjoyable harmony between human beings and their environment; to promote efforts which will prevent or eliminate damage to the natural resources and the environment; and to enrich the understanding of the ecological systems and natural resources important to the Pawnee Nation.

Section 202. Policies and Goals

- (a) The Pawnee Business Council, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, declares that it is the continuing policy of the Pawnee Nation, in cooperation with federal, state and local governments, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which human beings and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations.

In order to carry out the policy set forth in this Act, it shall be the continuing responsibility of the Pawnee Nation to use all practicable means, consistent with other essential considerations of Pawnee Nation law, policy, and customs, to improve and coordinate plans, functions, programs, and resources to the end that the Pawnee Nation may:

- (1) fulfill the responsibility of each generation of human beings as trustees of the environment for succeeding generations;
- (2) assure for all human beings a safe, healthful, productive and aesthetically and culturally pleasing surroundings;
- (3) attain the widest range of beneficial uses of the environment without degradation of the Pawnee Nation's natural resources;
- (4) preserve important historic, cultural, religious, and natural aspects of Pawnee Tribal heritage;
- (5) analyze the potential environmental effects of proposed actions and their alternatives;
- (6) enhance the quality of renewable resources and achieve their maximum value and yield;
- (7) provide Departmental, administrative, civil and criminal remedies and sanctions in favor of the Pawnee Nation against any persons who violate this Act or any regulations adopted hereunder, and, to the maximum extent possible, enforce these remedies and sanctions against such persons;
- (8) prohibit the improper storage, burial or disposal of any solid waste, or nuclear, hazardous or toxic refuse, by-product, waste or material within the jurisdiction of the Pawnee Nation, or that could affect natural resources within the jurisdiction of the Pawnee Nation;

- (9) provide for regulation and taxation of interests, actions and omissions that adversely affect the natural resources of the Pawnee Nation;
- (10) promote, develop, and utilize “preventive” strategies as apposed to “ after the fact” concepts of dealing with environmental and natural resource management issues;
- (11) practice compliance assistance as appropriate to encourage compliance to the laws and regulations as authorized under this Act. Compliance assistance may be the use of any departmental process which is intended as an option for adjudication or other administrative enforcement actions;
- (12) adopt and adhere to “continuous monitoring” strategies and concepts for management and enforcement to assure early detection and/or prevention of cause to the impairment of natural resources; and
- (13) utilize whenever possible, means of development, job creation, construction and resource use that are environmentally friendly and reflective of Tribal culture and history.

Section 203. Implementation

The Director, Commission, and/or other authorized representative of the Pawnee Nation are authorized and directed to prescribe, promulgate as required, implement, and enforce laws, rules, and regulations, which shall be approved by the Pawnee Business Council.

Section 204. Cooperation of Pawnee Nation Departments and Programs

The Pawnee Business Council authorizes and directs that, to the fullest extent possible:

- (a) The policies, regulations and laws of the Pawnee Nation shall be interpreted and administered by its departments and programs in accordance with the policies, procedures, and regulations adopted pursuant to §203 of this Act; and
- (b) All departments of the Pawnee Nation undertaking activities regulated by this chapter shall:
 - (1) utilize a systematic, interdisciplinary approach to ensure the integrated use of natural and social sciences in planning and in decision making which may have an impact on the environment, natural resources and public health;
 - (2) identify and develop methods and procedures which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations consistent with the regulations adopted under this chapter; and
 - (3) include in all recommendations and reports on proposals for the action, projects and programs identified in the regulations adopted under this chapter, a statement by the responsible official on:
 - (i) environmental impacts of the proposed action,
 - (ii) any adverse environmental effects on lands of the Pawnee Nation which cannot be avoided should the proposal be implemented,
 - (iii) alternatives to the proposed action,
 - (iv) the relationship between local short-term use of the environment and the maintenance and enhancement of long-term productivity, and
 - (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

- (4) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;
- (5) make available to other Indian tribes and Nations, states, and federal agencies and offices advice and information useful in restoring, maintaining, and enhancing the quality of their environment;
- (6) initiate and utilize ecological information in the planning and development of natural resource oriented projects.

Section 205. Conformity of Administrative Procedures

All departments of the Pawnee Nation shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance herein, report findings to the DECS, and take all measures as may be necessary to bring their authority and policies into conformity with the intent, purpose and procedures set forth in this Article.

Section 206. Statutory Obligations

Nothing in this Act shall in any way affect the specific statutory obligations of any department:

- (a) To comply with criteria or standards of environmental quality;
- (b) To coordinate or consult with any other department or intergovernmental agency, or;
- (c) To act, or refrain from acting contingent upon the recommendations or certification of any other department.

Section 207. Policy Supplementary

The policies and goals set forth in this Act are supplementary to those set forth in existing or future authorizations of departments and programs of the Pawnee Nation.

CHAPTER THREE – General Enforcement Provisions

Section 301. Purpose.

The purpose of this Chapter is to provide generalized enforcement provisions for the implementation of this Act.

Section 302. General Enforcement Authority

- (a) General Authority. Whenever, on the basis of any information available to the Director or Commission, the Director or Commission finds that any person (including the Pawnee Nation and any instrumentality of the Pawnee Nation) has violated, or is in violation of, any requirement or prohibition of this Act, its laws, the regulations promulgated under this Act, or permits, orders, plans, programs or fees issued or developed pursuant to this Act, the Director may:
- (1) Issue and serve on such person an order requiring such person to comply with such requirement or prohibition, including an emergency order to comply, pursuant to the provisions of this section;
 - (2) Issue and serve on such person an administrative penalty order in accordance with section 305 of this Act;
 - (3) Request that the Attorney General bring a civil action, including an action for injunctive relief in accordance with this Act; and/or
 - (4) Request that the Pawnee Nation Prosecutor's Office bring a criminal action in accordance with this Act and/or refer any criminal enforcement action or portion of such action to the appropriate court of jurisdiction.
- (b) Requirements for orders to comply.
- (1) An order issued under subsection (a)1 or (a)2 of this section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to regulations promulgated by the Director or Commission under this Act, if such hearing is requested in writing within 30 calendar days after the date of issuance of the order, and shall specify a time for compliance that the Director or Commission determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.
 - (2) The order shall become effective immediately upon the expiration of the 30 calendar days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director or Commission.
 - (3) The order may be conditional and require a person to refrain from particular acts unless certain conditions are met.
 - (4) A copy of the order shall be sent to the appropriate U.S. EPA region and, if the order is issued to a corporation, to the appropriate corporate officers and registered agent of the corporation.
 - (5) No order to comply issued under this section shall prevent the Pawnee Nation from assessing any penalties or otherwise affect or limit the Pawnee Nation's authority to enforce under other provisions of this Act, or affect any person's obligations to comply with any section of this Act or with a term or condition of any permit or other requirements promulgated or approved under this Act.

- (c) Emergency compliance orders.
 - (1) Notwithstanding any permit issued under this Act, if the Director determines that discharge of pollutants is presenting an imminent and substantial endangerment to public health or welfare or the environment and determines, in consultation with the Attorney General, that it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of a civil action pursuant to subsection (e) of this section, the Director may issue such orders as may be necessary to protect public health or welfare or the environment.
 - (2) Such orders may prohibit, restrict or condition any and all activities that contribute or may contribute to the emergency, shall be effective immediately upon issuance and shall remain in effect for a period of not more than 60 days, unless the Director brings an action pursuant to subsection (e) of this section within the 60-day period. If the Director brings such an action, the order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.
- (d) Enforcement of compliance orders. Enforcement actions of the Director shall be enforced by the Pawnee Nation Division of Public Safety (DECS, Rangers, Police), the Pawnee Nation Prosecutors Office, and/or Pawnee Nation Environmental Regulatory Commission as authorized by regulations. Those authorized to enforce the Director's actions may take reasonable steps to assure compliance, consistent with the requirements established by this Act (including rights of appeal), including but not limited to:
 - (1) Entering upon any property or establishment believed to be violating the order and demanding compliance; and
 - (2) Terminating operations at facilities not in compliance.
- (e) Injunctive relief. The Director may seek injunctive relief pursuant to this Act to restrain any person who causes or contributes to an imminent and substantial threat to the public health or welfare or environment due to any activity affecting the natural resources of Pawnee Nation.

Section 303. Judicial Enforcement

- (a) Civil judicial enforcement. The Director may request the Attorney General to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties of not less than \$200 and not more than \$25,000 per day per violation, or be banished from the Pawnee Nation for a term of not more than ten years, or both in any of the following instances:
 - (1) Whenever a person has violated, or is in violation of, any provision, requirement or prohibition of this Act, including, but not limited to, a regulation or plan adopted pursuant to this Act, a permit or an order issued pursuant to this Act or a fee assessed under this Act;
 - (2) Whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities; or
 - (3) Whenever a person is creating an imminent and substantial endangerment to the public health or the environment, in which case the Director shall request the Attorney General to pursue injunctive relief but not the assessment of civil penalties, unless the endangerment is caused by a violation, as specified in paragraphs 1 and 2.

- (b) Criminal penalties.
- (1) Any person who intentionally:
 - (i) Violates any provision, requirement or prohibition of this Act, including but not limited to a regulation or plan adopted pursuant to this Act or a permit or an order issued pursuant to this Act; or
 - (ii) Makes any false material statement, representation or certification in, or omits material from, or alters, conceals or fails to file or maintain any notice, application, record, report, plan or other document required to be filed or maintained pursuant to this Act, regulations or plans adopted pursuant to this Act or a permit or an order issued pursuant to this Act; or
 - (iii) Falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this Act, regulations or plans adopted pursuant to this Act or a permit or an order issued pursuant to this Act; shall, upon conviction,
 - (2) be punished by a fine of not more than \$25,000 per day of violation, or imprisonment for not more than one year, or both, or be subject to any other penalty imposed by the court that is available under Pawnee Nation law.
 - (3) In any instance where the Nation lacks jurisdiction over the person charged, or where the Director is limited in the amount of the fine that he may impose, the Director may refer the action to the appropriate Tribal, State, or Federal authority pursuant to this Act. For the purpose of this subsection, the term “person” includes any responsible corporate officer.
- (c) Jurisdiction and venue. Any action under this section shall be brought in the Pawnee Nation District Court in Pawnee, Oklahoma, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil and criminal penalties up to the amounts provided in this section, collect any fees or noncompliance penalties owed the Nation under this Act, and award any other appropriate relief.
- (d) Calculation of penalties
- (1) For purposes of determining the number of days of violation for which a civil penalty may be assessed under this Act, if the Director has notified the source in writing of the violation and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Pawnee Nation District Court that alleges any violation described in subsection (a) of this section.
 - (2) In determining the amount of a penalty assessed under this Act, the court shall consider the history, seriousness and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator’s full compliance history, including the severity and duration of past violations, if any; the

economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any, resulting from the violation; and any other factors that the court deems relevant. For purposes of Chapter V of this Act (Water Resource Protection), a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

- (3) All penalties collected pursuant to this section shall be deposited into the Environmental Regulatory Revolving Fund established pursuant to section 308.
 - (4) In lieu of or in addition to a monetary penalty, the Director may impose or may request the Attorney General to seek from the court a requirement to remediate the damage caused or to perform community service, or both.
- (e) Failure to pay penalty.
- (1) If any person fails to pay an assessment of a civil penalty, the Director shall request the Attorney General to bring a civil action in the Pawnee Nation District Court to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review.
 - (2) Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings.
 - (3) Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be no less than ten percent of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter; the Director may by regulation establish higher penalties to take into account situations where the prime rate is higher.

Section 304. Administrative Assessment of Penalties

- (a) Basis for penalty.
- (1) The Director or Commission may issue against any person an administrative order assessing a civil administrative penalty of up to \$10,000 per day per violation whenever the Director finds that a person has violated, or is in violation of, any provision, requirement or prohibition of this Act, including, but not limited to, a regulation or plan adopted pursuant to this Act, a permit or an order issued pursuant to this Act or a fee assessed under this Act.
 - (2) The Director and Commission's authority under this subsection, combined with actions under subsection (c), shall be limited to matters where the total penalty sought does not exceed \$100,000 and the first alleged date of violation occurred no more than one year prior to the initiation of administrative action, except where the Director and/or Commission, and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action.
 - (3) The communications required to make such a joint determination and the method(s) utilized for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify or

remit, with or without any conditions, any administrative penalty imposed under this section.

- (b) Hearing requirement. Any person assessed an administrative penalty under this section may request a hearing, pursuant to the Administrative Procedures Act.
- (c) Field citations. The Director may implement a field citation program through regulations establishing minor violations for which field citations (assessing civil penalties not to exceed \$1,000 per day per violation) may be issued by officers or employees designated by the Director, for any violation for which an administrative order could be issued to the extent permissible under applicable law. Any person on whom a field citation is assessed may, pursuant to regulations issued under this section, elect to pay the penalty or request a hearing on the citation. If a timely request for a hearing is not made, the penalty shall be final and the opportunity for judicial review shall be waived. Any hearing shall provide a reasonable opportunity to be heard and to present evidence. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this Act, except as to the days of violation for which the penalty required by a field citation is paid.
- (d) Judicial review. Any person subject to a civil penalty under subsections (a) or (c) of this section may seek review of such penalty assessment in the Pawnee Nation District Court pursuant to the Administrative Procedures Act.
- (e) Failure to pay penalty. If any person fails to comply with an administrative penalty order after the order or assessment has become final, the Director shall request the Attorney General to bring a civil action in the Pawnee Nation District Court to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be no less than 10 percent of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter; the Director or Commission may, by regulation, establish higher penalties to take into account situations where the prime rate is higher.
- (f) Calculation of penalty. In determining the amount of any penalty to be assessed under this section, the Director or the court, as appropriate, shall take into consideration the factors enumerated in section 303(d) of this Act.

Section 305. Citizen Suits

- (a) Authority to bring civil action; jurisdiction
 - (1) Except as provided in subsection (b) of this section, a person may commence a civil action in the Pawnee Nation District Court on his or her own behalf against any person (except the Pawnee Nation or any instrumentality of the Pawnee Nation) who is alleged to be in violation of any provision, requirement or prohibition of this Act, including but not limited to a regulation or plan adopted

pursuant to this Act, a permit or an order issued pursuant to this Act or a fee assessed under this Act.

- (2) The Pawnee Nation courts shall have jurisdiction to enforce such provision, prohibition, regulation, plan, permit, order, fee or other requirement, to restrain such violation, to order such person to take such other action as may be necessary and to apply any appropriate civil penalties.
- (b) Notice. An action may not be commenced under subsection (a)1. of this section fewer than 60 days after the plaintiff has given notice of the alleged violation to the Director, the Pawnee Nation and the alleged violator. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting a civil action in court to require compliance with this Act, except that any person may intervene as a matter of right in such an action.
 - (c) Venue; intervention; service of complaint
 - (1) Any action under this section may be brought only in the Pawnee Nation District Court.
 - (2) The Director, if not already a party, may intervene as of right in any action brought under this section.
 - (3) Whenever any action is brought under this section the plaintiff shall serve a copy of the complaint on the Attorney General and on the Director. No consent judgment may be entered in an action brought under this section in which the Director is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Director, during which time the Attorney General and/or the Director may submit, on behalf of the Pawnee Nation, their comments on the proposed consent judgment to the court and parties or the Director may intervene as a matter of right.
 - (d) Award of costs. The court, in issuing a final order in an action brought under this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever the court determines that such award is appropriate.
 - (e) Use of penalties. All penalties collected pursuant to this section shall be deposited into the Environmental Regulatory Revolving Fund established pursuant to section 310.

Section 306. Inspections and Records

- (a) Any duly authorized representative of the Pawnee Nation, DECS, or ERC as relevant shall have the power to enter at any time upon any private or public property, within the jurisdiction of the Pawnee Nation, for the purpose of monitoring, sampling, inspecting, and investigating conditions relating to the condition and/or damage to fish, wildlife, other natural resources, or the possible pollution or impairment of any air, land, waters, or any other natural resource of the Pawnee Nation, or the environment or relating to any other environmental or permitting responsibility authorized by law.
- (b) The Pawnee Nation, DECS, or ERC as relevant may require the establishment and maintenance of records and reports relating to any activity regulated by them. Copies of such records shall be submitted to the DECS or ERC, as relevant, upon request. Any authorized representative of the DECS or ERC shall be allowed access and may examine such reports or records.
- (c) The Pawnee Nation, DECS, or ERC as relevant may apply to and obtain from a judge of the District Court of the Pawnee Nation, or appropriate court, an order authorizing a

warrant to enforce access to premises for sampling, investigation, inquiry and inspection under the provisions of this Act and regulations promulgated hereunder. Failure to obey an administrative warrant of the district court may be punished by the district court as a contempt of court.

- (d) The Pawnee Nation may commission DECS staff and/or appoint commissioned peace officers to investigate noncompliance and provide criminal enforcement of this Act.

Section 307. Pollution Unlawful.

It shall be unlawful for any person to cause pollution or damage of any air, water, land or natural resources of the Nation, or to place or cause to be placed any wastes or pollutants in a location where they are likely to cause pollution of any air, water, land or resources of the Nation. Any such action is hereby declared, at minimum, to be a public nuisance and may be subject to the criminal penalties under Title VI Section 605 of this Code and/or other criminal or civil provisions of this Code.

Section 308. Environmental Regulatory Revolving Fund

There is hereby created a revolving fund for the use by the DECS and ERC, to be designated the "Environmental Regulatory Revolving Fund." The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received from appropriations, administrative penalties, fees, charges, gifts and monies from any other source that are not designated for deposit to any other fund authorized by this Act. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the DECS and ERC for the purpose of implementing and enforcing this Act.

Section 309. Culpability

Any person(s) who is willfully and, knowingly or unknowingly in violation of this Act shall be held responsible and liable for their actions whether with or without knowledge of this Act, its prohibitions, and/or the jurisdiction or ownership of land, air, or water resources potentially and/or directly impacted as a result of their violation. The Pawnee Nation, ERC, DECS, its staff, and/or designated agents shall not be held liable for loss of property, time and/or revenues (earned or lost, actual or estimated), damages, or claims incurred while operating under the authority of this Act.

Section 310. Appeals

Any party aggrieved by a final order, including the Tribe, may, pursuant to the Pawnee Tribe of Oklahoma Law and Order Code and Pawnee Nation Administrative Procedures Act as appropriate, petition for a judicial review thereof, in the District Court of the Pawnee Nation.

CHAPTER FOUR – Water Resource Protection

Section 401. Declaration of Policy and Authority

- (a) The objective of this Chapter is to protect and improve the chemical, physical, and biological integrity of the waters within Pawnee Indian Country. Whereas the pollution of the waters within Pawnee Indian Country constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational, cultural, and other legitimate beneficial uses of water, it is hereby declared to be the public policy of the Pawnee Nation to recognize, conserve, and utilize the water resources within Pawnee Indian Country and to protect, maintain, and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, recreational, cultural, and other legitimate beneficial uses. In order to achieve this objective it is hereby declared that:
- (1) it is the Tribe's goal that the introduction of pollutants into the waters within Pawnee Indian Country be eliminated;
 - (2) it is the Tribe's goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreational or cultural use in and on the water be achieved;
 - (3) it is the Tribe's policy that the discharge of toxic pollutants in significant amounts be prohibited;
 - (4) it is the Tribe's policy to actively participate in the federal regulatory process for the purpose issuing and enforcing discharge permits within Pawnee Indian Country to assure adequate control of water quality of the waters within Pawnee Indian Country;
 - (5) it is the Tribe's policy that programs for the control of point sources and non-point sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Chapter to be met through the control of both point and non-point sources of pollution; and
 - (6) it is further the policy of the Tribe that the President of the Pawnee Business Council shall take such action as may be necessary to insure that to the fullest extent possible all surrounding states and Tribes take meaningful action for the prevention, reduction, and elimination of pollution into the waters within Pawnee Indian Country and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the Tribe does under its laws.
- (b) This Chapter asserts the authority of the Pawnee Nation to implement the goals and policies of the Nation to:
- (1) Restore, maintain and improve the chemical, physical and biological integrity of water resources of the Pawnee Nation.
 - (2) Utilize area-wide planning and management to control sewage and other discharges.
 - (3) Assert and defend the Pawnee Nation legal rights and claims to surface waters, wetlands, ground waters and related natural resources including fish, wildlife,

plants, critical habitats, and ecological processes to support these aquatic resources.

- (4) Monitor and ensure that the United States and surrounding states and nations take meaningful action to protect water quality and comply with applicable laws for the protection of resources, whenever their actions or inaction may harm the Nation's waters or resources.
- (5) Hold anyone who has, without authorization, used or damaged the Nation's waters, aquatic life or its habitat, or related natural resources accountable for restoring the same to their original condition or compensating the Nation for such damage or unauthorized use.
- (6) Identify and protect waters and resources of the Nation with special cultural or historical significance, and develop and enforce such standards and anti-degradation provisions as may be appropriate for such purposes.
- (7) Identify, protect, preserve, or restore water resources to support both existing and reserved uses.
- (8) Engage in planning and participate in decision-making to assure that the Nation's waters and related natural resources are developed in a manner consistent with the goal of long-term, sustainable use and protection for future generations.
- (9) Prohibit the discharge of toxic pollutants in toxic amounts and, to the extent practicable eliminate, or effectively control, the discharge of pollutants from any source.
- (10) Require environmental review of proposed activities which may cause individual or cumulative adverse impacts to water quality, natural resources, public health, lands, recreation, cultural or historical values, air, quality of life, or other aspects of the Nation's environment;
- (11) Require projects to be modified to avoid adverse impacts if possible, to minimize unavoidable impacts, and provide full mitigation for unavoidable impacts.
- (12) Prohibit or regulate activities which may cause or contribute to a violation of this Chapter and applicable water quality standards, or a violation of federal law.

Section 402. Definitions

For the purpose of this article:

- (a) "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 watersheds within Pawnee Indian Country.
- (b) "Agricultural resources" means soil, livestock, crops, water resources, or any part of which is of agricultural use.
- (c) "Best Management Practices" (BMP) 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 Pawnee waters. BMPs 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, and includes the definition found in 40 CFR Section 122.2.

- (d) "Commission" means the Pawnee Environmental Regulatory Commission.
- (e) "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.
- (f) "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 Pawnee waters.
- (g) "Contamination" means impairment of the quality of water by pollutants, creating a hazard to human health, agricultural resources, aquatic life, wildlife, and plant life.
- (h) "Department" or "DECS" means the Pawnee Nation Department of Environmental Conservation and Safety.
- (i) "Director" means the Director of the Pawnee Nation Department of Environmental Conservation and Safety or its designee.
- (j) "Discharge of a pollutant" or "discharge" means any addition of a pollutant or combination of pollutants to Pawnee waters from any point source.
- (k) "Disposal system" means a system for disposing of sewage, industrial wastes, or other pollutants and includes sewage systems and treatment works.
- (l) "Effluent limitation" means any restriction or prohibition established under this Chapter or by the Environmental Protection Agency on quantities, discharge rates, and concentrations of chemical, physical, and biological constituents which are discharged from point sources into Pawnee waters, including, but not limited to, standards of performance for new sources, and schedules of compliance.
- (m) "Nation" means the Pawnee Nation of Oklahoma.
- (n) "Nonpoint source" means Pollution that is generated by distributed land use activities rather than from an identifiable or discrete source and is conveyed to waterways through natural processes, such as rainfall, storm water runoff, or groundwater seepage rather than direct discharges.
- (o) "Owner or operator" means any person who owns, leases, operates, controls, or supervises:
 - (1) a source, or
 - (2) real property, the operation or maintenance of which is subject to the application of best management practices.
- (p) "Pawnee Indian Country" means all areas of Land under Pawnee Nation jurisdiction.
- (q) "Pawnee reservation" means all land, air, water, and mineral resources (all individual and tribal trust lands and fee land) within the original boundary of the Pawnee nation as established by the Act of April 10, 1876.
- (r) "Pawnee water" means all the waters, surface and ground, supplying, arising upon, occurring within, flowing through, and bordering upon, the boundaries of the Pawnee Reservation as established in 1876.
- (s) "Permit" means a permit issued pursuant to Section 611 of this Chapter or by the Federal government
- (t) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental

- subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- (u) "Point source" means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, container, casing, dam gate or spillway, well, discrete fissure, container, rolling stock, or vessel or other floating craft, confined animal feeding operations and landfill leachate collection systems, petroleum production lease lines or underground injection system lines from which pollutants are or may be discharged.
 - (v) "Pollution" or "pollutant" means any contamination or alteration of the physical, chemical, or biological properties of any waters that will render the waters harmful or detrimental to:
 - (1) Public health, safety, or welfare
 - (2) Domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses
 - (3) Livestock, wild animals, or birds
 - (4) Fish or other aquatic life
 - (w) "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.
 - (x) "Source" means any building, structure, facility, device, vessel, container, or installation from which there is or may be a discharge of pollution.
 - (y) "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, a standard permitting no discharge of pollutants.
 - (z) "Treatment works," means works or facilities installed for treating or holding sewage, industrial wastes, or other wastes.
 - (aa) "Water quality standard" means any standard adopted pursuant to this Chapter or the CWA.

Section 403. Administration and Authority

- (a) The provisions of this Chapter will be administered and enforced by the Pawnee Nation Department of Environmental Conservation and Safety (DECS), which is hereby designated as the Tribal Water Resource Protection Agency for all purposes of the United States Clean Water Act, 33 U.S.C. §1251 et seq. (hereafter "CWA"). The Pawnee Nation Environmental Regulatory Commission is hereby responsible for the development and administration of regulations as authorized in this Chapter.
- (b) Authority of the Department of Environmental Conservation and Safety The DECS shall have the authority and the responsibility of the following:
 - (1) Carry out the implementation and enforcement provisions of this Chapter, including enforcement of civil penalty provisions, criminal prosecution of violators and such other administrative and judicial relief as may be appropriate;
 - (2) Administer waste discharge permit system as provided in this Chapter;
 - (3) Monitor waste discharges and the water resources of the Pawnee Nation;
 - (4) Recommend to the Pawnee Business Council and Commission the adoption, modification, or repeal of laws and regulations to accomplish the goals of this act;

- (5) To enter and inspect at any time and in any manner any open 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 Chapter. Such entry is also authorized in regulated businesses for the purpose of inspecting and copying records required to be kept concerning any effluent source;
 - (6) To obtain from the Tribal Court or other appropriate court a warrant to enter and inspect any private property, premise, or place, prior to entry and inspection;
 - (7) To stop or detain any vehicle, instrument, or person(s) observed or suspected to be in violation of this Chapter, with or without warrant for the purpose of investigation, enforcement, arrest, inspection, issuance of citation, notice to appear order, or detainment on behalf of other local, state, tribal, or federal agency;
 - (8) To issue emergency orders and to bring or defend enforcement action in Tribal Court or appropriate court to enforce the provisions of this Chapter;
 - (9) To conduct or cause to be conducted studies, research, and demonstrations with respect to the reduction or prevention of water pollution;
 - (10) To furnish technical advice and services relating to water pollution problems and control techniques;
 - (11) 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 Chapter; but any agreement involving, authorizing, or requiring compliance within the Pawnee Indian Country with any standard, rule or regulation of another jurisdiction shall not be effective unless or until the Department or the Council have provided approval;
 - (12) To certify facilities or activities subject to Tribal or federal licensing requirements;
 - (13) To issue, modify, or revoke permits pursuant to this Chapter, and to grant or deny variances;
 - (14) Develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the waters of this Nation;
 - (15) Require or conduct monitoring and testing of waters and discharges, and the submission of reports or laboratory analyses performed by laboratories or operators;
 - (16) Require the submission of plans, specifications and other data in connection with the issuance of permits or certifications required pursuant to this article;
 - (17) Issue, modify, or revoke orders requiring other actions such as the Pawnee Business Council or Commission may deem necessary to enforce the provisions of this article, and the laws and regulations promulgated there-under.
- (c) Authority of the Environmental Regulatory Commission
- The Commission shall have the Authority and Responsibility pursuant to this act to:
- (1) Adopt standards of quality of the waters of the Nation and classifications of such waters, and promulgate regulations to protect, maintain and improve the best uses of waters in this Nation and establish such best management practices and conditions as may be necessary or appropriate for the prevention, control and abatement of pollution;

- (2) Develop comprehensive regulatory process for the prevention, control and abatement of new or existing pollution of the waters of this Nation;
 - (3) Require the submission of plans, specifications and other data in connection with the issuance of regulatory permits required pursuant to this article;
 - (4) Require monitoring and testing of waters and discharges, and the submission of reports or laboratory analyses performed by certified laboratories or operators;
 - (5) Issue swimming, fishing, or other advisories related to human and animal health hazards;
 - (6) Issue, continue in effect, revoke, amend, modify, condition, deny, renew, or refuse to renew permits, licenses, water quality certifications and other authorizations as issued by the commission;
 - (7) Establish a schedule of fees for permits, studies, laboratory services or technical assistance and for recovering copy and other costs in response to open records requests;
 - (8) Establish, implement, amend and enforce a Water Quality Management Plan and total maximum daily loads;
 - (9) Issue, modify, or revoke orders requiring the construction of new disposal or treatment systems or the modification or extension of existing systems, or the adoption of other remedial measures to prevent, control or abate pollution, and
 - (10) Issue, modify, or revoke orders requiring other actions such as the Commission may deem necessary to enforce the provisions of this article and regulations promulgated there-under.
- (d) Emergencies.
- Whenever the Director determines, after investigation, that any person is engaged in an activity causing, threatening, or allowing the discharge or contamination of a pollutant onto the land or into Pawnee waters, which pollution, in the opinion of the Director, constitutes a clear, present, and immediate danger to human health or to the livelihood of Pawnee people, the Director shall issue a verbal or 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 shall initiate appropriate enforcement action against the responsible party.

Section 404. Water Pollution Control

The DECS shall develop comprehensive programs for preventing, reducing, or eliminating the pollution of the waters and ground waters of the Tribe. DECS shall make reasonable efforts to cooperate with neighboring jurisdictions and persons that are affected by the programs. In the development of such programs due regard shall be given to the improvements which are necessary to conserve such waters for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and the withdrawal of such waters for public water supply, agricultural, industrial, and other purposes. Programs may include Dredge or Filled Material (CWA 404 Permits), National Permit Discharge Elimination System (CWA 402 Permits), joint NPDES Permitting, or Tribal Certification of Federal Permits and Licenses. The Director is authorized to initiate or make joint investigations with any such agencies of the condition of any waters in any state or Tribe affecting the waters of the Tribe, and of the discharges of any sewage, industrial wastes, or any substance derived from point source or non point source pollutants which may adversely affect such waters.

Section 405. Cooperative Agreements

The DECS may negotiate with the U. S. Environmental Protection Agency for the purpose of establishing and entering into a Cooperative Agreement, Joint Permitting, Permitting, or Certifications for administration of NPDES programs and water pollution control programs including but not limited to monitoring, inspections, certifications, and enforcement.

Section 406. In-place Pollutants

The DECS is authorized to identify the location of in place pollutants with emphasis on toxic pollutants in Pawnee Nation waters, and is authorized, subject to Pawnee Business Council approval, to negotiate contracts for the removal and appropriate disposal of such materials in order to assure protection of both surface and ground water resources.

Section 407. Water Quality Certification

The Pawnee Nation Business Council hereby establishes the Pawnee Nation Water Quality Certification program and authorizes the Director to develop, direct, administer, and enforce all Certifications issued pursuant to this Chapter. Upon fulfillment of all federal conditions for approval of its certification program, the Director may certify compliance with all applicable water quality requirements by an applicant for a federal license or permit to conduct any activity within Pawnee Indian Country which may result in a discharge into Pawnee waters. Such activity may include the construction or operation of facilities pursuant to such federal permit or license.

Section 408. Unlawful Acts-Penalties

- (a) Unlawful acts: The following unlawful acts are each a crime and subject to enforcement provisions of this Law, unless the proper entity has first obtained a permit or written authorization from the Pawnee Nation as authorized under this Law:
- (1) It is unlawful to for any person to cause pollution to be introduced into any waters within Pawnee Indian Country or to place or cause to be placed any contaminant or waste in a location upon the lands where they are likely to cause pollution of any water within Pawnee Indian Country;
 - (2) It is unlawful to violate any provision set forth in any permit or certification issued within Pawnee Indian Country;
 - (3) It is unlawful to violate any provision set forth by any order issued pursuant to this Chapter;
 - (4) It is unlawful to cause a violation of any numeric or narrative criteria established within the Pawnee Nation Water Quality Standard or Pawnee Nation Ground Water Quality Standard, or any provision of any other applicable water quality standard;
 - (5) It is unlawful to violate any provision of this Chapter or any control regulation or rule promulgated pursuant to this Chapter;
 - (6) It is unlawful to construct, modify, or operate any pollution disposal system within Pawnee Indian Country without having a current permit authorizing such activity;
 - (7) It is unlawful to construct or use without permit any outlet for the discharge of sewage, industrial waste, petroleum waste, brine water, or any other pollutant or wastes onto the lands or into any waters within Pawnee Indian Country;

- (8) It is unlawful to construct, use, or operate any outlet used for draining secondary containment of spilled product or contaminated storm water in a manner which is not permitted or otherwise authorized under 40 CFR Part 112.
 - (9) It is unlawful to conduct dredge and fill activities in or adjacent to waters of the Nation or violate any permit provision or condition thereof.
 - (10) It is unlawful to land apply or dispose of any waste, waste water or sludge without permit.
 - (11) It is unlawful to operate any motor vehicle (agricultural, off road, or highway), water craft, or machinery upon any air, land, or water in any unsafe or illegal manner that may have potential for release or results in a release of any pollutant onto the lands or into any waters within Pawnee Indian Country (including railway crossing violation, bridge crossing violations, and other moving violations such as careless or reckless operations, speed restrictions and other posted signage violations);
 - (12) It is unlawful to violate any Tribal Notice of Violation, Corrective Action, Order, Certification or permit issued under the authority of this Chapter, or any other Act or code of the Pawnee Nation for the purpose of water quality protection.
 - (13) It is unlawful to discharge any pollutant into Pawnee waters without having first obtained a permit from the Pawnee Nation or USEPA for such discharge. Neither a permit issued pursuant to this Chapter nor an application therefore creates or recognizes a right in the permit holder or applicant to use Pawnee waters for beneficial purposes or any other property right or interest.
- (b) The Commission may establish specific exemptions to the requirements of this section by regulation pursuant to the Administrative Procedures Act.
- (c) Penalties:
- (1) Any person suspected by an investigating enforcement officer to be in violation of this section may be issued a citation for such offence.
 - (2) Violations may be remedied by either civil or criminal damages or sanctions. The maximum criminal penalty per violation for violators subject to the criminal jurisdiction of the Pawnee Nation shall be \$1000.00 per violation or up to one year imprisonment, community service, or any combination thereof.
 - (3) The maximum civil penalty for any person in violation of this section is \$1000.00 per violation, injunctive relief, or banishment from the jurisdiction of the Pawnee Nation for up to one year, or any combination thereof.
 - (4) Maximum monetary penalty shall not exceed \$5,000 for criminal or civil penalty per violation.
 - (5) The Court may also award actual and punitive damages.
 - (6) Continuing violations shall be considered a new violation for each 24 hour period. Enforcement of provisions of this section does not diminish the Pawnee Nation's ability to enforce and seek penalty as prescribed in other sections of this Act.
 - (7) Penalties for violation of this section are as established in Section 307 of Chapter III of Title XII of this Law and Order Code.

Section 409. Specific Provisions

The following provisions are protective of the natural and cultural resources of the Pawnee Nation. Any person suspected by an investigating enforcement officer to be in violation of this section may be issued a citation, notice to appear, or other order by the enforcement officer for

such offence. Violations may be remedied by either civil or criminal damages or sanctions. Maximum monetary penalty shall not exceed \$5,000 for criminal or civil penalty per violation. Continuing violations shall be considered a new violation for each 24 hour period. The Court may also award actual and punitive damages. Enforcement of provisions of this section does not diminish the Pawnee Nation's ability to enforce and seek penalty as prescribed in other sections of this Chapter. Penalties for violation of this section are as established in Section 307 of Chapter III of Title XII of this Law and Order Code.

Section 410. Streambed Alteration

Disturbance of earth or vegetation shall not be allowed within the high water mark of any stream without receiving a permit or authorization from the Pawnee Nation. Any person proposing the project shall submit a work plan to the Director for review at least 30 days before disturbing a stream bed. As a part of the review process, the Director may consult the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, U.S. Army Corp. of Engineers, and the Bureau of Indian Affairs for recommendations. On this basis, the Director may issue a permit, deny a permit, or request further review.

Section 411. Minimum In-Stream Flow.

- (a) Under this Chapter, minimum in-stream flow for cultural and traditional uses, fish and aquatic life, groundwater recharge for public water supply, recreation and aesthetic purposes are legitimate beneficial uses.
- (b) Any person proposing to remove water from streams and waterways for irrigation purposes or agricultural use must demonstrate to the Pawnee Nation that the proposed activities will not reduce minimum stream-flow to less than ten (10) cubic feet per second (cfs).
- (c) A minimum stream flow of 10 cfs shall be retained in all other streams at all times, unless the natural flow, due to natural conditions, is less than 10 cfs.

CHAPTER FIVE – Water Quality Standards

Section 501. Introduction

- (a) The Pawnee Nation of Oklahoma hereby establishes these water quality standards covering all surface water and ground water within its jurisdiction, including but not limited to the Pawnee Nation Reservation as established by the Act of April 10, 1876. The Pawnee Nation recognizes all lands which have been validly set apart for the use and benefit of the Pawnee Indian(s), including, but not limited to, any lands or interest in lands of the Pawnee Nation or an individual Pawnee Indian held “reserved” in trust by the United States, or which is subject to Federal restrictions against alienation, including mineral resources and mineral estates reserved to Pawnee Indian(s) in the conveyance of a surface or non-mineral estate. These lands shall be statutorily defined as Pawnee Reservation and are referred to as Pawnee Indian Country. Further, the Pawnee Nation recognizes its ownership and jurisdictional authority over the corpus of the waters (surface and ground) within its original boundaries as established in 1876. The Pawnee Nation through its sovereign powers, rights, privileges and ability, recognizes the need to assert these standards throughout its jurisdiction in part under the authorization as supported by U.S. Congress under the approval of the Constitution of the Pawnee Nation of Oklahoma on April 27, 1998 (Secretarial Order # 3177). Article II of the Pawnee Nation Constitution reads:

ARTICLE II-PURPOSE

Section 1. To secure for the Pawnee Nation of Oklahoma and its members rights, powers, privileges, and benefits of a sovereign nation.

Section 2. Establish its Jurisdiction and Powers.

- i. The governmental powers of the Pawnee Business Council, acting for the sovereign Pawnee Nation of Oklahoma shall extend to all persons and to all real and personal property including lands and other natural resources, and to all waters and air space, within the Indian Country over which the Pawnee Nation of Oklahoma has jurisdiction. The governmental powers of the Pawnee Nation of Oklahoma shall also extend outside the exterior boundaries of Indian Country to any persons or properties which are, or may be included within the jurisdiction of the Pawnee Nation of Oklahoma.
- ii. The Pawnee Nation of Oklahoma is empowered to maintain under any laws of the U.S. and/or Pawnee Nation of Oklahoma’s law and order, and judicial systems to protect the peace, safety, health, and welfare of the members of the Pawnee Nation of Oklahoma, provided the concepts of separation of powers is maintained.
- iii. The Constitution is the supreme law of the Pawnee Nation of Oklahoma and all persons subject to its jurisdiction. The Pawnee Business Council shall exercise its power consistent with the provisions of this Constitution and the Corporate Charter of the Pawnee Nation of Oklahoma

These standards shall provide a mechanism for managing and regulating the quality and use of waters resources by establishing the water quality goals for specific water bodies and/or resources, and providing a legal basis for regulatory controls.

- (b) These standards have been adopted by the Pawnee Nation as law and shall serve to protect the public health and welfare, enhance the quality of water within Pawnee Indian Country and serve the purposes of the Clean Water Act, pursuant to Sections 303 and 518 of the Clean Water Act.
- (c) The purposes of these water quality standards are to restore, maintain and protect the chemical, physical, biological, and cultural integrity of the surface waters within the jurisdiction of the Pawnee Nation; to promote the health, social welfare, and economic well-being of the Pawnee Nation, its people, and all the residents within Pawnee Indian Country; to achieve a level of water quality that provides for all cultural uses of the water, the protection and propagation of fish and wildlife, for recreation in and on the water, and all existing and designated uses of the water; to promote the integrated watershed approach to management of these waters; and to provide for protection of threatened and endangered species and their habitat.
- (d) These standards are designed to establish the uses for which the waters of the Pawnee Nation shall be protected, to prescribe water quality standards (narrative and numeric) to sustain the designated uses, and to protect existing water reserve resources for future uses.
- (e) The water use and quality criteria set forth herein are established in conformance with water uses of the surface waters of the Pawnee Nation and are established with consideration of the inherent water quality potential and limitations of those waters.
- (f) The Pawnee Nation recognizes its reserved water rights and its ability to establish uses of the water resources. The designated uses as established in this Standard shall not impede the reserved rights of the Pawnee Nation and its access to, and use of its water resources for the benefit of the Pawnee Nation.

Section 502. Definitions

The following definitions are intended to facilitate the use of this chapter.

"Acute toxicity" is a short-term lethal or other adverse effect to an organism caused by pollutants, and usually defined as occurring within 4 days for fish and large invertebrates and shorter times for smaller organisms.

"Appropriate reference site or region" means a site on the same water-body or within the same basin or eco-region that has similar habitat conditions and which is expected to represent the water quality and biological community attainable. Selected reference locations will represent natural conditions in which indigenous aquatic communities are healthy and can produce fertile off-springs.

"Aquatic species" means any plant or animal which lives at least part of their life cycle in water.

"Background conditions" means the biological, chemical, and physical conditions of a water body, outside and up-gradient of the area of influence of the point source discharge, non point source, or in-stream activity under consideration.

"Best management practices (BMP)" means physical, structural, and/or managerial practices that, when used singularly or in combination, prevent or reduce pollution.

"Bioaccumulation" means the process by which a compound is taken up by and accumulates in an aquatic organism, from water, food, and sediments.

"Biological assessment" is an evaluation of the biological condition of a water body using surveys of aquatic community structure, function, diversity, presence or absence, or other direct measurements of resident biota in surface waters.

"Biological criteria" means numerical values or narrative expressions that describe the biological integrity or aquatic communities inhabiting waters of a given designated aquatic life use. Biological criteria serve as an index of aquatic community health.

"Carcinogen" means any substance or agent that produces or tends to produce cancer in humans.

"Chapter" means the Water Quality Standards of the Pawnee Nation as set forth within this regulation.

"Chronic toxicity" means a long-term adverse effect to an organism (when compared to the life span of the organism) caused by or related to changes in feeding, growth, metabolism, reproduction, genetic mutation, etc. Short-term test methods for detecting chronic toxicity may be used.

"Constructed wetlands" means those wetlands intentionally created from non-wetland sites for the sole purpose of wastewater or storm-water treatment.

"Created wetlands" means the wetlands intentionally created from non-wetland sites to produce or replace natural wetland habitat.

"Critical conditions" means the physical, chemical, and biological characteristics of the receiving water and point source discharge, nonpoint source, or in-stream activity that interact to produce the greatest potential adverse impact on aquatic biota and existing or designated water uses.

"Cultural water use" means waters which are used to support and maintain the way of life of the Pawnee People including, but not limited to: use for in-stream flow, habitat for fisheries and wildlife, and preservation of habitat for berries, roots, medicines and other vegetation significant to the values of the Pawnee People. Cultural water use shall be protected by Primary Body Contact Recreation in Section 511 part e of this Standard.

"CWA" means the federal Clean Water Act (33 USC 1251 et seq.), as amended.

"Damage to the ecosystem" means any demonstrated or predicted stress to aquatic or terrestrial organisms or communities of organisms which the department concludes may interfere with the health or survival success or natural structure and functioning of such populations. This stress may be due to alteration in habitat or changes in water temperature, chemistry, or turbidity, or other causes. In making a determination regarding ecosystem damage, the department shall consider the cumulative effects of pollutants or incremental changes in habitat which may create stress over the long term.

"Department" means the Pawnee Nation Department of Environmental Conservation and Safety.

"Director" means the Director of the Pawnee Nation Department of Environmental Conservation and Safety.

"Designated use" means a use that is specified in water quality standards as a goal for a water body segment, whether or not it is currently being attained.

"EPA" means the United States Environmental Protection Agency.

"Ephemeral streams" means a water course that flows briefly only in direct response to precipitation in the immediate locality, and whose channel is at all times above the water table.

"Existing uses" means all uses actually attained in the water body on or after November 28, 1975, whether or not they are explicitly stated as designated uses in the water quality standards or presently exist.

"Fecal coli form" means that portion of the coli form group which is present in the intestinal tracts and feces of warm-blooded animals as detected by the product of acid or gas from lactose in a suitable culture medium within twenty-four hours at 44.5 plus or minus 0.2 degrees Celsius.

"Hardness" means a measure of the calcium and magnesium salts present in water. For the purpose of this chapter, hardness is measured in milligrams per liter and expressed as calcium carbonate (CaCO₃).

"Intermittent stream" means a waterway which flows only at certain times of the year or does not flow continuously.

"Marketing" is the transfer of water where one entity gains water and the other gains a monetary value.

"Mean detention time" is the mean amount of time that water remains in a basin. The time is computed by dividing a reservoir's mean annual minimum total storage by the thirty-day, ten-year, low flow from the reservoir.

"mg/L" means milligrams per liter.

"Migration or translocation" means any natural movement of an organism or community of organisms from one locality to another locality.

"Mixing Zone" means that portion of water body adjacent to an effluent outfall where mixing results in the dilution of the effluent with the receiving water. Water quality numeric criteria may be exceeded in a mixing zone as conditioned and provided for in section 511.

"Natural causes" means source of contamination which is not man induced.

"Natural conditions" means surface water quality that was present before human-caused pollution. When assessing natural background conditions in the headwaters of a disturbed watershed it may be necessary to use the natural background conditions of a neighboring or similar watershed as a reference condition.

"Near Instantaneous and Complete Mix" means no more than a 10 percent difference in bank-to-bank concentrations within a longitudinal distance not greater than 2 stream/river widths.

"Non point source" means pollution that enters any waters from any dispersed land-based or water-based activities, including but not limited to, atmospheric deposition; surface water runoff from agricultural lands, urban areas or forest lands; subsurface or underground sources; or discharges from boats or marine vessels not otherwise regulated under the National Pollutant Discharge Elimination System program.

"Normal Stream Flow" means flow corresponding to low gradient areas in the hydrograph.

"NPDES" means National Pollutant Discharge Elimination System, the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the CWA.

"Pawnee Indian Country" means all land, air, water, and/or minerals which have been validly set apart for the use and benefit of the Pawnee Indian(s), including, but not limited to, any lands or interest in lands of the Pawnee Nation or an individual Pawnee Indian owned under fee status, held in trust by the United States, or which is subject to Federal restrictions against alienation, including mineral resources and mineral estates reserved to Pawnee Indian(s) in the conveyance of a surface or non-mineral estate, both within and beyond the exterior boundaries of the Pawnee Nation as established by the Act of April 10, 1876.

"ppm" means parts per million.

"Permit" means a document issued pursuant to tribal code or federal laws (such as NPDES, CWA, Section 401; CWA, Section 404) specifying the waste treatment and control requirements and waste discharge conditions.

"Persistent pollutant" means a pollutant which is slow to or does not decay, degrade, transform, volatilize, hydrolyze, or photolyze.

"Person" means any individual or group or combination thereof acting as a unit, however associated; any organization of any kind, whether organized for profit or not, and regardless of the form in which it does business, whether as a sole proprietorship, partnership, joint venture, trust, unincorporated association, corporation, government, including any part, subdivision, or agency of any of the foregoing, or otherwise; and any combination of individuals or organizations in whatever form, and the plural as well as the singular number.

"pH" means the negative logarithm of the hydrogen ion concentration.

"Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, sewer, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

"Pollutant" includes dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

"Pollution" includes such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the tribe, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or

other substance into any waters of the tribe as will or is likely to create a nuisance or impair any beneficial use of such waters.

"Primary body contact recreation" means activities involving direct body contact with the water where a possibility of ingestion exists.

"Receiving waters" means any water course or water body that receives treated or untreated wastewater.

"Reservation" [Pawnee Nation] means all lands and waters within the exterior boundaries of the Pawnee Nation as established by the Act of April 10, 1876.

"Resident aquatic community" means aquatic life expected to exist in a particular habitat for a specific eco-region, basin, or water body. This shall be established by accepted bio-monitoring techniques.

"Sample standard" means an average of the last five years of available data plus two standard deviation of the mean.

"Storage" of water is the capture of water resources for one's own beneficial use.

"Storm water" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a storm water drainage system into a defined surface water body, or a constructed infiltration facility.

"Surface waters of the tribe" includes lakes, rivers, ponds, streams (including intermittent and ephemeral streams), wetlands, inland waters, and all other surface waters and water courses within the exterior boundaries of the reservation.

"Temperature" means water temperature expressed in degrees Celsius ($^{\circ}$ C).

"Threatened or endangered species (listed species)" means any species of fish, wildlife, or plant which has been determined to be endangered or threatened under section 4 of the Endangered Species Act. Listed species are found in 50 CFR 17.11.-17.12.

"Toxicity test" means a test using selected organisms to determine the acute or chronic effects of a chemical pollutant or whole effluent.

"Toxic pollutant" means those pollutants, or combinations of pollutants, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to EPA or the department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

"Transfer" of water is the exchange of water that changes from one party to another for a specified amount of time.

"Tribal Council" means the governing body of the Pawnee Nation exercising those powers granted by the Constitution and By-Laws of the Pawnee Nation of Oklahoma.

"Tribe" means the Pawnee Nation and/or Tribe.

"Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

"µg/L" means micrograms per liter.

"Wastes" include sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances which will or may cause pollution or tend to cause pollution of any water body.

"Water quality" means the chemical, physical, biological, and cultural characteristics of a water body.

"Wetland" means any area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Wildlife habitat" means the waters of the tribe used by, or that directly or indirectly provide food support to, fish, other aquatic life, and wildlife for any life history stage or activity.

"Yearly mean standard" means an average of the last five years of available data plus one standard deviation of the mean (also moving yearly mean standard).

Section 503. Anti-degradation Policy

- (a) Existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.
- (b) Where the quality of the waters exceeds 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 tribe finds, after the tribe's intergovernmental coordination and public participation provisions have been met, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the tribe shall assure water quality adequate to fully protect existing uses. Further, the tribe shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all approved, cost-effective, and reasonable best management practices for non point source control.
- (c) Outstanding Resource Waters. Waters meeting one or more of the following criteria shall be considered for outstanding resource water designation:
 - (1) Outstanding national or tribal resource;
 - (2) Documented critical habitat for populations of threatened or endangered species;
 - (3) Waters of exceptional recreational, ceremonial, cultural, or ecological significance; or
 - (4) Waters supporting priority species as determined by the tribe.
- (d) Where waters constitute outstanding resource water, the water quality and uses shall be maintained and protected and pollutants that will reduce the existing quality thereof shall not be allowed to enter such waters. To accomplish this, the department may require water quality controls, maintenance of natural flow regimes, protection of in-stream habitats, and pursuit of land use practices protective of the watershed.
- (e) In those cases where potential water quality impairments associated with thermal discharge are involved, the Anti-degradation Policy and implementing methods shall be consistent with Section 316 of the Clean Water Act, as amended.

Section 504. Mixing Zones and Zones of Passage

(a) Mixing Zones

- (1) In streams, the chronic regulatory mixing zone extends downstream a distance equivalent to thirteen (13) times the width of the water within the receiving stream at the point of effluent discharge and encompasses 25% of the total stream flow of the 7Q2 or 1 cfs, whichever is larger, immediately downstream of the point of effluent discharge.
- (2) Acute toxicity within the mixing zone is prohibited.
- (3) The acute regulatory mixing zone is encompassed by the $R = 0.01$ (cfs-1) isopleths. R is the ratio of concentration to waste load
- (4) Mixing zones in lakes are prohibited and shall be designated on a case-by-case basis.
- (5) Where overlapping mixing zones occur because of multiple outfalls, the total length of the mixing zone will extend thirteen (13) stream widths downstream from the downstream discharge point.

(b) Zones of Passage

- (1) All discharges permitted for any criteria listed for protection of fish and wildlife propagation, but not for consumption of fish flesh shall be regulated to insure that a zone of passage shall be maintained within the stream at the outfall and adjacent to the mixing zone that shall be no less than seventy-five percent (75%) of the volume of flow.
- (2) Water quality standards shall be maintained throughout the zone of passage.
- (3) Zones of passage in lakes shall be designated on a case-by-case basis.

Section 505. Implementation

Implementation Policies for the Anti-degradation Policy Statement

- (a) The following provisions set forth exceptions to the limitations for additional protection of certain waters of the Pawnee Nation:
 - (1) The limitations for additional protection of Outstanding Resource Waters shall apply to all discharges from point sources except such limitations do not apply to discharges of storm-water from temporary construction activities. Discharges of storm-water from point sources after June 15, 1992 are prohibited any new point source discharges. Storm water discharges in existence prior to June 15, 1992 are prohibited from increased load of any pollutant.
 - (2) The limitations for additional protection of High Quality Waters, and Sensitive Public and Private Water Supplies, shall apply to discharges from all point sources except point source discharges of storm-water.

- (b) The term “specified pollutants” means:
 - (1) Oxygen demanding substances, measured as Carbonaceous Biochemical Oxygen Demand (CBOD) and/or Biochemical Oxygen Demand (BOD);
 - (2) Ammonia Nitrogen and/or Total Organic Nitrogen;
 - (3) Phosphorus;
 - (4) Total Suspended Solids (TSS);
 - (5) Substances or water quality parameters not listed may be determined by the DECS.

- (c) The following limitations for additional protection apply to various waters of the Tribe:
 - (a.) Outstanding Resource Waters (ORW).
 - (i.) Outstanding Resource Waters (ORW) are those waters of the Pawnee Tribe which constitute outstanding resources or are of exceptional recreational, cultural, religious, and/or ecological significance
 - (ii.) Outstanding resource waters are prohibited from having any new point source discharge(s) of any pollutant or increased load of any pollutant from existing point source discharge(s).

 - (b.) High Quality Waters (HQW).
 - (i.) HQW (High Quality Waters) is intended to protect those waters of the Pawnee Nation which possess existing water with quality higher than the healthiest or least impaired waters that meets and/or exceeds Pawnee Nations water Quality Standards. These waters are rated as excellent based on chemical, biological and physical characteristics through monitoring or the detection of reference conditions. Additionally, HQWs support propagation of fishes, shellfishes, wildlife, and recreation, and/or are in areas which are inhabited by federally listed, threatened or endangered species.

 - (ii.) High Quality Waters (HQW) are those waters of the Pawnee Tribe which possess existing water quality which exceeds that necessary to support

propagation of fishes, shellfishes, wildlife, and recreation, and/or are in areas which are inhabited by federally listed, threatened or endangered species.

- (iii.) All water-bodies designated with the limitation indicated by the letters "HQW" are prohibited from having any new point source discharge(s) of any pollutant or increased load or concentration of specified pollutants from existing point source discharge(s), provided however that new point source discharge(s) or increased load of specified pollutants may be approved by the DECS in those circumstances where the discharger can demonstrate to the satisfaction of the DECS and USEPA that a new point source discharge or increased load from an existing point source discharge will result in maintaining or improving the level of water quality which exceeds that necessary to support recreation and propagation of fishes, shellfishes, and wildlife of the direct receiving water and downstream water-bodies designated HQW. No discharge of any pollutant to water bodies designated HQW may lower existing water quality.
- (iv.) New discharges or increased loading from existing discharges may be allowed under such conditions that ensure that the recreational and ecological significance of these waters will be maintained.
- (v.) Discharges or other activities associated with those waters containing Federally listed threatened or endangered species may be restricted through agreements between appropriate regulatory agencies and the United States Fish and Wildlife Service.

(c.) Sensitive Public and Private Water Supplies (SWS).

- (i.) Waters designated "SWS" are those waters of the Pawnee Nation which constitute sensitive public and private water supplies and are listed as "SWS" waters.
- (ii.) All water-bodies designated with the limitation indicated by the letters "SWS" in Section 513 are prohibited from having any new point source discharge(s) of any pollutant or increased load of specified pollutants from existing point source discharge(s), provided however that new point source discharge(s) or increased load of specified pollutants may be approved by the DECS in those circumstances where the discharger can demonstrate to the satisfaction of the DECS that a new point source discharge or increased load from an existing point source discharge will not lower water quality of either the direct receiving water or downstream water-bodies designated SWS.

(4) Prioritization of Limitations.

In situations where more than one beneficial use limitation exists for water-bodies, the more stringent limitation shall apply.

(5) Non-Point Source Discharges.

Best management practices for control of nonpoint source discharges shall be implemented in watersheds of water-bodies protected under this Standard. Development of conservation plans shall be required in sub-watersheds where discharges from nonpoint sources are identified as causing, or significantly contributing to, degradation in a water-body.

(6) Exceedances Guidelines.

Any violation of this standard is an indicator of non supported use and shall be cause for an ‘origin and cause’ investigation. The results of the origin and cause investigation shall determine the level (supportive, moderately or non-supportive) of beneficial use support.

Section 506. Enforcement

- (a) The Pawnee Nation Water Quality Standards are approved as law by the Pawnee Nation and are fully enforceable under the laws of the Pawnee Nation.
- (b) All waters within the exterior boundaries of the Pawnee Nation as established by the Act of April 10, 1876 are protected by these Standards.
- (c) Pawnee Nation Water Quality Standards approved by the Pawnee Nation shall be applicable to all activities which may affect the water quality of waters of the Pawnee Nation and shall be utilized by all appropriate environmental and natural resource agencies in implementing their respective duties to abate and prevent pollution to waters of the Pawnee Nation.
- (d) All methods of sample collection, preservation, and analysis used in applying any of the standards may be in accordance with The Guidelines Establishing Test Procedures for the Analysis of Pollutants as provided by 40 Code of Federal Regulations, part 136 (40 CFR:136); “Methods of Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms,” “Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms,” “Test Methods for Escherichia coli in Water by the Membrane Filter Procedure,” or other procedures approved by the Pawnee Nation Department of Environmental Conservation and Safety and/or U.S.E.P.A.

Section 507. Allowance for Compliance Schedules and Variances

- (a) NPDES and other permits, certifications, orders and directives of the Department issued under tribal authority for existing discharges or activities may include a schedule for achieving compliance with water quality criteria contained in this chapter. Such schedules of compliance shall be developed to ensure final compliance with all water quality criteria in the shortest practicable time, but not to exceed five years. Decisions regarding whether to issue schedules of compliance will be made on a case-by-case basis by the permitting agency and must be approved by the Department. Schedules of compliance may not be issued for new discharges or activities.
 - (1) Schedules of compliance may be issued to allow for:
 - (i.) construction of necessary treatment capability;
 - (ii.) implementation of necessary best management practices;
 - (iii.) implementation of additional best management practices for sources determined not to meet water quality criteria following implementation of an initial set of best management practices;
 - (2) For the period of time during which compliance with water quality criteria is deferred, interim limitations and/or other conditions may be formally established, based on the best professional judgment of the permitting agency and the Department.
 - (3) Prior to establishing a schedule of compliance, the permitting agency shall require the permittee to evaluate the possibility of achieving water quality criteria via non-construction changes (e.g. facility operation, pollution prevention).
- (b) A variance from the Pawnee Nation Water Resource Protection Act and this Standard may be granted at the discretion of the Department and USEPA on a case by case basis.
 - (1) A variance from the Pawnee Nation's criteria may be allowed in certain cases where the appropriateness of the specific criteria is questionable.
 - (2) The variance shall provide a period of time during which the issues concerning the appropriateness of the criteria may be resolved.
 - (3) A variance shall be valid for no more than three (3) years.
 - (4) Variances are not renewable but may be reissued upon adequate justification.
 - (5) A variance shall be granted only after appropriate public participation, review and approval from USEPA and the Pawnee Nation as required.
 - (6) A variance from criteria may be allowed for anticipated non-attainment of water quality standards due to one or more of the reasons listed in 40CFR 131.10(g).
 - (7) A variance from criteria shall be for a specific pollutant, time limited, and shall not forego the currently designated uses.

- (8) Variances are to be issued instead of removing a designated use for a water body where such use is not currently attainable but can be expected with reasonable progress towards water quality.

Section 508. Short-Term Modifications

- (a) The criteria established in these standards may be modified for a specific water body on a short-term basis in order to respond to emergencies, to accommodate essential activities, or to otherwise protect the public health and welfare, even though such activities may result in a temporary reduction of water quality conditions below those criteria established by this regulation. Such modifications shall be issued in writing by the Director, subject to such terms and conditions as he/she may prescribe.
- (b) Short-term modifications shall not exceed a 60 day period and shall be kept as short as feasible.
- (c) In no case will any degradation of water quality or aquatic habitat be allowed if this degradation could interfere with, or becomes injurious to, existing water uses or causes long-term harm to the environment or cultural resources. No short-term modification may be issued where it could adversely impact threatened or endangered species or their critical habitat.
- (d) A request for a short-term modification shall be made, in writing, to the department. Such requests shall be made at least thirty days prior to the start of the activity impacting water quality, unless the modification is in response to an emergency requiring immediate attention in which case notification shall be provided within twenty-four hours of the response decision.
- (e) Aquatic application of all pesticides shall require a short-term modification be granted prior to application. These modifications shall include, at a minimum, the following conditions:
 - (1) Such pesticide application shall be in accordance with all federal, tribal and local regulations;
 - (2) Such application shall be in accordance with label provisions promulgated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, et seq.);
 - (3) Such application shall not result in conditions injurious to indigenous aquatic biota, wildlife, humans, cultural resources, or other existing or designated uses of the water body;
 - (4) Public notice, including identification of the pesticide, applicator, location where the pesticide will be applied, proposed timing and method of application, and any water use restrictions shall be provided by the applicator; and
 - (5) The Department shall be notified 96 hours prior to pesticide application.
 - (6) Any additional conditions required by the department.

- (f) In the event of any fish kills or other harm to indigenous aquatic dependent resources, the department shall be notified immediately upon discovery.
- (g) Short-term modifications do not supersede any USEPA, Tribal, or state permit.

Section 509. Public Involvement

Periodically, the Department shall hold public hearings for the purpose of reviewing the water quality standards and, as appropriate, modifying and adopting standards. The Department will issue public notice of proposed changes and provide opportunity for public comment as directed by the Pawnee Nation Business Council. A minimum of 30 day notice shall be give prior to the public hearing on proposed changes to the Standard. A minimum of 30 days shall be given for public review and/or comment.

Section 510. Criteria for the Protection of Surface Water Resources

(a.) General Criteria

The following criteria shall apply to the water bodies and beneficial uses.

- (1.) All waters shall be free from pollutants in concentrations or combinations that do not protect the most sensitive use of the water body.
- (2.) Whenever the ambient conditions of surface waters of the tribe are of a lower quality than the criteria assigned, the Department may determine that the natural conditions shall constitute the water quality criteria. If an ambient condition varies with time, the natural condition will be determined as the highest quality prevailing condition measured during an annual, seasonal, or shorter time period prior to influence of human-caused pollution. The Department may, in its discretion, determine the natural condition for one or more seasonal or shorter time period(s) to reflect variable natural conditions. Ambient conditions should not have any anthropogenic sources.
- (3.) At the boundary between waters of different beneficial uses, the more stringent water quality criteria shall prevail.
- (4.) The Department may revise criteria on a jurisdictional or water body-specific basis as needed to protect aquatic life, human health and other designated uses and to increase the technical accuracy of the criteria being applied.
- (5.) The Pawnee Nation recognizes the importance of the diversity and ecological functions of wetlands and their interaction with rivers, streams, lakes, and ground water resources. The general criteria under this part shall apply to all wetland types. However, the wetland criteria (numeric and narrative) as provided in Section 512 (Wetlands) shall supersede the criteria under this Section (General Criteria).
- (6.) All surface waters, including those within designated mixing zones, shall be free from substances attributable to point source discharges, non point sources, or in-stream activities in accordance with the following criteria:
 - (i.) Floating Solids, Oil and Grease: All waters shall be free from visible oils, scum, foam, grease, and other floating materials and suspended substances of a persistent nature resulting from other than natural causes.
 - (ii.) Color: True color-producing materials resulting from other than natural causes shall not create an aesthetically undesirable condition; nor should color inhibit photosynthesis or otherwise impair the existing and designated uses of the water.

- (iii.) Odor and Taste: Water contaminants from other than natural causes shall be limited to concentrations that will not impart unpalatable flavor to fish, or result in offensive odor or taste arising from the water, or otherwise interfere with the existing and designated uses of the water.
- (iv.) Trophic Status: The Trophic Status Index (chlorophyll response to nutrient concentrations) shall be below 0.8 to prevent the potential of fish kills. Furthermore, the primary production should not exceed two times (2 x) historical conditions.
- (v.) Turbidity:
 - I. Turbidity at normal low flow shall not exceed 25 Nephelometric Turbidity Units (NTUs) for all water bodies.
 - II. Turbidity shall not exceed 10 NTUs from point source discharges.
 - III. Elevated turbidity levels may be expected during and for several days after a runoff event: However, turbidity shall not be at a level to potentially impair designated use or aquatic biota under moderate and/or normal low flow conditions.
- (vi.) Sediment (Bottom Deposits): All surface waters of the tribe shall be free from anthropogenic contaminants that may settle and have a deleterious effect on the aquatic biota or that will significantly alter the physical and chemical properties of the water or the bottom sediments.
 - I. All waters shall be free from all debris and soil particulates resulting from erosion of land involved in earthwork, such as construction, agricultural activities (cropping, grazing, harvesting), mining, and Silva culture activities, and other land use activities contributing to increase in-stream sediment yield.
 - II. Best available technology as presented by the Pawnee Nation, Department of Interior, Oklahoma Conservation Commission, Natural Resource Conservation Service, or other reputable organizations shall be used to minimize sedimentation yield.
 - III. Every effort shall be made by the land user to protect and preserve stream bank profile and riparian zones. Disturbance of land measuring one hundred feet out from each side of the average water mark of the water body or stream shall not be disturbed without planning and implementation of control measures in accordance to applicable Tribal law and regulations.
- (vii.) Suspended Solids, Total: Total Suspended Solids shall not exceed 15.0 mg/l at normal flow and shall not exceed 30.0 mg/l at any flow greater than normal.
- (viii.) Bacteria: Escherichia coli (E. coli) or any other fecal bacteria shall not exceed 40/100 CFM /ml. at any time.

- (ix.) Chlorides: Chlorides shall not exceed 46.0 mg/l at any time.
- (x.) pH (hydrogen ion activity): pH value shall be between 6.5 and 9.0 in all water systems; unless pH values outside that range are due to natural conditions. Human-caused variation shall not exceed 1.0 unit within 24 hours
- (xi.) Fish Tissue Levels (Bio-concentrations of Toxic Substances):
 - I. Surface waters of the tribe shall be maintained to prevent bio-concentration of toxic substances in fish, shellfish, or other aquatic organisms.
 - II. The toxic substances in fish tissue (fillets) to protect human health for fish consumption as indicated in 510, subpart (b) of this Standard (Toxic Substances) shall apply to all surface waters.
- (xii.) Water Column criteria to protect for the consumption of fish flesh and water:
 - I. Surface waters of the Tribe shall be protected to allow for the consumption of fish, shellfish, and water.
 - II. The water column numeric criteria to protect human health for fish consumption and water as indicated in Section 510, subpart (b)5 of this Standard (Toxic Substances) shall apply to all surface waters.

(b) Toxic Substance Criteria

- (1.) Toxic substances shall not be introduced into waters of the tribe in concentrations which have the potential either singularly or cumulatively to adversely affect existing and designated water uses, cause acute or chronic toxicity to the most sensitive biota dependent upon those waters, or adversely affect public health, as determined by the Department.
- (2.) The Department shall employ or require chemical testing, acute and/or chronic toxicity testing, and biological assessments, as appropriate, to evaluate compliance with subsection (1) of this section. Where necessary the Department shall establish controls to ensure that aquatic communities and the existing and designated beneficial uses of waters are being fully protected.
- (3.) Criteria for toxic, and other substances not listed shall be determined with consideration from the *USEPA National Recommended Water Quality Criteria, 2009*, and other relevant information as appropriate.
- (4.) Risk-based criteria for carcinogenic substances shall be applied such that the upper-bound excess cancer risk is less than or equal to one in 10^6 , which means the probability that one case of cancer per 1,000,000 people exposed.
- (5.) The aquatic organism consumption rate utilized in determining the human health criteria shall be 17.5 g/day.
- (6.) Criteria for metals shall be applied as dissolved values.
- (7.) The criteria in the following table shall be applied to all surface waters within Pawnee Indian Country for the protection of aquatic life and human health:

Table 1. Numerical Criteria to Protect Beneficial Uses and All Subcategories Thereof

PARAMETER	CAS #	Fish & Wildlife Propagation		Public and Private Water Supply (Raw Water)	Fish Consumption and Water	Fish Consumption
		ACUTE	CHRONIC			
		µg/L	µg/L	mg/L	µg/L	µg/L
INORGANICS						
Anthracene	120127				8300	40000
Antimony	7440360				5.6	640
Arsenic	7440382	340.0	150.0	0.04	0.018	0.14
Barium	7440393			1.00	1000.0	
Benzo(ghi) Perlene	50328				0.0038	0.018
Cadmium	7440439	e(1.0166 [ln(hardness)] -3.924)	e(0.7409 [ln(hardness)] -4.719)	0.020	14.49	84.13
Cadmium for trout streams		e(1.128 [ln(hardness)] - 3.828)	e(0.7852 [ln(hardness)] -3.490)	0.020	14.49	84.13
Chlorine	7782505	19.0	11.0		7.5	
Chromium (III)	16065831	e(0.819 [ln(hardness)]+ 3.7256)	e(0.819 [ln(hardness)]+ 0.6848)			
Chromium (VI)	18540299	16.0	11.0	0.050	166.3	3365.0
Copper	7440508	e(0.9422 [ln(hardness)]- 1.700)	e(0.8545 [ln(hardness)] -1.702)	1.000		
Cyanide	57125	22.0	5.2	0.200	140.0	140.0
Diazinon	333415	0.17	0.17			
Di-n-butyl Phthalate	84742				2000.0	4500.0
Ethylbenzene	100414				530.0	2100.0
2-Ethylhexyl Phthalate	117817				1.2	2.2
Fluorene	86737			4.0	1100.0	5300.0
Lead	7439921	e(1.273 [ln(hardness)] - 1.460)	e(1.273[ln(hardness)] - 4.705)	0.100	5.0	25.0
Manganese	7439965				50.0	100.0
Methylmercury	22967926	1.4*	0.77*			0.3

Mercury	7439976	1.4*	0.77*	0.002		0.3
Naphthalene	91203					
Nickel	7440020	$e(0.8460[\ln(\text{hardness}) + 2.255])$	$e(0.846[\ln(\text{hardness}) + 0.0584])$		610.0	4600.0
Nitrates (as N)	1479755 8			10.000		
Nonylphenol	8485215 3	28.0	6.6			
Phenanthrene	85018					
Selenium	7782492		5.0	0.010	170.0	4200.0
Silver	7440224	$e(1.72[\ln(\text{hardness}) - 6.52])$		0.050	104.8	64620.0
Thallium	7440280	1400.0			0.24	0.47
Vinyl Chloride	75014				0.025	2.4
Zinc	7440666	$e(0.8473[\ln(\text{hardness}) + 0.884])$	$e(0.8473[\ln(\text{hardness}) + 0.884])$	5.000	7400.0	26000.0

Table 1 Cont. Numerical Criteria to Protect Beneficial Uses and All Subcategories Thereof

PARAMETER	CAS #	Fish & Wildlife Propagation		Public and Private Water Supply (Raw Water)	Fish Consumption and Water	Fish Consumption
		ACUTE	CHRONIC			
ORGANICS		µg/L	µg/L	mg/L	µg/L	µg/L
1-1-1 TCE	71556				3094.0	173100.0
1-1-1 TCE	71556				3094.0	173100.0
2-4-5-TP Silvex	93721		10.0	0.010		
2-4-6-TNT		450.0				
2-4-D	94757			0.100		
2-4-D	94757			0.100		
Acrylonitrile	107131	7550.0			0.051	0.25
Aldrin	309002	3.0			0.000049	0.000059
Benzene	71432		2200.0		2.2	51.0
Benzidine	92875			0.001	0.000086	0.0020
Butylbenzyl Phthalate	85687			0.150	1500.0	1900.0
Carbon Tetrachloride	56235				0.23	1.6
Chlordane	57749	2.4	0.0043		0.00080	0.000810
Chloroform	67663				5.7	470.0
Chlorpyrifos (Dursban)	2921882	0.083	0.041			
DDT	50293	1.1	0.001		0.00022	0.00022
Demeton	8065483		0.1			
Detergents (total)				0.200		
Dichlorobromomethane	75274				0.55	17.0
Dieldrin	60571	0.24	0.056		0.000052	0.000054
Dioxin	1746016				0.0000013	0.00000138
Endosulfan		0.22	0.056			
Endrin	72208	0.086	0.036	0.0002	.059	0.060
Ethylbenzene	100414				530.0	2100.0
Guthion	86500		0.01			
Gamma BHC	58899	0.95			0.98	1.80
Heptachlor	76448	0.52	0.0038		0.000079	0.000079
Hexachlorobenzene	118741				0.00028	0.00029
Malathion	121755		0.10			
Methoxychlor	72435		0.03	0.100	100.0	
Methylene blue			0.001	0.500		

active substances						
Mirex	2385855		0.001			
Parathion	56382	0.065	0.013			
PCB			0.014		0.000064	0.000064
PCE (Tetrachloroethyl ene)	127184				0.69	3.3
Pentachloropheno l	87865	e[1.005(pH) -4.830	e[1.005(pH)- 5.290]		1014.0	29370.0
Phenol	108952				20900.0	4615000.0
Phthalate esters				0.003		
RDX	121824	2591.5				
Toluene	108883				1300.0	15000.0
Toxaphene	8001352	0.73	0.0002	0.005	0.00028	0.00028

(c.) Radio Active Substance Criteria

- (1.) Radioisotope concentrations in all waters shall not exceed concentrations may result in a significant hazard to humans or harm to aquatic life.
- (2.) Concentrations of radioactive materials for all waters shall not exceed the following:
 - (i.) Gross Alpha Particle Activity - 15 pCi/L
 - (ii.) Strontium 90 - 8 pCi/L
 - (iii.) Radium 226 & 228 - 5 pCi/L
 - (iv.) The average annual concentration of beta particle and photon radioactivity from manmade radio nuclides in water having the designated use of Public and Private Water Supply shall not exceed the annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.

(d.) Biological Criteria

- (1.) This narrative and numeric Biological Criteria will be applied to protect the biological and physical integrity of all waters including lakes, rivers, and streams with the designated use of fish and wildlife propagation. The biological community structure and function as well as the physical habitat shall be assessed, maintained, protected, and restored to the highest potential use.
- (2.) Assessments including the sampling of the aquatic community and the use of multi-metric indices shall be used to maintain and protect the biological and physical integrity of aquatic systems and riparian areas. The values calculated from the metrics may be used in conjunction with acceptable chemical, physical, microbiological, toxicological water quality measurements and in combination with any historical records for the protection of aquatic systems in Pawnee Nation.
- (3.) Sensitive macro-invertebrates and fish are used indicator species expected to be present any aquatic system at any time. Absence of the indicator species may be an indication the aquatic system is not supportive of its fish and wildlife propagation used designation and may be an early indicator of other use impairment. An origin and cause investigation may be initiated immediately upon determination the indicator species are not present.

(4.) Lotic Systems

(i.) Wadable

I. Narrative Criteria

Sensitive macro-invertebrates and fish expected to be present in all Pawnee Nation's wadable rivers and streams or stream segments considered in good condition are outlined in Tables 2 and 3.

Table 2. Types of sensitive benthic macroinvertebrates expected to be found in Pawnee Nation's wadable streams that are considered in good condition.

Sensitive Species Common Name
Mayfly
Stonefly
Beetle
Dobsonfly
Fish fly
Alderfly
Mussel

Table 3. Types of fish expected to be found in Pawnee Nation’s wadable streams that are considered in good condition.

Sensitive Species Common Name
Spotfin shiner
Smallmouth Bass
Banded pygmy sunfish
Bantam sunfish
Bigeye Chub
Taillight Shiner
Suckermouth minnow
Darters
Spotfin shiner

II. Numeric Criteria

The stream metrics and expected values used for the protection of macro-invertebrates and fish for wadable rivers and streams are presented in Tables 4 and 5.

Table 4. Metrics with corresponding values for current reference conditions expected for macroinvertebrate in Pawnee Nation’s wadable

Metrics	Expected Metric Values
Taxa Richness	≥ 13
% EPT Abundance	$\geq 31.45\%$
% Chironomidae	$\leq 7.19\%$
% Tolerant	$\leq 22.77\%$
% Shredders	$\geq 6.34\%$
% Scrapers	$\geq 7.41\%$

Table 5. Metrics with corresponding values to support designated uses for fish in Pawnee Nation’s wadable streams.

Metrics	Expected Metric Values
Taxa Richness	≥ 9
% Darters	$\geq 10.74\%$
% Tolerant	$\leq 27.74\%$
% Carnivores	$\leq 7.74\%$
% Insectivores	$\geq 64.63\%$
Total abundance	≥ 152

(ii.) Non-wadable
Narrative Criteria

Sensitive macro-invertebrates and fish expected to be found in all Pawnee Nation’s non-wadable streams considered in good condition are outlined in Tables 6 and 7.

Table 6. Types of sensitive benthic macroinvertebrates expected to be found in Pawnee Nation's non-wadable streams that are considered in good condition.

Sensitive Species Common Name
Mayfly
Stonefly
Beetle
Dobsonfly
Fishfly
Alderfly
Mussel

Table 7. Types of fish expected to be found in Pawnee Nation's non-wadable streams that are considered in good condition.

Sensitive Species Common Name
Spotfin shiner
Smallmouth Bass
Banded pygmy sunfish
Bantam sunfish
Bigeye Chub
Taillight Shiner
Suckermouth minnow
Darters
Spotfin shiner

(5.) Lentic Systems

Narrative Criteria

Sensitive macro-invertebrates and fish expected to be found in all Pawnee Nation's non-wadable rivers considered in good condition are outlined in Tables 8 and 9.

Table 8. Types of sensitive benthic macroinvertebrates expected to be found in Pawnee Nation's lakes that are considered in good condition.

Sensitive Species Common Name
Mayfly
Stonefly
Beetle
Dobsonfly
Fishfly
Alderfly
Mussel

Table 9. Types of fish expected to be found in Pawnee Nation’s lakes that are considered in good condition.

Sensitive Species	Common Name
	Spotfin shiner
	Smallmouth Bass
	Banded pygmy sunfish
	Bantam sunfish
	Bigeye Chub
	Taillight Shiner
	Suckermouth minnow
	Darters
	Spotfin shiner

(6.) Habitat/Ecological Health

(i.) Narrative Criteria

The Habitat/Ecological Health criteria shall protect and restore riparian and aquatic system condition to be supportive of Fish and Wildlife Propagation.

(ii.) Numeric Criteria

Clinger richness and abundance from the macro-invertebrate population are representative of in-stream cover (vegetation, woody debris, substrate) and shall be used to assess the Habitat/Ecological Health of an aquatic system. The metrics and expected values are presented in Table 10.

Table 10. Metrics with corresponding values to support habitat in Pawnee Nation’s aquatic systems.

Metrics	Expected Metric Values
Clinger Richness	≥ 5
Clinger % abundance	$\geq 55.55\%$
Total Score	7-10
Condition	Good

(e.) Dissolved Oxygen Criteria

The dissolved oxygen criteria shall not be below levels of 7.0 mg/L at 22° C for the dates between 3/1-6/15 (for early life stages). Dissolved oxygen levels shall not be below 6.0 mg/L at 18° C for the dates of 6/16-2/28 (for other life stages).

(f.) Temperature Criteria

- (1.) At no time shall heat be added to any surface water in excess of the amount that will raise the temperature of the receiving water more than 2.8°C outside the mixing zone.
- (2.) The normal daily and seasonal variations that were present before the addition of heat from other than natural sources shall be maintained.
- (3.) In streams, temperature determinations shall be made by averaging temperature measurements of the cross sectional area of the stream at the end of the mixing zone.
- (4.) In lakes, the temperature of the water column and/or epilimnion, if thermal stratification exists, shall not be raised more than 1.7°C above that which existed before the addition of heat of artificial origin, based upon the average of temperatures taken from the surface to the bottom of the lake, or surface to the bottom of the epilimnion if the lake is stratified.
- (5.) Water in privately-owned reservoirs used in the process of cooling water for industrial purposes is exempt from these temperature restrictions, provided the water released from any such lake or reservoir into a stream system shall meet the water quality standards of the receiving stream.

(g.) Nutrient Criteria

- (1.) Nutrients or other substances from anthropogenic sources shall not be present in concentrations that will produce intolerable algal densities or cause a dominance of nuisance aquatic vegetation resulting in eutrophication or otherwise causing adverse environmental conditions.
- (2.) The following narrative nutrient criteria shall apply at all times:
 - (i.) Nitrates: The Nitrate concentration shall not exceed 1.00 mg/l NO₃-N at any time.
 - (ii.) Ammonia: The Ammonia concentrations shall not exceed the levels outlined in Table 11.

Table 11. Numeric Ammonia Criteria:	
pH	Ammonia (NH ₃ -N) at 20° C
≤8.0	1.71 mg/L NH ₃ -N
8.1-8.5	0.87 mg/L NH ₃ -N
8.6-9.0	0.34 mg/L NH ₃ -N

- (iii.) Phosphates (Total): The Total Phosphates shall not exceed the levels outlined in Table 12.

Table 12. Total Phosphate Criteria:	
Streams/Rivers	0.1 mg/L PO ₄ -P
Streams entering Lakes/Reservoirs/Storage Units	0.05 mg/L PO ₄ -P
Lakes/ Reservoirs	0.025 mg/L PO ₄ -P

Section 511. General Water Use and Criteria Classification

Beneficial uses are designated for all waters of the Pawnee Nation. Such uses are protected through the restrictions imposed by the anti-degradation policy statement, narrative criteria, and numeric standards. Some uses require higher quality water than others. When multiple uses are assigned to the same waters, all such uses shall be protected. Beneficial uses are also protected by permits or other authorizations issued to meet these Standards for point sources and through practical management or regulatory programs for non-point sources. Water uses currently recognized by the Pawnee Nation and protected under this Standard are:

- Public and Private Water Supplies
- Emergency Public and Private Water Supplies
- Fish and Wildlife Propagation
- Agriculture: Livestock and Irrigation
- Primary Body Contact Recreation/Cultural
- Water Resource Reserves
- Ground Water Recharge

The following criteria shall apply to the designated use associated with the waters within Pawnee Indian Country.

(a.) **Public and Private Water Supplies and Emergency Public and Private Water Supplies**

The following criteria apply to surface waters of the Tribe having the designated beneficial use of Public and Private Water Supplies. During emergencies, those waters designated Emergency Public and Private Water Supplies may be put to use.

- (1.) General Criteria.
- (2.) Toxic Substance Criteria for Public and Private Water Supply
- (3.) Biological Criteria.
- (4.) Nutrient Criteria.

(b.) **Fish and Wildlife Propagation**

The following criteria apply to surface waters having the designated use as fish and Wildlife Propagation:

- (1.) General Criteria.
- (2.) Biological Criteria.
- (3.) Dissolved oxygen.

- (4.) Temperature.
- (5.) Toxic Substance Criteria for Fish and Wildlife Propagation (Acute and Chronic)
- (6.) Nutrient Criteria.

(c.) Agriculture: Livestock and Irrigation

The surface waters of the Pawnee Nation shall be maintained so that toxicity does not inhibit continued ingestion by livestock or irrigation of crops.

- (1.) General Criteria

(d.) Primary Body Contact Recreation/Cultural Use

- (1.) Primary Body Contact Recreation involves direct body contact with the water where a possibility of ingestion exists. In these cases the water shall not contain chemical, physical or biological substances in concentrations that are irritating to skin or sense organs or are toxic or cause illness upon ingestion by human beings.
- (2.) Cultural water use is considered waters which are used to support and maintain the way of life for the Pawnee People including, but not limited to: use for in-stream flow, habitat for fisheries and wildlife, preservation of habitat for berries, roots, medicines and other vegetation significant to the values of the Pawnee People. Furthermore, this includes Native American spiritual and cultural practices which may involve primary and secondary contact with water and consumption of water. This also includes uses of a water-body to fulfill cultural, traditional, spiritual, or religious needs of the Pawnee Nation.
- (3.) The following criteria shall be used to protect the uses of primary body contact recreation and cultural use:
 - (i.) General Criteria
 - (ii.) Biological Criteria

(e.) Water Resource Reserves

Pawnee Nation of Oklahoma acknowledges that water resources are reserved for current and future use for the continuing benefit of the Pawnee Nation. This consists of water that maintains water in creeks, rivers, lakes and water used for groundwater recharge. Furthermore, this incorporates water used for marketing, transfer and storage. Throughout the exchange of marketing, transfer or storage all designated uses must be maintained. The following criteria apply to surface waters having the designated beneficial use as Water Resource Reserves:

- (1.) General Criteria

(2.) Biological criteria

(f.) Groundwater Recharge

The following criteria apply to surface waters of the Tribe having the designated beneficial use of Groundwater Recharge:

(1.) General Criteria

(2.) Toxic Substance Criteria for Public and Private Water Supply

(3.) Biological Criteria

Section 512. Wetland Water Quality Standard

- (a.) Wetlands provide a critical ecological functions (through their assimilative capacity for nutrients and sediment) that protects the quality of water resources (surface and ground) from point sources and nonpoint source pollution effects on waters adjacent to, downstream of, or hierologically connected to the wetlands. Ecological functions are dependant upon the wetland type. The Pawnee Nation has classified its wetlands into three systems:
- Riverine System - Channels not dominated by trees, shrubs, persistent emergent, mosses, and lichens.
 - Lacustrine System - Topographic Depressions or dammed channel having less than 30% areal coverage by trees, shrubs, persistent emergent, mosses, and lichens; and area greater than 20 acres or less if any part of shoreline is wave active or bedrock, or the deepest point of the basin exceeds 2 meters (6.6 feet) at low water.
 - Palustrine System - Wetlands (i.e., swamps, marshes, prairie) dominated by trees, shrubs, persistent emergent, mosses, and lichens; and wetlands having little such vegetation, less than 2 acres coverage, no wave active shoreline or bedrock shoreline, and deepest water is less than 2 meters (6.6 feet) at low water.

Wetland inventories within the Pawnee Nation are included in the National Wetlands Inventory.

- (b.) All wetlands within Pawnee Indian Country (or otherwise within the jurisdiction of the Pawnee Nation) shall be subject to the following numeric and narrative criteria:
- (1.) Riverine System - The Criteria for the Protection of Surface Water Resources (Section 510, subpart (a) thru (g)).
 - (2.) Lacustrine System - The Criteria for the Protection of Surface Water Resources (Section 510, subpart (a) thru (g)).
 - (3.) Palustrine System -
 - (i.) Nutrient Criteria shall not exceed the following limits at any time:
 - I. Ammonia shall not exceed 1.24 mg/l at pH of 8.0.
 - II. Nitrates shall not exceed 5.0 mg/l at 20° C.
 - III. Phosphorous (Total) shall not exceed 0.1 mg/l at 20° C .
 - (ii.) Chloride levels shall not exceed 25 mg/l at any time.
 - (iii.) Water quality in wetlands shall be maintained at naturally occurring levels, within the natural range of variation for the wetland type as required for Anti-degradation (Section 503).
 - (iv.) Physical and biological characteristics shall be maintained and protected by:

- I. Maintaining hydrological conditions, including hydro-period, hydrodynamics, and natural water temperature variations;
- II. Maintaining the natural hydrophytic vegetation;
- III. Maintaining substrate characteristics necessary to support existing and future designed uses; and
- IV. Total Suspended Solids shall not exceed 30.0 mg/l at any time.

- (c.) Point and nonpoint sources of pollution shall not cause destruction or impairment of wetlands except where authorized under section 404 of the CWA.
- (d.) Wetlands shall not be used as repositories or treatment systems for wastes from human sources, except as specified by number (e), below.
- (e.) Wetlands intentionally created from non-wetland sites for the sole purpose of wastewater or storm-water treatment (constructed wetlands) are not considered "waters of the tribe" and are not subject to the provisions of this section.

Section 513. Designated Beneficial of Surface Waters of the Pawnee Nation of Oklahoma

Water Body Name and Resource Type										
		Additional Protection			Beneficial Uses					
Water body	HUC Numbers	ORS	HQW	SWS	PPWS	FW Prop.	Ag	PBCR	WRR	GWR
Arkansas River	1106			X		X	X	X	X	X
Black Bear Creek	11060006			X		X	X	X	X	X
#1 Storage Unit				X			X	X	X	X
#2 Storage Unit				X			X	X	X	X
#5 Storage Unit				X			X	X	X	X
#7 Storage Unit				X			X	X	X	X
#8 Storage Unit				X			X	X	X	X
#9 Storage Unit				X			X	X	X	X
#14 Storage Unit				X			X	X	X	X
#15 Storage Unit				X			X	X	X	X
Camp Creek				X		X	X	X	X	X
Lone Chimney Lake						X	X	X	X	X
#18 Storage Unit				X			X	X	X	X
#21 Storage Unit				X			X	X	X	X
#22 Storage Unit				X			X	X	X	X
#23 Storage Unit				X			X	X	X	X
#24 Storage Unit				X			X	X	X	X
#25 Storage Unit				X			X	X	X	X
#26 Storage Unit				X			X	X	X	X
Crystal Creek						X	X	X	X	
Pepper Creek						X	X	X	X	
#16 Storage Unit						X	X	X	X	

Water Body Name and Resource Type (continued)										
Water body	HUC Numbers	Additional Protection			Beneficial Uses					
		ORS	HQW	SWS	PPWS	FW Prop	Ag	PBCR	WR	GWR
Peters Creek						X	X	X	X	
#6 Storage Unit							X	X	X	
Skedee Creek				X		X	X	X	X	
Pawnee Lake						X	X	X	X	
# 3 Storage Unit							X	X	X	
# 4 Storage Unit							X	X	X	
Coal Creek			X			X	X	X	X	
Coon Creek						X	X	X	X	
Eagle Creek						X	X	X	X	
Hell Roaring Creek						X	X	X	X	
Rock Creek						X	X	X	X	
Spring Creek						X	X	X	X	
Walker Creek						X	X	X	X	
West Branch Creek						X	X	X	X	
Meramec Lake		X				X	X	X	X	X
Cimarron River	11050003			X		X	X	X	X	X
Council Creek						X	X	X	X	
Lagoon Creek						X	X	X	X	
Salt Creek						X	X	X	X	X
Kennedy Creek						X	X	X	X	

Section 514. Groundwater Standards

The provisions of this Section apply only to fresh groundwater. Groundwater basins that have an average yield of at least 50 gallons per minute are designated as major groundwater basins for the purpose of these standards. All yields less than 50 gallons per minute are designated as minor ground water basins. All major and minor ground water basins shall be designated a classifications for protection. Major groundwater basins shall be further classified as:

- Class I (Special Source Groundwaters)
- Class II (General Use Groundwaters)
- Class III (Limited Use Groundwaters)

Minor groundwater basins are classified as Class IIB unless specifically designated.

(a.) Classification of Ground Water Aquifers

The following Classifications shall be designated to each major or minor ground water basin:

- (1.) Class I (Special Source Groundwater): Special source groundwaters are defined as any area with exceptional water quality, there is an irreplaceable source of water, it is necessary to maintain an outstanding resource or places the groundwater is ecologically important. Special source groundwaters are considered to be very vulnerable to contamination. Special source groundwater include groundwater which underlie lands located within the boundaries of the Tribe approved wellhead protection area for public water supply and/or water body designated as public/private water supply.
- (2.) Class II (General Use Groundwater): These are groundwaters capable of being used as a drinking water supply with no treatment or with conventional treatment methods, and also have the potential to be used for other beneficial uses. General use groundwaters shall have a mean concentration of Total Dissolved Solids of less than 3,000 milligrams per liter. General use for groundwaters will be further subdivided as follows:
 - (i.) Class II(A) - includes all major, unconfined groundwater basins;
 - (ii.) Class II(B) - includes all minor groundwater basins;
 - (iii.) Class II(C) - includes all major, confined groundwater basins.
- (3.) Class III (Limited Use Groundwater): These are groundwaters which have poor quality due to naturally occurring sources of contamination and could require extensive treatment for use as a source of drinking water. Limited use groundwaters are allowed to have a mean concentration of Total Dissolved Solids greater than or equal to 3000 milligrams per liter

(b.) Protective measures and corrective actions

Groundwater is protected by both narrative and numerical criteria as follows:

- (1.) Narrative criteria.
 - (i.) Where specific protective measures are not listed, protective measures adequate to preserve and protect existing and designated groundwater basin classifications shall be maintained at all times.
 - (ii.) Protective measures shall also be sufficient to minimize the impact of pollutants on groundwater quality.
- (2.) General numerical criteria for required action.
 - (i.) In addition to the narrative criteria, and for all fresh ground water, regardless of classifications or whether it is listed in a groundwater basin, the groundwaters of the tribe shall be maintained to prevent alteration of their chemical properties by the specified harmful substances not naturally found in groundwater.
 - (ii.) Specifically, the concentration of the substances listed for the numeric water quality criteria for ground water shall not exceed the levels practically measured in an unpolluted groundwater sample using laboratory technology. If a listed level is exceeded, it shall be deemed polluted and corrective action may be required. The substances and highest allowable concentrations are listed in the table 11 below:
 - (iii.) Additionally, if the concentration of any toxic substance listed pursuant to Section 307(a) of the Clean Water Act or any other pesticide in fresh groundwater is found above levels practically measured, it shall be deemed pollution and corrective action may be required.

Table 13. Numerical Water Quality Criteria for Groundwater

SUBSTANCE	CONCENTRATION (µg/L)
Acetone	2.7
Benzene	0.2
Bromodichloromethane	0.3
Bromoform	2.4
Bromomethane	1.7
Carbon Disulfide	0.2
Carbon Tetrachloride	0.4
Chlorobenzene	0.7
Chloroform	10.0
Chloroethane	2.1
2-Chloroethylvinyl Ether	0.9
Chloromethane	2.7
Dibromochloromethane	0.4
1,1-Dichloroethene	0.6
1,1-Dichloroethane	0.3
Trans-1,1-Dichloroethylene	0.4
1,2-Dichloroethylene	0.5
1,2-Dichloropropene	0.3
Trans-1,3-Dichloropropene	0.4
Cis-1,3-Dichloropropene	0.3
Ethyl Benzene	0.4
Methyl Isobutyl Ketone	2.915
Methyl Ethyl Ketone	0.8
Methyl-N-Butyl Ketone	4.1
Methylene Chloride	10.0
Styrene	0.8
1,1,2-Trichloroethane	0.7
1,1,1-Trichloroethane	0.3
Trichloroethene	0.3
Trichlorofluoromethane	0.6
Tetrachloroethene	1.6
1,1,2,2-Tetrachloroethane	2.8
Toluene	0.5
Meta+Para Xylene	0.8
O-Xylene	0.8
Vinyl Chloride	1.9

(c.) Corrective Actions

In the event that pesticides or other toxic pollutants are identified at levels above detection, or substances listed in this section above are identified above the limits specified, an investigation will be initiated to determine the source or sources responsible.

- (1.) For the major groundwater basins, corrective action will be initiated to restore, where practical, groundwater quality to a level suitable for the appropriate classification.
- (2.) In the event the source or sources cannot be identified, actions will begin in cooperation with Federal, state, Tribal, and local agencies to monitor the groundwater quality to protect the groundwater from further degradation.
- (3.) For all other groundwater, action will be initiated on a case-by-case basis to restore, where practical, groundwater quality, taking into account existing uses of the groundwater, proximity of the polluted groundwater to water supply wells, vapor impacts of the polluted groundwater, toxicity and persistence of the pollutants, and other factors as necessary.

CHAPTER SIX – Aquatic Buffers.

Section 601. Background

It is the desire of the Pawnee Nation to protect and maintain the native vegetation in riparian and wetland areas by implementing specifications for the establishment, protection, and maintenance of vegetation along all stream systems or coastal zones within our jurisdictional authority. Buffers adjacent to stream systems and coastal areas provide numerous environmental protection and resource management benefits that can include the following:

- (a) Restoring and maintaining the chemical, physical, and biological integrity of the water resources
- (b) Removing pollutants delivered from urban stormwater
- (c) Reducing erosion and sediment entering the stream
- (d) Stabilizing stream banks
- (e) Providing infiltration of stormwater runoff
- (f) Maintaining base flow of streams
- (g) Contributing the organic matter that is a source of food and energy for the aquatic ecosystem
- (h) Providing tree canopy to shade streams and promote desirable aquatic organisms
- (i) Providing riparian wildlife habitat
- (j) Furnishing scenic value and recreational opportunity

Section 602. Intent

The purpose of this Section is to establish minimal acceptable requirements for the design of buffers to protect the streams, wetlands, and floodplains of Pawnee Nation; to protect the water quality of watercourses, reservoirs, lakes, and other significant water resources within Pawnee Nation jurisdiction; to protect Pawnee Nation's riparian and aquatic ecosystems; and to provide for the environmentally sound use of Pawnee Nation's land resources.

Section 603. Applications

- (a) This Section shall apply to all proposed development except for that development which meets waiver or variance criteria as outlined in Section IX of this regulation.
- (b) This section shall apply to all timber harvesting activities, except those timber harvesting operations which are implementing a forest management plan that has been deemed to be in compliance with the regulations of the buffer ordinance and has received approval from the Department.
- (c) This section shall apply to surface mining operations except that the design standards shall not apply to active surface mining operations that are operating in compliance with an approved federal surface mining permit.
- (d) The section shall not apply to agricultural operations that are covered by an approved Natural Resources Conservation Service (NRCS) conservation plan that includes the application of BMPs.
- (e) Except as provided in paragraph 8, this ordinance shall apply to all parcels of land, structures, and activities that are causing or contributing to:
 - (1) Pollution, including nonpoint source pollution, of the waters of the jurisdiction adopting this ordinance
 - (2) Erosion or sedimentation of stream channels
 - (3) Degradation of aquatic or riparian habitat

Section 604. Plan Requirements

- (f) In accordance with Section IV of this ordinance, a plan approved by the appropriate agency is required for all development, forest harvesting operations, surface mining operations, and agricultural operations.
- (g) The plan shall set forth an informative, conceptual, and schematic representation of the proposed activity by means of maps, graphs, charts, or other written or drawn documents so as to enable the agency an opportunity to make a reasonably informed decision regarding the proposed activity.
- (h) The plan shall contain the following information:
 - (1) A location or vicinity map
 - (2) Field-delineated and surveyed streams, springs, seeps, bodies of water, and wetlands (include a minimum of 200 feet into adjacent properties)
 - (3) Field delineated and surveyed forest buffers
 - (4) Limits of the ultimate 100-year floodplain
 - (5) Hydric soils mapped in accordance with the NRCS soil survey of the site area
 - (6) Steep slopes greater than 15 percent for areas adjacent to and within 200 feet of streams, wetlands, or other water bodies
 - (7) A narrative of the species and distribution of existing vegetation within the buffer
- (i) The buffer plan shall be submitted in conjunction with the required grading plan for any development, and the forest buffer should be clearly delineated on the final grading plan.
- (j) Permanent boundary markers, in the form of signage approved by the Department, shall be installed prior to final approval of the required clearing and grading plan. Signs shall be placed at the edge of the middle zone.

Section 605. Design Standards

- (a) A forest buffer for a stream system shall consist of a forested strip of land extending along both sides of a stream and its adjacent wetlands, floodplains, or slopes. The forest buffer width shall be adjusted to include contiguous sensitive areas, such as steep slopes or erodible soils, where development or disturbance may adversely affect water quality, streams, wetlands, or other water bodies.
- (b) The forest buffer shall begin at the edge of the stream bank of the active channel.
- (c) The required width for all forest buffers (i.e., the base width) shall be a minimum of 100 feet, with the requirement to expand the buffer depending on
 - (1) Stream order
 - (2) Percent slope
 - (3) 100-year floodplain
 - (4) Wetlands or critical areas
- (d) In third-order and higher streams, 25 feet shall be added to the base width of the forest buffer.
- (e) The forest buffer width shall be modified if steep slopes are within close proximity to the stream and drain into the stream system. In those cases, the forest buffer width may be adjusted as follows:

Percent Slope	Width of Buffer
15%-17%	add 10 feet
18%-20%	add 30 feet
21%-23%	add 50 feet
24%-25%	add 60 feet

- (f) Forest buffers shall be extended to encompass the entire 100-year floodplain and a zone with a minimum width of 25 feet beyond the edge of the floodplain.
- (g) When wetland or critical areas extend beyond the edge of the required buffer width, the buffer shall be adjusted so that the buffer consists of the extent of the wetland plus a 25-foot zone extending beyond the wetland edge.

Section 606. Water Pollution Hazards

The following land uses or activities are designated as potential water pollution hazards and must be set back from any stream or water body by the distance indicated below:

- (a) Storage of hazardous substances—(150 feet)
- (b) Aboveground or underground petroleum storage facilities—(150 feet)
- (c) Drainfields from onsite sewage disposal and treatment systems (i.e., septic systems)—(100 feet)
- (d) Raised septic systems—(250 feet)
- (e) Solid waste landfills or junkyards—(300 feet)
- (f) Confined animal feedlot operations—(250 feet)
- (g) Subsurface discharges from a wastewater treatment plant—(100 feet)
- (h) Land application of biosolids—(100 feet)

Section 607. Zones

The forest buffer shall be composed of three distinct zones, with each zone having its own set of allowable uses and vegetative targets as specified in this ordinance. (See Figure 2.)

- (a) Zone 1 – Streamside Zone
 - (1) Protects the physical and ecological integrity of the stream ecosystem.
 - (2) Begins at the edge of the stream bank of the active channel and extends a minimum of 25 feet from the top of the bank.
 - (3) Allowable uses within this zone are highly restricted to
 - (4) Flood control structures
 - (5) Utility right of ways
 - (6) Footpaths
 - (7) Road crossings, where permitted
 - (8) Target for the streamside zone is undisturbed native vegetation.
- (b) Zone 2, Middle Zone
 - (1) Protects key components of the stream and provides distance between upland development and the streamside zone.
 - (2) Begins at the outer edge of the streamside zone and extends a minimum of 50 feet plus any additional buffer width as specified in this section.
 - (3) Allowable uses within the middle zone are restricted to
 - (i) Biking or hiking paths
 - (ii) Storm water management facilities, with the approval of the Department.
 - (iii) Recreational uses as approved by the Department
 - (iv) Limited tree clearing with approval from the Department.
 - (4) Targets mature native vegetation adapted to the region.
- (c) Zone 3, Outer Zone
 - (1) Prevents encroachment into the forest buffer and filters runoff from residential and commercial development.

- (2) Begins at the outward edge of the middle zone and provide a minimum width of 25 feet between Zone 2 and the nearest permanent structure.
- (3) Restricts septic systems, permanent structures, or impervious cover, with the exception of paths.
- (4) Encourages the planting of native vegetation to increase the total width of the buffer.

Section 608. Buffer Management and Maintenance

- (a) The forest buffer, including wetlands and floodplains, shall be managed to enhance and maximize the unique value of these resources. Management includes specific limitations on alteration of the natural conditions of these resources.
- (b) The following practices and activities are restricted within Zones 1 and 2 of the forest buffer, except with approval by the Department:
 - (1) Clearing of existing vegetation
 - (2) Soil disturbance by grading, stripping, or other practices
 - (3) Filling or dumping
 - (4) Drainage by ditching, underdrains, or other systems
 - (5) Use, storage, or application of pesticides, except for spot spraying of noxious weeds or non-native species consistent with recommendations of the Department.
 - (6) Housing, grazing, or other maintenance of livestock
 - (7) Storage or operation of motorized vehicles, except for maintenance and emergency use approved by the Department.
- (c) The following structures, practices, and activities are permitted in the forest buffer, with the following criteria, specific design and maintenance features, subject to the review of the Department: Roads, bridges, paths, and utilities:
 - (1) An analysis needs to be conducted to ensure that no economically feasible alternative is available.
 - (2) The right-of-way should be the minimum width needed to allow for maintenance access and installation.
 - (3) The angle of the crossing shall be perpendicular to the stream or buffer to minimize clearing requirements
 - (4) The minimum number of road crossings should be used within each subdivision, and no more than one fairway crossing is allowed for every 1,000 feet of buffer.
- (d) Storm water management:
 - (1) An analysis needs to be conducted to ensure that no economically feasible alternative is available and that the project either is necessary for flood control or significantly improves the water quality or habitat in the stream.
 - (2) In new developments, onsite and nonstructural alternatives will be preferred over larger facilities within the stream buffer.
 - (3) When constructing storm water management facilities (i.e., BMPs), the area cleared will be limited to the area required for construction and adequate maintenance access as outlined in Department approved and current storm water design manuals.
 - (4) Material dredged or otherwise removed from a BMP shall be stored outside the buffer.
- (e) Stream restoration projects, facilities, and activities approved by the Department are permitted within the forest buffer.

- (f) Water quality monitoring and stream gauging are permitted within the forest buffer, as approved by the Department.
- (g) Individual trees within the forest buffer that are in danger of falling causing damage to dwellings or other structures, or causing blockage of the stream may be removed.
- (h) Other timber cutting techniques approved by the agency may be undertaken within the forest buffer under the advice and guidance of the Department if necessary to preserve the forest from extensive pest infestation, disease infestation, or threat from fire.
- (i) All plans prepared for recording and all right-of-way plans shall clearly
 - (1) Show the extent of any forest buffer on the subject property
 - (2) Label the forest buffer
 - (3) Provide a note to reference any forest buffer stating: "There shall be no clearing, grading, construction or disturbance of vegetation except as permitted by the agency."
 - (4) Provide a note to reference any protective covenants governing all forest buffer areas stating: "Any forest buffer shown here on is subject to protective covenants that may be found in the land records and that restrict disturbance and use of these areas."
- (j) All lease agreements must contain a notation regarding the presence and location of protective covenants for forest buffer areas and shall contain information on the management and maintenance requirements for the new property occupier.
- (k) An offer of dedication of a forest buffer area to the Pawnee Nation shall not be interpreted to mean that this automatically conveys to the general public the right of access to this area.
- (l) The Department may inspect the buffer periodically and immediately following severe storms for evidence of sediment deposition, erosion, or concentrated flow channels and corrective actions taken to ensure the integrity and functions of the forest buffer.
- (m) Forest buffer areas may be allowed to grow into their vegetative target state naturally, but methods to enhance the successional process such as active reforestation may be used when deemed necessary by the Department to ensure the preservation and propagation of the buffer area. Forest buffer areas may also be enhanced through reforestation or other growth techniques as a form of mitigation for achieving buffer preservation requirements.

Section 609. Enforcement and Penalties

- (a) Penalties that may be assessed for those deemed to be in violation may include the following:
 - (1) A civil penalty not to exceed \$1,000.00 for each violation. Every day that such violation(s) continue will be considered a separate offense.
 - (2) A criminal penalty in the form of a fine of not more than \$1,000.00 for each violation, imprisonment for not more than 90 days, or both. Every day that such violation(s) continue will be considered a separate offense.
- (b) Anyone who knowingly makes any false statements in any application, record, or plan required by this ordinance shall upon conviction be punished by a fine of not more than \$1,000.00 for each violation, imprisonment for not more than 30 days, or both.
- (c) In addition to any other sanctions listed in this Chapter, a person who fails to comply with the provisions of this buffer ordinance shall be liable to the agency in a civil action for damages in an amount equal to twice the cost of restoring the buffer. Damages that are recovered in accordance with this action shall be used for the restoration of buffer

systems or for the administration of programs for the protection and restoration of water quality, streams, wetlands, and floodplains.

Section 610. Application, Waivers/Variances

- (a) This ordinance shall apply to all proposed development except for activities that were completed prior to the effective date of this ordinance and had received the following:
 - (1) A valid, unexpired permit in accordance with development regulations
 - (2) A current, executed public works agreement
 - (3) A valid, unexpired building permit
 - (4) A waiver in accordance with current development regulations.
- (b) The Director of the agency may grant a variance for the following:
 - (1) Those projects or activities for which it can be demonstrated that strict compliance with the ordinance would result in a practical difficulty or financial hardship
 - (2) Those projects or activities serving a public need where no feasible alternative is available
 - (3) The repair and maintenance of public improvements where avoidance and minimization of adverse impacts to non-tidal wetlands and associated aquatic ecosystems have been addressed
 - (4) Those developments which have had buffers applied in conformance with previously issued requirements
- (c) Waivers for development may also be granted in two additional forms, if deemed appropriate by the Director:
 - (1) The buffer width may be reduced at some points as long as the average width of the buffer meets the minimum requirement. This averaging of the buffer may be used to allow for the presence of an existing structure or to recover a lost lot, as long as the streamside zone (Zone I) is not disturbed by the reduction and no new structures are built within the 100-year floodplain.
 - (2) The Department may offer credit for additional density elsewhere on the site in compensation for the loss of developable land due to the requirements of this ordinance. This compensation may increase the total number of dwelling units on the site up to the amount permitted under the base zoning.
- (d) The applicant shall submit a written request for a variance to the director of the agency. The application shall include specific reasons justifying the variance and any other information necessary to evaluate the proposed variance request. The agency may require an alternative analysis that clearly demonstrates that no other feasible alternatives exist and that minimal impact will occur as a result of the project or development.
- (e) In granting a request for a variance, the director of the agency may require site design, landscape planting, fencing, signs, and water quality best management practices to reduce adverse impacts on water quality, streams, wetlands, and floodplains.
 - (1) Conflict With Other Regulations
 - (2) Where the standards and management requirements of this buffer ordinance are in conflict with other laws, regulations, and policies regarding streams, steep slopes, erodible soils, wetlands, floodplains, timber harvesting, land disturbance activities, or other environmental protective measures, the more restrictive shall apply.

CHAPTER SEVEN – Water Supply Systems

Section 701. Cooperation with federal agencies

The Commission shall have authority to administer a wellhead protection program and Public Water Supply Supervision program for the Nation pursuant to the federal Safe Drinking Water Act, in cooperation with such other departments of the Nation as the Council may deem appropriate.

Section 701. Regulations and standards

- (a) The Commission shall establish regulations as necessary to implement the provisions of this part pertaining to water supply systems and the treatment and distribution of water to the public, including rules for:
 - (1) The construction and extension of such systems;
 - (2) Specifications and directions as to the source, manner of storage, purification, treatment and distribution of water supplied to the public;
 - (3) Requirements for control tests, laboratory checks, operating records and reports, including the submission of water samples for testing or sample analyses as prescribed by the federal Safe Drinking Water Act and this Code; and
 - (4) Permitting requirements.
- (b) The Commission shall recommend standards to the public for individual water supplies.
- (c) Such regulations may provide for the exemption, and conditions of specified categories of water supply systems from any of the requirements thereof, except for wastewater discharges, if the public health will not thereby be endangered.

Section 702. Waterworks

Filing of plans and surveys – Every person supplying, authorized to supply, or proposing to supply water to the public shall file with the Commission a certified copy of the plans and surveys of the waterworks, with a description of the source from which the water supply is derived. No additional source of supply or well shall thereafter be used without written authorization from the Commission.

Section 703. Investigations of sanitary quality of water

- (a) The Commission may investigate the sanitary quality of water supplied to the public if the Commission has reason to believe that such water supply is prejudicial to the public health or environment.
- (b) During such investigation, the person in charge of the water supply shall furnish to the Commission all information requested relative to the source or sources from which the supply of water is derived, and the manner of storage, distribution and purification or treatment necessary or desirable for the determination of its sanitary quality.

Section 704. 520 Orders

- (a) The Director or Commission may issue an order requiring compliance with this Act, regulations of the Commission, and orders previously issued. Such orders may require a change in the source or sources of a public water supply, or in the manner of storage, distribution, purification or treatment of the supply before delivery to consumers, as may be necessary to safeguard the public health or environment.
- (b) The Commission or Director may issue an emergency orders as necessary to safeguard the health of the consumers or the environment.

- (c) Orders of the Commission or Director may require public water supply systems to notify consumers of the problem with the supply and the action required by the order.
- (d) An order shall remain in full effect until it is rescinded by the Commission.
- (e) Orders and proceedings, unless otherwise specifically provided, shall be in compliance with general enforcement provisions of this Chapter.

CHAPTER EIGHT – Groundwater Resources

Section 801. Purpose and Intent

- (a) The Council finds that a safe public groundwater supply is one of the most valuable natural resources in this Nation.
- (b) The Council recognizes and declares that the management, protection and conservation of groundwater supplies and the beneficial uses thereof are essential to the economic prosperity and future well-being of the Nation. As such, the public interest demands procedures for the development and implementation of management practices to conserve and protect public groundwater supplies.
- (c) The Council recognizes that many residents rely on groundwater for their safe drinking water supply, and that certain land uses can contaminate groundwater particularly in shallow/surficial aquifers.
- (d) The purpose of this section is to protect public health and safety by minimizing contamination of shallow/surficial aquifers and preserving and protecting existing and potential sources of drinking water supplies. It is the intent to accomplish this through both public education and public cooperation, as well as by creating appropriate land use regulations that may be imposed in addition to those currently imposed by other law.

Section 802. Definitions

For the purposes of this section, the following terms are defined below:

- (a) **AQUIFER.** A geological formation, group of formations or part of a formation composed of rock, sand or gravel capable of storing and yielding groundwater to wells and springs.
- (b) **CONTAMINATION.** An impairment of water quality by chemicals, radionuclides, biologic organisms, or other extraneous matter whether or not it affects the potential or intended beneficial use of water.
- (c) **DEVELOPMENT.** The carrying out of any construction, reconstruction, alteration of surface at or below the soil profile, or structure or change of land use or intensity of use.
- (d) **FACILITY.** Something that is built, installed, or established for a particular purpose.
- (e) **GREY WATER:** All domestic wastewater except toilet discharge water or otherwise containing dangerous levels of pollutant.
- (f) **GROUNDWATER PROTECTION OVERLAY DISTRICT:** The zoning district defined to overlay other zoning districts in the Pawnee Nation. This district may include specifically designated recharge areas that collect precipitation or surface water and carry it to aquifers.
- (g) **HAZARDOUS MATERIAL.** A material which is defined in one or more of the following categories:
 - (1) **Ignitable:** A gas, liquid or solid which may cause fires through friction, absorption of moisture, or which has low flash points. Examples: white phosphorous and gasoline.
 - (2) **Carcinogenic:** A gas, liquid, or solid which is normally considered to be cancer causing or mutagenic. Examples: PCB's in some waste oils.
 - (3) **Explosive:** A reactive gas, liquid or solid which will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.

- (4) **Highly Toxic:** A gas, liquid, or solid so dangerous to man as to afford an unusual hazard to life. Example: chlorine gas.
- (5) **Moderately Toxic:** A gas, liquid or solid which through repeated exposure or in a single large dose can be hazardous to man.
- (6) **Corrosive:** Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy other containers of hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.
- (h) **PRIMARY CONTAINMENT FACILITY:** A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.
- (i) **RELEASE:** Any unplanned or improper discharge, leak, or spill of a potential contaminant including a hazardous material.
- (j) **SECONDARY CONTAINMENT FACILITY:** A second tank, catchment pit, pipe, or vessel that limits and contains liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery are required,
- (k) **SHALLOW/SURFICIAL AQUIFER:** An aquifer in which the permeable medial (sand and gravel) starts at the land surface or immediately below the soil profile.
- (l) **SPILL RESPONSE PLANS:** Detailed plans for control, re-containment, recovery, and cleanup of hazardous material releases, such as during fires or equipment failures.
- (m) **STORMWATER TREATMENT PRACTICES (STPs):** Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to storm water runoff and water bodies.
- (n) **TIME-OF-TRAVEL DISTANCE:** The distance that groundwater will travel in a specified time. This distance is generally a function of the permeability and slope of the aquifer.

Section 803. Zones

- (a) **ZONE 1 - DRINKING WATER CRITICAL IMPACT ZONE.**
 - (1) Zone 1 is defined as the area within the 6-month time-of-travel distance mapped around all the public water supply well(s). This zone shall be presumed to be the area within 1000 feet of a public water supply well.
 - (2) Encouraged Uses. The following uses are encouraged within Zone 1 provided they meet the appropriate performance standards outlined in 3.1.c below and are designed so as to prevent any groundwater contamination.
 - (i) Parks, greenways, or publicly-owned recreational areas such as foot, bicycle or horse paths, and bridges.
 - (ii) Necessary public utilities/facilities including the construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels..
 - (iii) Conservation efforts for soil, water, plants, and wildlife;
 - (3) Special Exceptions. The following uses are permitted only under the terms of a special exception and must conform to provisions of the underlying zoning district and meet the performance standards outlined in 3.2.(c) below.
 - (4) Expansion of existing nonconforming uses to the extent allowed by the underlying district: The applicant should consult the local zoning plan to confirm nonconforming uses. The Agency reserves the right to review all applications

and shall not grant approval unless it finds such expansion does not pose greater potential contamination of groundwater than the existing use.

(5) Prohibited Uses. The following uses, unless granted a special exception, are prohibited within Zone 1, the 6- month time-of-travel zone.

- (i) Automobile body/repair shop;
- (ii) Gas station;
- (iii) Fleet/trucking/bus terminal;
- (iv) Dry cleaner;
- (v) Electrical/electronic manufacturing facility;
- (vi) Machine shop;
- (vii) Metal plating/finishing/fabricating facility;
- (viii) Chemical processing/storage facility;
- (ix) Wood preserving/treating facility;
- (x) Junk/scrap/salvage yard;
- (xi) Mines/gravel pit
- (xii) Irrigated nursery/greenhouse stock
- (xiii) Confined animal feeding operations
- (xiv) Land divisions resulting in high density (>1 unit/acre) septic systems;
- (xv) Equipment maintenance/fueling areas;
- (xvi) Injection wells/dry wells/sumps, except for single-family residences directing gutter downspouts to a drywell;
- (xvii) Underground storage tanks, (except those with spill, overflow, and corrosion protection requirements in place);
- (xviii) All other facilities involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or waste having potentially harmful impact on groundwater quality;
- (xix) All uses not permitted in the underlying zone district

(b) ZONE 2 - DRINKING WATER POTENTIAL IMPACT ZONE.

- (1) Zone 2 is established as the remainder of the Pawnee Nation Jurisdiction not included in Zone 1, but deemed necessary to ensure adequate protection of public drinking water supplies.
- (2) Permitted Uses: All uses permitted in the underlying zoning districts provided that they can meet the Performance Standards as outlined for the Groundwater Protection Overlay District.
- (3) Special Exceptions: All special exceptions may be approved by the Director provided they can meet performance standards outlined for the Groundwater Protection Overlay District.
- (4) Performance Standards: The following standards shall apply to uses in Zones 1 and 2:
 - (i) Any facility involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or wastes, unless granted a special exception either through permit or another ordinance, must have a secondary containment system which is easily inspected and whose purpose is to intercept any leak or release from the primary containment vessel or structure. Underground tanks or buried pipes carrying such materials must have double walls and sumps capable of inspection.
 - (ii) Open liquid waste ponds containing materials referred to in item (1) above will not be permitted without a secondary containment system.

- (iii) Storage of petroleum products in quantities exceeding 500 gallons at one locality in one tank or series of tanks must be in elevated tanks; such tanks must have a secondary containment system noted in item (I) above where it is deemed necessary by the Agency.
- (iv) All permitted facilities must adhere to appropriate federal and state standards for storage, handling and disposal of any hazardous waste materials.
- (v) An acceptable contingency plan for all permitted facilities must be prepared for preventing hazardous materials from contaminating the shallow/surficial aquifer should floods, fire, or other natural catastrophes, equipment failure, or releases occur:
 - (I) For flood control, all underground facilities shall include but not be limited to a monitoring system and secondary standpipe above the 100 year flood control level, for monitoring and recovery. For above ground facilities, an impervious dike, above the 100 year flood level and capable of containing 100 percent of the largest volume of storage, will be provided with an overflow recovery catchment area (sump).
 - (II) For fire control, plans shall include but not be limited to a safe fire fighting procedure, a fire retarding system, effective containment of any liquid runoff, and provide for dealing safely with any other health and technical hazards that may be encountered by disaster control personnel in combating fire. Hazards to be considered are pipes, liquids, chemicals, or open flames in the immediate vicinity.
 - (III) For equipment failures, plans shall include but not be limited to:
 - a. Below ground level, removal and replacement of leaking parts, a leak detection system with monitoring, and an overfill protection system.
 - b. Above ground level, liquid and leaching monitoring of primary containment systems, the replacement or repair and cleanup or repair of the impervious surface.
 - (IV) For any other release occurring, the owner or operator shall report all incidents involving liquid or chemical material to the Director.
- (vi) Since it is known that improperly abandoned wells can become a direct conduit for contamination of groundwater by surface water, all abandoned wells should be properly plugged according to Section 806.

Section 804. Liability

Nothing in this ordinance shall be construed to imply that the Pawnee Nation has accepted any of an owner/developer's liability if a permitted facility or use contaminates groundwater in any aquifer.

Section 805. Enforcement

- (a) CIVIL ENFORCEMENT:

- (i) Any person may submit a verbal or written complaint alleging a violation of this ordinance.
- (ii) Upon receipt of a complaint, the Agency shall conduct a brief investigation of the substances of the complaint, including a meeting with the landowner involved.
- (iii) Based upon the determination that there is a violation of this ordinance, the jurisdiction shall conduct an informal reconciliation with the violator. As part of such informal reconciliation, the jurisdiction shall:
 - (I) Notify the violator by mail of the violation of this ordinance and a desire of the jurisdiction to correct the violation through informal reconciliation. The statement shall also indicate that should the violator refuse to allow the recommended corrective actions within the time set forth by the jurisdiction, action may be taken to correct the violation and the violator will be billed for the cost of taking the corrective action.
 - (II) Make a good faith effort to meet the violator and resolve/correct the violation.
- (iv) If after taking the steps above and after a period of 30 days following the mailing of the notice of the violation, the jurisdiction in good faith determines that the violator is unwilling to participate in informal reconciliation and take the corrective actions prescribed, the jurisdiction shall notify the violator by mail of the termination of the informal reconciliation.
- (v) The jurisdiction may take corrective actions deemed necessary following 45 days after notifying violator by mail of the notice of termination of the informal reconciliation, and bill the violator for the reasonable cost of such action.
- (b) **CRIMINAL ENFORCEMENT:** In lieu of civil enforcement proceeding, a person who is alleged to have violated this ordinance may be prosecuted for the commission of a crime. Violation of this ordinance may be punished by imprisonment of not more than 180 days or imposition of a fine of not more than \$5,000 or both.

Section 806. Wellhead and water supply protection program.

- (a) The Commission may develop rules and programs to prevent pollution of public water supply systems, including but not limited to a wellhead protection program to assist communities, states, municipalities, rural water districts, non-profit water corporations and other public groundwater suppliers in the conservation and protection of their public groundwater supplies. Such a program may provide guidelines for:
 - (1) specifying the duties of local communities and governments in developing and implementing a wellhead protection program;
 - (2) determining all potential and actual pollution sources which may have an adverse effect on public health;
 - (3) taking into consideration potential sources of pollution when sighting new wells or intake structures for public water supplies;
 - (4) promulgating regulations concerning well drilling and capping; and
 - (5) developing contingency plans for pollution release containment, cleanup and the provision of alternative drinking water supplies for each public water system in the event of pollution.
- (b) The Commission may assist communities with long-term planning for meeting water supply needs from groundwater, surface water or other sources.

Section 807. Water supply protection education program.

- (a) The DECS may develop and implement an education program concerning protection of water supplies, including both groundwater and surface waters. In developing such program, the Commission shall consult with community leaders, public health agencies, water utilities, educational and research institutions, nonprofit organizations and any other person or agency the Commission deems necessary.
- (b) The program should provide public recognition of land uses and owners located within a public groundwater supply wellhead protection area, or within a watershed plan area, who demonstrate successful and committed efforts to protect drinking water supplies by implementing innovative approaches to pollution prevention and groundwater protection.

CHAPTER NINE – Pollutant Discharges

Section 901. Duty of Commission to promulgate regulations

The Commission shall promulgate rules implementing or effectuating this Chapter. Such rules may incorporate by reference any applicable rules, regulations and policies of the U. S. Environmental Protection Agency, U.S. Corps of Engineers, or any other appropriate entity, including but not limited to rules which:

- (a) Allow the inclusion of technology-based effluent limitations and require water quality-related effluent limitations in discharge permits;
- (b) Establish, implement and enforce effluent limitations, prohibitions, pretreatment standards, standards for the removal of toxic materials and pollutants, national standards of performance or more stringent standards, in the control of discharges, through permit terms and conditions or otherwise;
- (c) Prohibit or control the discharge of pollutants into wells;
- (d) Ensure that the public and any other nation or state, the waters of which may be affected, receive notice of each application for a discharge permit and have the opportunity to submit written recommendations or comments;
- (e) Establish management standards for sludge which are no less stringent than applicable federal regulations;
- (f) Establish requirements for dredge and fill activities, mining and physical alterations of streams and lakes of the Nation; and
- (g) Establish any requirements needed to obtain treatment as state or delegation of federal programs or requirements otherwise deemed necessary for comprehensive environmental programs.

Section 902. Permitting

- (a) Pollutant discharge permits may include schedules of compliance and such conditions as the Commission may determine appropriate, including terms and conditions that:
 - (1) Prevent, control or abate pollution, including but not limited to such water-quality-related and technology-based effluent limitations as are necessary to protect water quality and existing and designated beneficial uses of the waters of the nation;
 - (2) Set interim compliance dates which are enforceable without otherwise showing a violation of an effluent limitation or harm to water quality;
 - (3) Set terms and conditions for sludge, land application of wastewater and impoundments.
- (b) The Commission shall:
 - (1) Have authority to issue individual permits and authorizations under general discharge permits for pollutants and storm water and sludge;
 - (2) Issue permits for fixed terms not to exceed five years, but subject to modification prior to the expiration of term for purposes including but not limited to compliance with new standards or assuring protection of water quality;
 - (3) Have the authority to require in permits issued to publicly or privately owned treatment works conditions requiring the permittee to give notice to the Commission of new introductions into such works, a substantial change in volume or character of pollutants, or other appropriate condition, and to require permits for any indirect discharges to such works;

- (4) Have the authority to ensure compliance with all provisions of the Clean Water Act and with other applicable federal law;
- (5) Have the authority to terminate or modify permits for cause, including but not limited to:
 - (i) violation of any condition of the permit, including conditions related to monitoring requirements, entry and inspections,
 - (ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts, or
 - (iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
- (6) Have authority to implement and enforce duly promulgated rules, authority to implement and enforce a Nationwide pretreatment program, and to implement and enforce requirements applicable to dischargers into municipal separate storm sewer systems; and
- (7) Have all necessary or incidental authority to investigate and abate violations of permits, administrative orders, rules, and laws of the Nation, to apply sanctions through administrative proceedings for violations, including but not limited to violations of requirements to obtain permits, terms and conditions of permits, effluent standards and limitations and water quality standards, and violations of requirements for recording, reporting, monitoring, entry, inspection and sampling.

Section 903. Commission Authority

Authorized employees or representatives of the Commission shall, upon presentation of credentials, have:

- (a) A right of entry to, upon, or through any private or public premises upon which an effluent or sludge source is or may be located or in which any records are required to be maintained;
- (b) Access to at any reasonable time for the purposes of reviewing and copying any records required to be maintained;
- (c) Authority to inspect any monitoring equipment, methods, disposal systems or other facilities or equipment which may be required; and
- (d) Access for the purpose of inspecting and sampling any effluent streams or any discharge of pollutants to waters of the Nation or to treatment systems discharging into waters of the Nation or for inspection and sampling of any sludge source, storage, beneficial use, reuse or disposal site.

Section 904. Information

Copies of records, plans, reports or other information required by the Commission shall be submitted upon request and shall be subject to and made available for inspection at reasonable times to any authorized representative of the Commission upon showing of proper credentials. Any authorized representative of the Commission may examine any records or memoranda pertaining to discharges, treatment, or other limitations set by statute, permit, order or duly promulgated rules of the Commission.

Section 905. Discharge without permit unlawful

- (a) Except as otherwise provided in subsection (b) of this section, any point source discharge into waters of the Nation, or in a place likely to reach waters of the Nation, by or from any facility, activity, source or entity regulated by the Commission, shall be unlawful unless a permit has first been obtained from the Commission.

- (b) The Commission may promulgate regulations applicable to discharges composed entirely of storm water or other discharges that are known not to contain significant quantities of pollutants, require permits on a case-by-case basis, establish general permit terms, exempt categories of discharges, or provide a schedule for obtaining a permit.
- (c) Dilution shall not be considered a solution to pollution.
- (d) Effluent limitations established by the USEPA shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this Act.
- (e) Notwithstanding any other provisions of this Section it shall be unlawful to discharge or otherwise introduce any radiological, chemical, or biological warfare agent, any high level radioactive waste, or any medical waste, into the waters within Pawnee Indian Country or into waters affecting the waters within Pawnee Indian Country.
- (f) Runoff from agricultural lands, storm runoff, and irrigation return flows, confined animal feeding operations, or any construction activity which utilize any system of works which stores, collects, conveys, or discharges such flow are point sources and shall be subject to permitting. Such compliance shall include protection of agricultural, domestic, industrial, public drinking water, and in stream uses made of the waters stored, collected, or conveyed prior to the construction of the system of works.
- (g) No permit shall be issued that 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 Act have been met or will be met pursuant to a schedule of compliance or a variance specifying treatment requirements as determined by the Commission. No permit shall be issued that 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 Commission. No permit shall be issued that 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. If the NPDES program is delegated to the Tribe, no permit shall be issued prior to its review and approval by the U.S. Environmental Protection Agency where such approval is required by the federal Act or by regulations adopted there under.

CHAPTER TEN – Waste Water

Section 1001. Wastewater treatment.

- (a) No person shall do any construction work of any nature for a municipal treatment works, non-industrial wastewater treatment system, sanitary sewer system or other sewage treatment works, or for any extension thereof, or make any change in the manner of non-industrial wastewater treatment or make any change in the treatment, storage, use or disposal of sewage sludge without a permit issued by the Commission.
- (b) No permit shall be required for the construction or modification of a private individual sewage disposal system provided that such system is constructed or modified in accordance with other applicable requirements of the Nation.
- (c) An application for such permit shall include an engineering report fully describing the proposed construction, legal description of the site where the works or system is or is proposed to be located; and a legal description of the site where any discharge point is or is proposed to be located, and any other relevant information requested by the Director.
- (d) Upon approval of the engineering report, the applicant shall submit plans and specifications for the proposed system or the proposed extension or change of an existing system for review. Such plans and specifications shall be prepared by a professional engineer licensed to practice in the state of Oklahoma.

Section 1002. Construction, operation and extension of treatment systems.

- (e) The Commission may require permits or promulgate rules as necessary pertaining to the treatment, transportation, storage, use and disposal of wastewater, sewage sludge and other waste by wastewater treatment systems or treatment works.
- (f) The Commission may allow the exemption, and set conditions therefor, for specified categories of wastewater treatment systems or treatment works for small public sewage facilities if public health and the environment will not thereby be endangered. Provided, no exemption shall be allowed which is inconsistent with applicable minimum federal requirements for discharges or use, transportation or disposal of sludge.

Section 1003. Sludge

- (a) Regulations of the Commission applicable to sewage sludge shall be at least as stringent as applicable federal regulations. Prior to promulgation of such rules, federal requirements shall apply, in addition to requirements established pursuant to this Act.
- (b) Sludge or other wastes shall only be land applied pursuant to a permit issued by the Commission and in a manner consistent with Commission rules, including appropriate limitations on the location, amount, frequency, content, manipulation, setbacks and prohibitions as the Commission may deem appropriate. When permitted, the following minimum requirements apply:
 - (1) Annual land application of sludge or other waste shall only occur during the growing season at a rate not to exceed the target crop's ability to uptake applied nutrients and shall be consistent with results of recent soil tests;
 - (2) Land application of sludge or waste that contains concentrations of heavy metals, pathogens or pollutants which may pose an environmental or public health risk is prohibited;
 - (3) Sludge or waste applied to land shall be incorporated into the soil before the end of each working day;

- (4) Sludge or waste shall not be applied within four (4) feet of the highest seasonal water table nor applied to the land within five hundred (500) feet of a stream or body of water;
- (5) Sludge shall not be applied within the watershed of a designated outstanding resource water or scenic river, or within one mile of a surface public water supply or any water body that is already impaired by pollutants normally found in such sludge. For purposes of this section, until such time as the Commission may promulgate superseding rules, the term designated “outstanding resource water” or ORW shall include those streams and their tributaries that are currently designated ORW under applicable law;
- (6) Sludge or waste shall not be applied within five hundred (500) feet of any other public or private water supply; and
- (7) Sludge or waste shall not be land applied in areas of karst topography.

Section 1004. Activities requiring permit

- (a) It shall be unlawful for any person to carry on any of the following activities with regard to wastewater or sludge without first securing a permit from the Commission:
 - (1) The construction, installation, operation and closure of any industrial surface impoundment, industrial septic tank or treatment system, or the use of any existing un-permitted surface impoundment, septic tank or treatment system that is within the jurisdiction of the Nation and which is proposed to be used for the containment or treatment of industrial wastewater or sludge;
 - (2) The construction, installation or operation of any industrial or commercial facility, the operation of which would cause an increase in the discharge of waste into the waters of the Nation or would otherwise alter the physical, chemical or biological properties of any waters of the Nation in any manner not already lawfully authorized;
 - (3) The construction or use of any new outfall for the discharge of any waste or pollutants into the waters of the Nation; or
 - (4) The land application of any non industrial or industrial wastewater and the land application of sludge or waste of any type.
- (b) Any major addition, extension, operational change or other change proposed for a facility permitted pursuant to subsection A of this section shall require the approval of the Commission and modification of the facility's permit prior to construction or implementation of such addition, extension or change.
- (c) The discharge of domestic sewage except to an authorized public or private disposal system or the surfacing of effluent from any domestic septic system shall be deemed pollution and be subject to a fine of up to \$1000 per day.

Section 1005. Rules - Application

- (a) The Commission shall have authority to make rules for the control of pollution and sanitation on all property located within any watershed, reservoir or drainage basin subject to the Nation's jurisdiction, including but not limited to rules:
 - (1) Relating to the collection and disposal of domestic and industrial wastes within any reservoir or drainage basin;
 - (2) Prohibiting the dumping of garbage, trash or other wastes or contaminated material within any reservoir or drainage basin; and
 - (3) Providing that all wastes originating within any watershed, reservoir or drainage basin shall be disposed of in a manner approved by the Commission, and that the

plans and specifications for any disposal system shall be approved by the Commission prior to the construction of any such system.

(b) Underground injection of hazardous and nonhazardous liquids

A permit must be obtained from the DECS or Commission prior to construction or use of any underground injection wells within the Nation's jurisdiction.

Section 1006. Penalties for Violations of Act; Procedures

(a) Notice of Alleged Violations.

Wherever the Pawnee Nation has reason to believe that there has occurred a violation of an order, permit, or control regulation issued or promulgated under authority of this Chapter, the Director may issue an administrative notice of violation. The DECS shall provide an evidentiary hearing in accordance with the Administrative Procedures Act.

(b) Suspension, Modification, and Revocation of Permit

Upon a finding and determination, after hearing (administrative or judicial), that a violation of a permit provision has occurred, the Pawnee Nation shall suspend, modify, or revoke the pertinent permit, or take such other action with respect to the violation as may be authorized pursuant to laws and regulations promulgated by the Pawnee Nation.

(c) Cease and Desist Orders

If the Pawnee Nation determines, with or without a hearing, that there exists a violation of any provision of this article or of any order, permit, or control regulation issued or promulgated under authority of this act, the Director, or Attorney General 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 acts or practices complained of must be terminated.

(d) Clean-up Orders

The Director, Attorney General, or Commission may issue orders to any person to clean up any material which he, or his employee, or his agent has accidentally or purposely dumped, spilled, or otherwise deposited in or near water resources which may pollute them.

(e) Restraining Orders and Injunctions.

(1) In the event any person fails to comply with a cease and desist order or clean-up order that is not subject to stay pending administrative or judicial review, the Pawnee Nation may request the tribal prosecutor or Attorney General to bring, and if so requested it shall be his duty to bring, a suit for a temporary restraining order, preliminary injunction, or permanent injunction to prevent any further or continued violation of such order. In any such suit the final findings of the tribe based upon evidence in the record, shall be prima facie evidence of the facts found therein.

(2) Suits under this section shall be brought, where practicable, in the tribal court. Emergencies shall be given precedence over all other matters pending in such court. The institution of such injunction proceeding by the tribe shall confer upon such court exclusive jurisdiction to determine finally the subject matter of the proceeding.

(f) Civil Penalties.

(1) Any person who violates any provision this Act or any permit issued under this Act or any final cease and desist order or clean-up order shall be subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000) per day for each day during which such violation occurs.

(2) Penalties shall be determined after a hearing as to the amount thereof and may be collected by the Pawnee Nation by action instituted in tribal court by the

Attorney General or prosecutor for collection of such penalty. A stay of any order of the Pawnee Nation pending judicial review shall not relieve any person from any liability under this section, but the reason for the request for judicial review shall be considered in the determination of the amount of the penalty.

(g) Criminal Penalties

The Pawnee Nation or federal government retains all authority of criminal prosecution under this Act. All penalties prescribed may be found under this Section, Section 307 of Chapter III of Title XII, or as prescribed by applicable Federal regulations under the federal Clean Water Act.

- (1) Negligent violations. Any person who negligently violates this Act, or any permit condition or limitation implementing any of such Sections in a permit issued under this Act by the USEPA or DECS, or any requirement imposed in a pretreatment program approved under this Chapter; or negligently introduces into a sewer system or into a treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, Tribal, State, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under this Act by the USEPA or DECS shall be punished by a fine of not more than \$25,000 per day of violation. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation or imprisonment not to exceed one year.
- (2) Knowing violations. Any person who knowingly violates any permit condition or limitation implementing any Section in a permit issued under this Act by the USEPA or DECS, or any requirement imposed in a pretreatment program approved under this Chapter; or knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, Tribal, State, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under this Chapter by the USEPA or DECS shall be punished by a fine of not more than \$50,000 per day of violation. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$100,000 per day of violation or imprisonment not to exceed one year.
- (3) Knowing Endangerment. Any person who knowingly violates any Section of this Act, or any permit condition or limitation implementing any of such Sections in a permit issued under this Act by the USEPA or DECS, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000. A person who is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than \$1,000,000 or imprisonment not to exceed one year. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to fine.
- (4) False Statements. Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan,

or other document filed or required to be maintained under this Section or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Section, shall upon conviction, be punished by a fine of not more than \$10,000 or imprisonment not to exceed one year. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation or imprisonment not to exceed one year.

- (5) Responsible corporate officer as "person". For the purpose of this subsection, the term "person" means any responsible corporate officer.
- (6) Hazardous Substance Defined. For the purpose of this subsection, the term "hazardous substance" means:
 - (i) any substance designated pursuant to Section 603 of this Act,
 - (ii) any element, compound, mixture, solution, or substance designated pursuant to 42 U.S.C. § 9602; and this Act,
 - (iii) any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act [42 U.S.C.A. § 6921]. but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C.A. § 6901 et seq.] has been suspended by Act of Congress,
 - (iv) any toxic pollutant listed under this Act, and
 - (v) any imminently hazardous chemical substance or mixture with respect to which the USEPA or DECS regulates or may regulate.

Section 1007. State Liability

Whenever a county, municipality, or other subdivision of a state is a party to a civil action brought by the Tribe under this Section, the state in which such municipality is located may be joined as a party.

Section 1008. Wrongful pollutants into Treatment Works

Whenever, on the basis of any information available to it, the DECS finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of this Act, the DECS may notify the owner or operator of such treatment works and the State of such violation. If the owner or operator of the treatment works does not commence appropriate remedial action within 30 days of the date of such notification, the DECS may, by and through the Attorney General, commence a civil action for appropriate relief, including but not limited to, a permanent or temporary injunction, against the owner or operator of such treatment works. In any such civil action the USEPA or DECS shall join the owner or operator of such source as a party to the action. Such action shall be brought in the Pawnee Nation District Court or the appropriate District Court of the United States. Such court shall have jurisdiction to restrain such violation and to require the owner or operator of the treatment works and the owner or operator of the source to take such action as may be necessary to come into compliance with this Act. Notice of commencement of any such action shall be given to the Pawnee Business Council. Nothing in this subsection shall be construed to limit or prohibit any other authority the USEPA or DECS may have under law.

Section 1009. Compliance Orders.

Whenever the DECS has reason to believe that violation of a provision of this Act has occurred, the DECS 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 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 may be served either personally or by certified mail with a return receipt signed by the responsible person.

Section 1010. Notification of Un-Authorized Discharge-Penalty

Any person engaged in an operation or activity which results in a spill or discharge of any substance which may cause pollution of the surface or ground water resources of the Pawnee people contrary to the provisions of this Act shall, as soon as he has knowledge thereof, notify the DECS of such spill or discharge. If the immediate notification is verbal, it shall be followed by written notification within three calendar days of the un-permitted discharge. Written notification shall include at minimum the reporting party, the suspected responsible party, time, date, location, cause, source, amount, type of product, control measures implemented and by whom implemented, time and date discharge reported to other entities, and resources damaged and threatened. The DECS may request additional information as needed to conduct its investigation and report. The DECS may provide a form for such written notice. Failure to so notify within one hour of knowledge of a discharge is a violation of this Act, and the DECS may bring a departmental or civil action for failure to notify against the person whose operation or activity resulted in the discharge. Tribal Court may assess the discharger a penalty not to exceed \$25,000, exclusive of cleanup costs.

Section 1011. Administrative Provisions

- (a) For vessels, vehicles, craft, and machinery.
 - (1) The Director and other persons that are authorized by the Pawnee Nation to enforce the provisions of this Act with respect to any vessel may, except as to public vessels:
 - (i) With probable cause, stop, detain, enter, inspect, and seize any mechanism upon any transportation corridor, waterway, or land within Pawnee Indian Country,
 - (ii) With or without a warrant, arrest or detain for arrest, investigation, or other enforcement action, any person who in the presence or view of the authorized person violates the provisions of this Section or any regulation issued there under, and
 - (iii) Execute any warrant or other process issued by a court of competent jurisdiction.
- (b) For facilities.
 - (1) Record keeping – Whenever required to carry out the purposes of this Section, the DECS shall require the owner or operator of a facility to which this Section applies to establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment and methods, and provide such other information as the USEPA or DECS may require to carry out the objectives of this Section.
 - (2) Entry and inspection – Whenever required to carry out the purposes of this Section, the DECS, upon presentation of appropriate credentials, may
 - (i) enter and inspect any facility to which this Section applies, including any facility at which any records are required to be maintained under subparagraph (a); and

- (ii) at reasonable times, have access to and copy any records, take samples, and inspect any monitoring equipment or methods required under subparagraph (a).
- (3) Arrests and execution of warrants – Anyone authorized by the USEPA and DECS to enforce the provisions of this Section with respect to any facility may:
 - (i) arrest any person who violates the provisions of this Section or any regulation issued there under in the presence or view of the person so authorized; and
 - (ii) execute any warrant or process issued by an officer or court of competent jurisdiction.
- (c) Obligation for damages unaffected; existing authority not modified or affected.
 - (1) Nothing in this Section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or entity under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil or hazardous substance or from the removal of any such oil or hazardous substance.
 - (2) Nothing in this Section shall be construed as affecting or modifying any existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this Chapter or any other provision of law, or to affect any State or local law not in conflict with this Section.

Section 1012. Expedited Enforcement Action-- (Departmental Action)

A person violating a condition, limitation, standard, or other requirement established pursuant to this Act may be served with an expedited enforcement action. The expedited enforcement action is a non-judiciary action and may be issued for minor violations of provisions of this Act. The DECS will issue a Compliance Order/Settlement Agreement (COSA) as a settlement agreement to the violator. The COSA will identify violation(s), prescribe corrective action, monetary penalty, and a time line for meeting terms of the agreement. The COSA cannot be appealed. Persons not accepting the terms of the COSA may be subject to formal enforcement actions. Penalty shall not exceed \$1,000 dollars per day, per violation.

CHAPTER ELEVEN – Solid Waste Regulation

Section 1101. Definitions

As used in this Chapter the term:

- (a) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, burning, or placing of any solid or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituents thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater;
- (b) "Disposal site" means any place subject to this Act at which solid waste is dumped, abandoned, or accepted or disposed of by incineration, land filling, composting, shredding, compaction, baling or any other method or by processing by pyrolysis, resource recovery or any other method, technique or process designed to change the physical, chemical or biological character or composition of any solid waste so as to render such waste safe or nonhazardous, amenable to transport, recovery or storage or reduced in volume;
- (c) "Disposer" means any person, company, business or organization that disposes of waste.
- (d) "Fee" means out-of-nation user fee.
- (e) "Flood plain" means (a) the surface or strip of relatively smooth land adjacent to a stream channel, constructed (or in the process of being constructed) by the present stream in its existing regimen and covered with water when the stream overflows its banks in times of high water. (b) any flat or nearly flat, usually dry lowland that borders a stream and that may be covered by its waters at flood stages, and (c) the part of a lake-basin plain outside the shoreline, subject to submergence enduring high stages of the lake.
- (f) "Flood way" means the channel or parts of a stream, water course or body of water and the adjacent land areas that must be reserved in order to discharge the flood without cumulatively increasing the water surface elevation more than one foot.
- (g) "Ground water" means water below the land surface in a zone of saturation.
- (h) "Hazardous waste" means a solid waste, or a combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may--
 - (1) cause, or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or
 - (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed; or
 - (3) any substance listed by the United States government as hazardous;
- (i) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.
- (j) "Household waste" means any household waste or domestic by-product in the jurisdiction of the Pawnee Nation.
- (k) "Landfill" means any landfill in the jurisdiction of the Pawnee Nation.
- (l) "Laced" means the fluid stream which collects in and/or from a pile, cell or other accumulation of solid waste and which may enter and contaminate ground or surface water.

- (m) "Open dump" means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria established by the federal government under 42 U.S.C. § 6944 and is not a facility for disposal of hazardous waste.
- (n) "Processing facility" means any place where solid waste is dumped, abandoned or accepted for processing by incineration, composting, pyrolysis, shredding, compacting, baling, resource recovery or any other technique, or process designed to change the physical, chemical, or biological character or composition of the waste to make it safe or amenable for transport, or to make it non-hazardous and amenable for recovery or storage, or to reduce it in volume.
- (o) "Sanitary landfill" means a facility for the disposal of solid wastes which meets the criteria published under federal requirements at 42 U.S.C. § 6944.
- (p) "Sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant, or air pollution control facilitator any other such waste having similar characteristics and effects;
- (q) "Solid waste" means all putrescible and nonputrescible refuse in solid or semisolid form including, but not limited to, garbage, rubbish, ashes or incinerator residue, street refuse, dead animals, demolition wastes, construction wastes, solid or semisolid commercial and industrial waste and hazardous wastes including explosives, pathological wastes, chemical wastes, herbicide and pesticide wastes, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, petroleum, commercial, mining, and agricultural operations and from community activities;
- (r) "Solid waste management system" means the system that may be developed for the purpose of collection, disposal or processing of solid waste by any person engaging in such process as a business or by any municipality, authority, trust, county or by any combination thereof at one or more disposal sites.
- (s) "Storage" when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis not to exceed a period of one year, in such a manner as not to constitute disposal of such hazardous waste.
- (t) "Surface water" includes but is not limited to water that stands on the surface of the land in reservoirs, lakes, ponds, sloughs, or swamps, or that flows across the land in rivers or streams within the jurisdiction of the Pawnee Nation.
- (u) "Treatment", when used in connection with hazardous waste, means any method technique or process, including the neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amendable for recovery, amenable for storage, or reduce in volume. Such term includes any activity or processing designed to change the form or chemical composition of hazardous waste so as to render it nonhazardous;

Section 1102. Findings of the Pawnee Nation

- (a) Solid waste
 - The Pawnee Nation finds with respect to solid waste--
 - (1) that the continuing changes in technology and in methods of manufacturing, packaging, and marketing of consumer products has resulted in a change in the characteristics of the mass material discarded by the purchasers of such products;

- (2) that the economic and population growth of the Pawnee Nation and the United States and the changes in Pawnee and American lifestyle have required increased industrial production, the demolition of old buildings, construction of new buildings, and provision of highways and other avenues of transportation, which, together with the related industrial, commercial, and agricultural operations, have resulted in a rising tide of scrap, discarded, and waste material;
- (3) that the continuing concentration of American population in expanding metropolitan areas has presented these communities with serious financial, management, intergovernmental, and technical problems in the disposal of solid wastes resulting from the industrial, commercial, domestic, and other activities carried on in such areas;
- (4) that such solid waste disposal, recycling, or treatment may present an economic opportunity for the Pawnee Nation;
- (5) that such solid waste may present a significant, lingering hazard on the lands of the Pawnee Nation that may adversely impact the potential use for future generations;
- (6) that due to the far reaching and potentially dangerous effects of any solid waste program, the Pawnee Nation should approach agreements and projects with utmost caution;
- (7) that the Pawnee Nation desires to impose standards equal to or more stringent than the federal government;
- (8) that to fulfill the Pawnee Nation's obligation of protecting the health and welfare of its people, the Pawnee Nation must adopt statutes regulating solid waste disposal and management upon the lands of the Pawnee Nation and its members.

(b) Environment and health

The Pawnee Nation finds with respect to environment and health –

- (1) that land is too valuable a resource to be needlessly polluted by discarded materials;
- (2) that disposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to human health and quality of life, agricultural productivity, and the environment;
- (3) that as a result of the federal Clean Air Act [42 U.S.C. §7401 et. seq.], the Water Pollution Control Act [33 U.S.C. §1251 et. seq.], and other federal and state laws respecting public health and the environment, greater amounts of solid waste (in the form of sludge and other pollution treatment residues) have been created; and similarly, inadequate and environmentally unsound practices for the disposal or use of solid waste have created greater amounts of air and water pollution and other problems for the environment and for health;
- (4) that open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and the land;
- (5) that the placement of inadequate controls on hazardous waste management will result in substantial risk to human health and the environment;
- (6) that if solid or hazardous waste management is improperly performed in the first instance, corrective action is likely to be expensive, complex, and time consuming.

(c) Importation of Waste – The Pawnee Nation finds with respect to importation of waste from areas outside the jurisdiction of the Pawnee Nation to areas within the jurisdiction of the Pawnee Nation,

- (1) that adequate safeguards must be incorporated into Pawnee Nation statutes and agreements with firms to protect Pawnee interests, lands and members;
- (2) that identifying hazardous waste present in waste labeled as non-hazardous is a complex, difficult, technical process;
- (3) that once non-hazardous waste is mixed with any amount of listed hazardous material, federal law reclassifies the entire mixture as "hazardous waste";
- (4) that agreements which do not properly protect the Pawnee Nation may allow the highly populated cities of the United States to transfer their problems to the Pawnee Nation; and
- (5) that the Pawnee Nation should attempt to achieve and maintain as much control as possible over any solid waste feed streams which are to enter the lands of the Pawnee Nation.

Comment § 402 Legislative history

State analog: None

Federal analog: 42 U.S.C. 6901

Regulations

Grants, see 40 CFR 30.100 et. seq., 40.100 et. seq.

Hazardous waste treatment facilities, standards for owners of, see 40 CFR 264.1 et. seq., 265.1 et. seq.

Section 1103. Objectives and Policy of the Pawnee Nation

(a) Objectives

The objectives of this Act are to promote the protection of health and environment by--

- (1) prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or health;
- (2) assuring that hazardous waste management practices are conducted in a manner which protects human health and the environment;
- (3) requiring that hazardous waste be properly managed in the first instance thereby reducing the need for corrective action at a future date;
- (4) minimizing the Pawnee Nation's and the individual landowner's risk of liability for contamination caused by the originator, transporter and/or the broker of the solid waste;
- (5) developing cooperative programs with federal, state and Indian tribal and national agencies;
- (6) providing for the promulgation of guidelines, regulations, and licensing for solid waste collection, transportation, separation, recovery, and disposal practices and systems.

(b) Policy of the Pawnee Nation

The Pawnee Nation declares it to be the policy of the Nation that, solid waste generated on lands under the jurisdiction of the Pawnee Nation or imported from outside the Pawnee Nation should be treated, stored, and/or disposed of so as to minimize the present and future threat to human health and the environment.

Comment § 403

Legislative history

State analog: None

Federal analog: 42 U.S.C. 6902

Section 1104. Prohibition of Financial Interest-Penalty

- (a) Statement – Each officer or employee of the Pawnee Nation who performs any function or duty under this section and has or has any immediate family member with any known financial interest in any person who applies for or receives permission from the Pawnee Nation to operate under this section shall annually file with the Pawnee Nation Environmental Regulatory Commission (ERC) a written statement showing divestment of such interest or resign from such position before consideration of the program begins.
- (b) Penalty for citizens of Pawnee Nation – Any Indian citizen who is an officer or employee who is subject to, and knowingly violates, this section shall be fined by the Pawnee Nation not more than \$2500 or imprisoned not more than one year or both.
- (c) Penalty for non-citizens of Pawnee Nation
Any non-Indian citizen who is an officer or employee who is subject to, and knowingly violates, this section shall be fined by the Pawnee Nation not more than \$2500 or be banished from the jurisdiction of the Pawnee Nation for a period of not more than ten years or both.

Comment § 404

Legislative history

State analog: None

Federal analog: 42 U.S.C. 6906

Section 1105. Solid Waste Prohibited Acts

It shall be unlawful for any person to:

- (a) dispose of any solid waste in a manner that will harm the environment, endanger the public health, safety and welfare or create a public nuisance;
- (b) dispose of any solid waste in a place other than a facility which is in compliance with these regulations and other applicable laws;
- (c) dispose of any waste not defined as solid waste in a solid waste disposal facility;
- (d) dispose of bulk or non-containerized liquids in a solid waste facility;
- (e) collect, store, dispose of, burn or incinerate, transport, process or store solid waste in any manner or at any facility that is not in compliance with the provisions of this chapter or the regulations promulgated hereunder;
- (f) interfere/prohibit with inspections, entry or monitoring, activities; and
- (g) violate any other provision, requirement or prohibition of this chapter, including but not limited to a regulation or plan adopted pursuant to this chapter, a permit or order issued pursuant to this chapter, a filing, reporting or notice requirement under this chapter or a fee assessed under this chapter.

Section 1106. Permit Required

- (a) Unless otherwise specified by this Chapter or regulations no person shall dispose of solid wastes upon any land, site, or facility, within the jurisdiction of the Pawnee Nation other than a site or facility for which a permit for solid waste disposal or processing has been issued by the Director or ERC;
- (b) Unless otherwise specified by this Chapter or regulations promulgated hereunder, no person shall construct, operate or modify a solid waste landfill facility unless the facility has obtained a permit or permit modification from the Director for the described action.

- (c) Any person in violation of this section shall be subject to the penalties as described in Section 1118 of this Chapter.

Comment § 406

Legislative history

State analog: 63 O.S. 2258

Federal analog: None

Section 1107. Permitting Procedures

The following Permitting Procedures are required in addition to the permitting requirements as required under implementing regulations of this Act and/or Chapter:

- (a) Applications – Any Person seeking a permit required by Section 1106a of this Act shall submit 10 copies of an application therefore to the ERC on the form provided by the Pawnee Nation Department of Environmental Conservation and Safety (DECS).
- (b) Review and Recommendation by Departments; Public Review – Upon receipt of an application, the DECS shall circulate copies of the same application to the appropriate Departments of the Pawnee Nation for review. Each Department shall review the application and any other information relevant thereto to determine the effect, if any, of the proposed project on matters within the Department's scope of responsibilities. Based on its review, each Department shall inform the DECS in writing of its findings and a recommendation that the permit application be approved, denied, or modified. The DECS shall make the application available for public review according to the procedures established in the regulations adopted hereunder.
- (c) Presentation to ERC – The DECS shall submit the application to the ERC, together with any other pertinent data, reports or information concerning the proposed project for which the permit is sought. The DECS shall also submit to the ERC the recommendations and findings of the responding Departments, if any, including the recommendations and findings of the DECS.
- (d) Issuance, Denial or Modification – The ERC shall review all recommendations, findings and other materials presented to it by the DECS, as well as any other information and materials which the ERC deems appropriate. Based on its review of the foregoing, the provisions of this Act and the rules and regulations adopted by the Pawnee Nation and then in effect, the ERC shall order that the application be (i) approved, (ii) denied or (iii) approved with such modifications or conditions as the ERC deems appropriate. In reaching its decision, the ERC shall consider all pertinent information but shall give particular emphasis to the recommendations and findings of the Departments, if any, and the DECS.
- (e) Written Decision – The ERC's order approving or denying an application, or approving an application subject to modification or conditions, shall be in writing and shall be delivered to all parties to the proceeding and to the President of the Pawnee Nation.
- (f) Violations of other Permits – The ERC shall not grant a permit to any Person who the ERC finds is currently in violation of any other permit issued by the Pawnee Nation or any Department thereof, or who it finds is currently in violation of any permit issued by the U.S. Environmental Protection Agency or other governmental agency acting under their authority of the U.S. Environmental Protection Agency.
- (g) Issuance – The ERC shall not grant a permit to any person, or to any affiliate of a person, who in violation of (c)(4) of this section, has been convicted of a felony, or is subject to a current cease and desist order issued pursuant to Section 1116 or is in violation of a compliance order issued pursuant to Section 1117 of this Act.

- (h) Appeals – Any Affected Party may appeal a decision or order of the DECS or ERC issued pursuant to this Chapter in accordance with Section 312 of this Act

Section 1108. Solid Waste Contracts

All contracts between citizens of the Pawnee Nation or the Pawnee Nation and waste disposal, recycling, and treatment firms must contain the following clause:

"By accepting this contract or lease, the parties acknowledge and submit to all provisions of the law of the Pawnee Nation and the jurisdiction of its courts regardless of their status as Indian or non-Indian and acknowledge that Pawnee Nation, state or federal authorities may prosecute for violations of Pawnee Nation, state, or federal environmental laws at the Pawnee Nation's request."

Section 1109. Feasibility Studies

All proposals for solid waste disposal, recycling, or treatment on lands of the Pawnee Nation must include a feasibility study conducted by an independent engineering firm approved by the ERC and the President of the Pawnee Nation. Each study is to include economic forecasts of the project, potential pollution concerns, the long range impacts of the project on the land involved. The environmental study results are to be available to the general public.

Section 1110. Contingency Plans

Any person disposing of, recycled or treated solid waste on lands of the Pawnee Nation must present contingency plans for effective action to minimize unanticipated damage from any treatment, storage, processing or disposal of solid waste.

Section 1111. Facility Operation

The owner and operator is responsible for the maintenance of and operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility (including financial responsibility for corrective action) as may be necessary or desirable;

Section 1112. Prohibition of Open Dumps-Penalty

- (a) The Pawnee Nation in compliance with Federal law (42 U.S.C. § 6943) prohibits all open dumps on lands of the Pawnee Nation (Tribal and individual Trust Lands, and Fee lands owned by the Pawnee Nation) and requires all solid waste disposal to be in permitted sanitary landfills.
- (b) Any person who knowingly and willfully receives, stores, transports, disposes, burns, stores, deposits, throws, drops, or discards any deleterious substance, litter, trash, brine, or aids and abets in the disposal of such waste upon any lands or facility without having consent shall be punished by a fine of not less than \$200 nor more than \$25,000 per day of violation, or by imprisonment for no more than one year, or both. Any person not under the criminal jurisdiction of the Pawnee Nation shall be subject to civil penalties of not less than \$200 nor more than \$25,000 per day of each violation.

Section 1113. Record Keeping

The owner and operator of a solid waste management facility shall be required, at a minimum, to maintain records of all wastes which enter lands of Pawnee Nation and are treated, stored, processed or disposed of, as the case may be, and the manner in which such wastes were treated, stored, processed or disposed of report, monitor, and inspect all solid waste entering lands of the Pawnee Nation.

Comment § 413

Legislative history

State analog: None

Federal analog: 42 U.S.C. 6924(a)

Section 1114. Enforcement Authority

- (a) DECS Authority – The DECS is hereby designated as the lead enforcement authority entrusted with the duty and responsibility of ensuring the proper handling, treatment, composting, and disposal of solid waste on lands of the Pawnee Nation and of ensuring compliance by all persons with this Act.
- (b) Cooperative compacts with surrounding States – The President of the Pawnee Nation shall have the authority to make cooperative compacts with the surrounding states to enforce the provisions of this section. Any future cooperative compacts between the Pawnee Nation and the State of Oklahoma or any other State, or presently existing agreements, including cooperative law enforcement agreements, shall become effective enforcement provisions under this Act and are considered cumulative to the provisions hereof.
- (c) Cooperative compacts with the federal government – The President of the Pawnee Nation is delegated the authority to enter cooperative compacts with the federal government to enforce the provisions of this agreement.
- (d) Cooperative compacts with Indian Tribes and Nation – The President of the Pawnee Nation is delegated the authority to enter cooperative compacts with Indian Tribes and Nations to enforce the provisions of this agreement.

Section 1115. Department and Commission Duties

- (a) Enforcement of Act – The DECS shall enforce all provisions of this Act and the Environmental Regulatory Commission (ERC) shall enforce the regulations adopted hereunder that pertain to the minimum standards solid waste handling, treatment, composting, and disposal, all for the protection of the public health and safety and of land, air and water. Any violation of valid permit shall be enforced through designated regulatory or civil proceedings where appropriate. Any violation of this Act where valid permit does not exist shall be enforced through criminal action and/or civil proceeding where appropriate.
- (b) Enforcement by other agencies – The DECS may request enforcement by federal, state, and local agencies of their respective laws governing solid waste handling, treatment, composting, and disposal.
- (c) Record keeping – The DECS shall keep and maintain records of its inspection, enforcement, and training programs.
- (d) Consultation with health departments –
- (e) The DECS shall consult with appropriate health departments and agencies concerning all actions involving solid waste handling, treatment, composting and disposal.

Section 1116. Enforcement Actions

- (a) Actions on complaints
 - (1) If the Pawnee Nation receives a complaint from any Person concerning a solid waste facility or a solid waste transporter, the Pawnee Nation, DECS, or other designee shall inspect the facility or transporter to determine whether any law, regulation, or permit has been or is being violated.

- (2) If the DECS receives a complaint concerning a solid waste facility or a solid waste transporter and determines that it is not able or authorized to take action concerning the complaint, the DECS shall refer the complaint within ten days of receipt to the federal, state, or Indian tribe or nation that it determines is authorized to take action.
 - (3) If the DECS receives a complaint concerning a solid waste facility or solid waste transporter and the DECS does not refer it to another agency, the DECS shall either take enforcement action concerning that facility or transporter or provide the person who filed the complaint with a written statement within 30 days explaining why an enforcement action would not be appropriate.
- (b) Cease and desist orders; Remedial actions
- (1) If the DECS determines that any person or solid waste disposal site is violating this Act or operating a facility in violation of this Act, the DECS may issue a Compliance Order and negotiate a Settlement Agreement and/or file a petition with the ERC demanding a cease and desist order and other remedial action authorized by this Chapter.
 - (2) Any person who operates a solid waste facility in violation of his solid waste facility permit; who operates such without a solid waste facility permit; or who violates any standard adopted in this Act or regulations adopted pursuant thereto shall, upon order of the DECS shall cease and desist any improper action, clean up any improper action, clean up any solid waste, abate the effects thereof, and take any other remedial action directed by the DECS and/or ERC. Whenever the DECS determines that the operation of a solid waste facility or the transportation of solid waste is causing or threatening to cause a condition of hazard, pollution, or nuisance due to the migration of hazardous material or solid waste or for any other reason, the DECS may require the operator of the solid waste facility to take corrective action necessary to abate any hazard, pollution, or nuisance or to protect public health and safety and the environment.
 - (3) If any of the circumstances set forth herein above pose an imminent threat to life or health, the DECS may expend any available monies to perform any cleanup, abatement, and remedial work required.
 - (4) If any of the circumstances set forth hereinabove do not pose an imminent threat to life or health, but the DECS deems it necessary for the public health and safety to perform cleanup, abatement work, or remedial work, the DECS may perform such work and expend monies thereon.
 - (5) If solid or hazardous waste is cleaned up, the effects thereof abated, or other necessary remedial action is taken as described above, the person or persons who committed or allowed the improper action shall be liable to the DECS and/or Pawnee Nation for the reasonable costs actually incurred in cleaning up any solid waste or hazardous material, abating the effects thereof, or taking other remedial action. The amount of such costs shall be recoverable in a civil action in the courts of the Pawnee Nation and state or federal courts where applicable, together with costs of suit incurred by the DECS in recovering such monies. A judgment ordering the payment of these costs to the DECS and/or Pawnee Nation will bear interest allowable on judgments under Pawnee Nation law.
- (c) Compliance schedule
- (1) The DECS shall develop a compliance schedule for any permitted solid waste facility or solid waste transporter that violates the DECS minimum standards. The compliance schedule shall assure that diligent progress shall be made to

bring the solid waste facility or solid waste transporter into compliance with the DECS minimum standards within a specific period of time determined by the DECS.

- (2) If the solid waste facility or solid waste transporter is not in compliance within the period specified, the DECS may petition the ERC to review the action. The ERC may revoke, suspend or modify the permit until such time as violators or the minimum standards are remedied and/or assess a civil penalty for recovery of economic gains the violator may have gained from their non-compliance.
- (d) Revocation, suspension, or modification of permit
- (1) Grounds for suspension, revocation, or modification
After a hearing, any permit may be suspended, modified, or revoked by the ERC for cause, including but not limited to any or all of the following:
 - (i) Any violation of any term or condition contained in the permit, this Act, the underlying lease or land use permit or regulations of the Pawnee Nation.
 - (ii) Obtaining the permit by misrepresentation or failing to disclose fully all relevant facts.
 - (iii) A change in any condition that requires either a temporary or permanent modification, reduction, or elimination of the permitted operation to bring it into compliance with the terms or conditions of the permit, this Act, or the underlying lease or land use permit.
 - (2) Statement of Charges – A hearing to determine whether a permit should be revoked, suspended, or modified may be initiated by the ERC by filing a written statement of charges that sets forth the acts or omissions with which the permittee is charged and specifies the terms, laws, conditions, or rules that the permittee is alleged to have violated. The statement of charges and all accompanying documents shall be delivered personally or by certified or registered mail, return receipt requested, to the permittee, at the address indicated of the license on permit application.
 - (3) Notice of Hearing – The statement of charges shall be accompanied by a notice advising the permittee of a date for a hearing, which hearing shall be held no earlier than 20 days and no later than 45 days from the ERC's mailing or personal delivery of the statement of charges. The notice shall inform the permittee that he has the right to inspect and copy documents relative to the statement of charges.
- (e)
- (1) Notice of Defense
 - (i) Within 15 days after the service upon him, the permittee may deliver to the ERC a Notice of Defense in which he may object to the statement of charges and state his defenses.
 - (ii) The Notice of Defense shall be deemed a specific denial of all parts of the statement of charges not expressly admitted. Failure to timely file a Notice of Defense shall constitute a waiver of the right to a hearing.
 - (iii) The Notice of Defense shall be in writing signed or on behalf of the permittee.
 - (iv) A copy of any statement of charges and Notice of Defense shall be sent by the ERC to the President of the Pawnee Nation immediately upon receipt.

- (2) Hearing panel – All hearings shall be conducted by ERC.
 - (3) Issuance of decision – The ERC shall issue its decision as soon as practicable following submission. Cases shall be decided by concurrence of at least two members of the panel. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the assessment of costs and penalties, if any. Copies of the decision shall be sent to all parties and to the Chief.
 - (4) Reduction of penalty or reinstatement – A person whose permit has been revoked or suspended may petition the ERC for reinstatement after a period of not less than one year has elapsed from the effective date of the revocation or suspension or from the date of the denial of a similar previous petition.
- (f) APPEALS – Any decision or order of the DECS or ERC issued pursuant to this Chapter may be appealed pursuant to the terms of Section 312 of this Act.

Section 1117. Compliance Orders

- (a) Issuance – Whenever on the basis of any information the ERC determines that any person has violated or is in violation of any provision of this Act or regulation thereunder, the ERC may:
 - (1) issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period or both, or
 - (2) require compliance immediately or within a specified time period, or
 - (3) commence a civil action in Pawnee Nation, state or federal court as appropriate for penalties and temporary or permanent injunctions.
- (b) Violation of Compliance Orders – If a violator fails to take corrective action within the time specified in a compliance order, the ERC may assess a civil penalty of not more than \$5,000 for each day of continued noncompliance with the order and the ERC may suspend or revoke any permit issued to the violator. Any equipment or property used in any part of the violator's operations after a compliance order is issued shall be considered instrumentality of the violation and thus be subject to forfeiture to the Pawnee Nation as contraband.
- (c) Appeals – Any decision or order of the DECS or ERC issued pursuant to this Chapter may be appealed pursuant to Section 312 of this Act.

Comment § 417

Legislative history

State analog: 63 O.S. 2264 (repealed 1990)

Federal analog: 42 U.S.C. 6928, 6992d

Section 1118. Penalties

- (a) Any Person under Pawnee criminal jurisdiction who violates any of the provisions of this Chapter or orders or regulations of this Act shall, unless determined by specific penalty provisions, be guilty of a crime and upon conviction thereof may be subject to imprisonment in facilities normally used by the Pawnee Nation for detention of criminals for not more than one year, or a fine of not more than \$5,000 per incident, or by both fine and imprisonment. Each day or part of a day during which such violation is continued or repeated shall constitute a separate offense.
- (b) Any Person who violates any of the provisions of the Chapter or orders or regulations of this act may be subject to a civil penalty of not more than \$5,000, or be banished from the jurisdiction of the Pawnee Nation for a period of not more than ten years or both.

Each day or part of a day during which such violation is continued or repeated shall constitute a separate offense.

Section 1119. Knowing Endangerment

Any Person who knowingly violates any provision of the solid waste sections of this Chapter who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, shall be guilty of a crime and or shall be referred to the appropriate prosecutor as provided for in 42 USC Section 6992d (c) upon conviction under subsection (e) be subject to a fine of not more than \$250,000 or imprisonment for not more than 1 year or both as provided for in this Act. The DECS and/or ERC is directed under these circumstances to pursue federal enforcement of the federal provisions.

Section 1120. Imminent Hazard

Upon receipt of evidence that the past, present or future handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the ERC shall bring suit on behalf of the Pawnee Nation in the courts of the Pawnee Nation, or state, or federal court as applicable to enforce Pawnee Nation, state or federal law.

Section 1121. Finances and Revenues

- (a) NAME – This section shall be known as the "Out-of-Nation User Fee Act."
- (b) PURPOSE – It is the purpose of this section to impose a certain fee for waste materials generated outside the jurisdiction of the Pawnee Nation; providing for the fee to be in addition to any other charges; providing for the fee to be deposited in a certain account; and providing for a statement of purpose for the fees collected.
- (c) ASSESSMENT
 - (1) There is imposed and assessed a \$5 per ton fee for waste disposed of at any landfill or permitted solid waste disposal facility within Pawnee Indian Country or other waste management facility where the said waste is generated from outside the original territorial jurisdiction of the Pawnee Nation.
 - (2) The fee assessed by this section is to be charged against waste producers using the landfill or other waste management facility in addition to any charges specified in contract or elsewhere.
- (d) REPORTS; PROVISION FOR DEPOSIT OF FEES; USE OF FEES COLLECTED
 - (1) The Pawnee Nation DECS shall prepare monthly reports indicating:
 - (i) the tonnage of waste materials received for disposal;
 - (ii) the amount of fees assessed or collected pursuant to this chapter; and
 - (iii) expenditure of fees.
 - (2) All fees received pursuant to this Act shall be credited to a separate account in the DECS operating budget for solid waste management.
 - (3) The fees shall be expended for purposes of maintaining the solid waste management activities and for the development of the technical assistance programs, educational curricula, recycling and litter prevention and other programs that promote the environmental protection, health, safety and welfare of the members of the Pawnee Nation.
 - (4) All out-of-nation user fees collected prior to the effective date of this section shall be deposited and expended in the same manner as those fees hereinafter collected.
- (e) FEDERAL GRANTS

- (1) The DECS shall apply for federal grants available under 42 U.S.C. 6977 to assist the Pawnee Nation in developing solid waste programs.

(f) COST ALLOCATION

- (1) The person placing solid waste within Pawnee Indian Country is responsible for all reasonable costs of a comprehensive technological feasibility study, testing and inspection.
- (2) Any person proposing a solid waste facility within Pawnee Indian Country is responsible for all costs involved in the initiation process including but not limited to public meeting expenses, studies, testing and publicity.
- (3) Operator agrees to assume the cost of reasonable random testing conducted by an independent firm at the request of the DECS and/or ERC.

CHAPTER TWELVE – Oil Pollution Control

Section 1200. Purpose

The purpose of this Chapter is to prevent discharges of oil, chlorides, and other pollutant and debris from petroleum production and /or distribution activities onto the lands and/or into the waters within Pawnee Indian Country and the United States. The goal of this Chapter is primarily “prevention” as opposed to “after the fact”, or “reactive” control measures, and to set forth requirement (laws and/or regulations) relating to point sources and non-point sources of pollution related and/or associated with the production and/or distribution of petroleum resources.

Section 1201. Authority

The Pawnee Nation Department of Environmental Conservation and Safety is provided with the statutory authority to protect, maintain, and improve the quality of all waters, lands, air, and all other natural resources (aquatic, terrestrial, renewable, and/or limited) within Pawnee Indian Country as set forth in Title X and Title XI of the Pawnee Nation of Oklahoma Law and Order Code, and to enforce all environmental, conservation, and safety laws, standards, and regulations of the Pawnee Nation.

Section 1202. Definition

The definitions contained in Title X and Title XI of the Pawnee Nation Law and Order Code, and 40 C.F.R. Sections 112, 113, and 280 shall apply and are hereby adopted and incorporated by reference.

Section 1203. Adoption of Federal Statute

- (a) Authority. The Pawnee Nation Business Council, upon recommendation by the Pawnee Nation Department of Environmental Conservation and Safety, and Pawnee Nation Environmental Regulatory Commission, find that the U. S. Environmental Protection Agency has established regulations in Title 40 of the Code of Federal Regulations which are recognized and implemented nationally for the administration of Oil Pollution Prevention and that the Pawnee Business Council has the authority under the Constitution of the Pawnee Nation to adopt such regulations for the benefit of the People of the Pawnee Nation.
- (b) Interpretations of rules. Narrative provisions of this Chapter shall control over every provision of the Environmental Protection Agency which are adopted by reference.
- (c) Federal Regulations Adopted. Unless otherwise provided in this Chapter, the following provisions contained in Title 40 of the Code of Federal Regulations (CFR) and the requirements contained therein are adopted and incorporated by reference in their entirety as they were published in Title 40 of CFR in effect as of July 1, 1997.
 - (1) Part 112 (Oil Pollution Prevention)
 - (2) Part 113 (Liability Limits for Small Onshore Storage Facilities)
 - (3) Part 280 (Underground Storage Tank)

Section 1204. Pollution Control

(a) SPCC/FRP

- (1) Spill Prevention Control Countermeasure (SPCC) plans and/or Facility Response Plans (FRP) must be in place by the facility and/or its operators in accordance to 40 CFR Part 112, and in accordance to additional provisions of this Chapter. Lessee having storage capacity of oil and/or salt water greater than 660 gallons (16 barrels) or more are required to have a P. E. certified SPCC plan in place at all times in accordance to this part.
- (2) The lessee shall assure the operator(s) have possession of, and are trained in the use of the SPCC plans while on the site and are properly trained in the implementation of the SPCC plan.
- (3) All plans must be readily available to the Tribal and or federal facility inspectors immediately upon request. Violations of this section will result in penalties by the Pawnee Nation and/or other federal agencies.
- (4) The lessee shall develop and maintain its SPCC or FRP and submit two copies to the DECS by march 15th of each year. Lessee may provide the FRP with the Tier II reports.
- (5) The lessee shall submit required USEPA Tier II reports to the DECS, Pawnee Nation Fire Department, Pawnee Nation Local Emergency Planning Committee as required, and other state and local agencies as required.

(b) Secondary Containment

- (1) Lessee must provide means of adequate secondary containment for all storage vessels, including tanks, drums, barrels, and buckets. Spill Prevention Control Countermeasure (SPCC) plans and/or Facility Response Plans (FRP) must be in place in accordance to 40CFR part 112, and in accordance to additional provisions of this Chapter. All tank batteries must be included in the SPCC plan.
- (2) The containment area must be constructed using at minimum a 30 millimeter thick artificial liner in addition to compactable and impermeable soils to prevent seepage of water and/or product into the ground.
- (3) All pipes within the containment area not in use must be immediately be removed or closed by plugging to prohibit the unlawful transport of fluid from the containment area. Any fluid discharging from open pipe shall result in immediate penalty by the Pawnee Nation and/or Federal agency.
- (4) Containment berms must be designed to prevent the flow from spilled oil and/or salt water from the tank battery area onto land and/or into surface streams. Berms must surround the battery, or be downhill from the tank battery. The berm must be high enough on a level plane to hold fluid from the largest tank plus a minimum of 50 % to compensate for receiving fluids, major rainfall event, and/or other acts of God.
- (5) There shall be no seepage of contained materials (petroleum product, brine, or storm water) outside the containment area. The use of permeable material such as limestone screening, gravel, sand, and/or other permeable material as impermeable containment construction material is prohibited at all times.
- (6) The use of drain pipes (with or without valves) in tank battery berms and/or other secondary containment are prohibited at all times. No variance shall be given to existing and/or newly constructed containment areas. Secondary containment must be designed and constructed to enable product to be collected from within the containment area for proper disposal by tank truck and/or pumped directly to a vessel within the containment area for disposal. For

purpose of this Chapter, lessee discharging contained product and/or water under the NPDES General Permit program is prohibited at all times.

- (7) All connection points used for picking-up and/or off-loading petroleum product and/or salt water must be within the containment area at all times.
- (8) All liner material and contaminated soil must be removed prior to closing a containment area.
- (9) Containment areas shall not be modified from initial design which breaches containment capabilities. Construction of pits or containment area below the surrounding ground grade level is prohibited.
- (10) Contaminated soil and/or other containment material generated from cleaning, maintenance, or reconstruction of the containment site must be lawfully disposed of.

(c) **Abandonment**

- (1) Any well and/or surface equipment (including, but not limited to piping, casing, rods, pumps, vehicles, motors, engines, etc.) not in use as specified by the current lease agreement shall be considered as being abandoned and must be removed, closed, and/or put back into production within 360 days of discontinued use. Wells and lines will be considered active as long as they are mechanically tested every 360 days there after. The lessee is responsible for all cost incurred by the private contractor, land owner, Pawnee Nation and/or other federal or state entity for treatment, closure, and /or disposal of wells and/or surface equipment including injection wells, production wells, disposal wells, pipelines, lease lines, and/or gathering systems.
- (2) The lessee shall assure annual integrity testing is performed and documented annually on all wells (including wells in service, temporarily out of service, temporarily abandoned, and/or abandoned).
- (3) Storage of surface equipment upon any lease by the lessee is prohibited unless specified by current land owner(s), Mineral Lease and/or other BIA approved land use lease.
- (4) The lessee shall identify all wells located within the zone of endangerment (1/4 mile) of any underground injection well and shall assure those wells are tested annually for mechanical integrity to assure tightness.

(d) **Tank Batteries**

- (1) The use of Underground Storage Tanks (UST) for oil and gas productivity is prohibited.
- (2) The use of Aboveground Storage Tanks (AST) must be consistent with requirements of permits and regulations as set forth by the U. S. E. P. A., B. I. A., B. L.M., and the Pawnee Nation.
- (3) All tank batteries must be included in the SPCC plan.
- (4) All tanks must be free from leaks, corrosion, rust, and excessive petroleum residual.
- (5) Lessee shall provide monthly inspection of all ASTs and maintain a daily log on the inspection and maintenance of tanks and associated equipment to assure immediate response and repairs.
- (6) All tank batteries shall be clean from petroleum residuals at all times. Drip pans shall be in use at all oil delivery points.
- (7) Discharge of salt water and/or oil contained within the secondary containment area to the ground and/or water way outside the containment area is prohibited at all times.

- (8) The lessee shall provide documentation of proper disposal of contaminated water by truck to facility inspectors upon request. All tank batteries and their daily logs shall be subject to inspections without notice by regulatory and surface management agencies (Tribal, Federal, and/or State) for compliance with this Chapter and/or other regulations in effect.
 - (9) All tank batteries must contain signage which at minimum contains lessor name and valid emergency and non-emergency contact numbers for all times of day and night, legal description of lease location, applicable permit number(s) and other information as required by federal and Tribal law.
- (e) Lease Lines - Production Lines / Disposal Lines / Gathering Lines
- (1) Lease lines shall be installed, inspected, and closed in accordance to this Chapter, all applicable permits, agreements, and mineral lease specifications.
 - (2) Lease line material must be appropriate to the fluids and pressures they transport.
 - (3) Lease lines in areas of cropping and/or high vehicle traffic must be buried a minimum of three feet below grade.
 - (4) Lease lines in pastures must be buried a minimum of three feet below grade unless written variance is provided by the Pawnee Agency of the Bureau of Indian Affairs.
 - (5) All non metallic lines must be buried a minimum of six inches unless otherwise indicated under this Chapter and pressure tested.
 - (6) The lessee shall provide monthly inspection of pipelines for external corrosion, leaks, and/or weak joints. Pressure integrity testing shall be performed annually on all buried lease lines. Use of clamps are considered a temporary repair and must be replaced within 14 days of initial repair. The lessee shall document and maintain a daily log of all repairs and maintenance activities of all lease related pipelines.
 - (7) Lease lines no longer in use by lessee shall be removed and the area remediated in accordance to specifications required by the Pawnee Agency of the B. I. A. and Pawnee Nation Department of Environmental Conservation and Safety. Lessee must request a written variance for the lease pipeline to be "closed in-place" from the Pawnee Agency of the B. I. A. and Pawnee Nation Department of Environmental Conservation and Safety. The variance request must be made within 30 days from date of discontinued flow.
 - (8) There shall be no tap, valve, and/or T fitting established in any lease line which can be used to drain off produced hydrocarbons and/or brine prior to its designed destination.
- (f) Injection Wells / Disposal Wells
- (1) Injection wells must be permitted and operated as required by U. S. E. P. A. and B.L.M. All injection and/or disposal wells must have secondary containment with no drainpipe or other discharge point outside the containment area.
 - (2) All lines must be inspected annually. Residual (petroleum, chloride, and/or other) product within the secondary containment area is prohibited.
 - (3) Non-authorized use of the injection and/or disposal well is prohibited.
 - (4) The lessee shall document and maintain a daily log of all repairs and maintenance activities of all injection and disposal wells. Daily logs must be made available for review by the DECS and /or requesting federal agency.
- (g) Production Wells

- (1) All production well sites (oil and/or gas) shall be kept clean, maintained, and operated in accordance to the lease agreement.
 - (2) The lessee must maintain mechanical integrity of all wells under the lease.
 - (3) Discharge of oil, gas, and/or salt water from the wellhead and/or pipelines is prohibited at all times. Oil and chloride residue shall not accumulate more than three feet around the well head. Any accumulation outside the three feet area is prohibited and shall be removed and lawfully disposed of by the lessee immediately. Any contribution to non-point sources of pollution (scouring, erosion, trash, debris, etc.) caused from production well systems are prohibited.
 - (4) The lessee shall assure all pipelines and gathering systems are inspected and maintained in order to prevent surface and/or water pollution from oil and/or salt water.
 - (5) The lessee shall document and maintain a daily log of all repairs and maintenance activities of all lease related production wells and the associated lease lines.
- (h) Solid Waste – Improper storage and/or disposal of solid waste is prohibited within Pawnee Indian Country at all times. Disposal and/or storage of unused surface equipment, refuse, debris, containers, pump jack parts, discarded piping, and petroleum product is prohibited at all times and must be removed from the sight and disposed of by the lessee in accordance to Tribal, state, and federal law. Materials, product, and/or equipment not used in accordance to the lease agreement is deemed solid waste.
- (i) N. O. R. M. The lessee is responsible for assuring all surface equipment and sludge is surveyed for naturally occurring radioactive material (NORM) prior to handling and/or disposal. The lessee is responsible for assuring the safety of its employees and for assuring the safe and lawful handling and disposal of all radioactive materials. A visible warning shall be placed on all sites were detection exist.
- (j) Water Quality - Surface Water / Ground Water
- (1) Point sources and/or non-point sources of pollution to all surface water and/ or ground water resulting from any oil and/or gas production activity are prohibited.
 - (2) Discharge of any petroleum product (oil, brine, etc.) into any storm water conveyance, waterway (lentic, lotic, intermittent and/or perineal), is prohibited.
 - (3) Any release, residual, or discharge upon the surface of land not having secondary containment is prohibited at all times.
 - (4) Any violation of Tribal Water Quality Standards (surface and/or ground waters) resulting from any oil/or gas production activity is prohibited at all times. Violation of this part shall be subject to penalties assessed by Pawnee Nation in accordance to the Pawnee Nation Water Pollution Control Act and/or USEPA.

Section 1205. Lease Compliance

The lessee is responsible for assuring mineral lease compliance at all times. The lessee must provide the B. L. M. and B. I. A. at least 30 days notice prior to selling and/or transferring their lease to another party. The B. L. M. and/or B. I. A. will assess lease compliance status to assure lessee is in full compliance with all provisions of their lease, and other applicable Tribal and federal law.

Section 1206. Brine Management

- (a) Any facility, motor carrier, and/or device used for the purpose of transporting, storage , and/or disposal of brine (salt water) or any unknown waste product shall be subject to

audits and/or inspections by the Pawnee Nation DECS and/or other federal agencies. The owner and/or operator shall provide record and/or information as requested by the DECS enforcement officer or representative.

- (b) The DECS officers and/or its designated officers may temporarily stop and board any motor carrier to inspect and/or sample the loaded product, and/or review shipping documents for the product transported from and/or into Pawnee Indian Country. The owner (s) and/or operator of the vehicle will be subject to penalty for violations.

Section 1207. Transportation of Product and /or Equipment

- (a) No motor carrier shall transport and/or engage in the business of transporting of any salt water, mineral brines, waste oil and/or other deleterious substance produced from, obtained, or used in connection with the drilling, development, producing, and/or operating of oil and/or gas wells and brine wells, for any valuable consideration ever, or any quantity over twenty (20) gallons, without a license authorizing such operation and a deleterious substance transport permit to be issued by the Pawnee Nation and/or Oklahoma Corporation Commission. Provided, transportation of such substances by private carrier of property by motor vehicle shall require a deleterious substance transport permit as issued by the Pawnee Nation and/or Oklahoma Corporation Commission.
- (b) It shall be unlawful for a motor carrier, whether private, commercial, common, or contract to dump, disperse, release, and/or otherwise improperly dispose of any substance as described in Section 1207 (A) of this Chapter upon any surface, roadway, highway, container, or into any well and/or receptacle unless rightfully and legally available to the motor carrier for such use and purpose.
- (c) It shall be unlawful for any individual and/or carrier to park and/or store any unattended transport vessel, tank, trailer, or container containing over twenty gallons (20) deleterious substance as indicated under this Chapter at any time upon any land within the Pawnee Nation.
- (d) It shall be unlawful for any carrier as indicated in this Chapter to have a release devise located and/or operated in any manner within the cab area of such motor vehicle.
- (e) Any violation of this Section (Section 1207) shall result in a penalty not to exceed \$2,500 for the first violation or offence and \$5,000 for the second violation or offence. Any violation of this Section may be reported to all effected State, Federal, and/or Local agencies for further enforcement action. Any driver not the owner of the vehicle used in any violation of this Section shall be adjudicated a codefendant and subject to a fine equal to ten percent (10%) of the fine assessed the owner of such vehicle.

Section 1208. General Site Safety

All owners and/or operators shall maintain safe oil and /or gas production sites to comply with but not be limited to the following:

- (a) All electrical connections and wiring shall be installed, buried or placed overhead, marked, and of integrity which is not inconsistent with local codes or as required under federal laws.
- (b) There shall be no burning for the purpose of maintenance, remediation, destroying spilled and/or discarded materials and/or containers, and/or cleanup on any site.
- (c) There shall be no discarded refuse, waste containers, lease lines, rags, left un attended and/or otherwise disposed of at any site.
- (d) All pumps must be protected with appropriate guards and/or fencing established within 2 feet around the pump operating area at all times.

- (e) All access roads must be maintained in order to assure no potential for erosion, and to assure access for any emergency vehicle.
- (f) All wells and tank batteries must be properly marked with the current lessee or operator name and working emergency contact number(s). Newly acquired leases shall be properly marked no later than 30 days from time of acquiring the lease.

Section 1209. Fish and Wildlife Protection

- (a) The lessee is responsible for the protection of fish, wildlife, and their associated habitat from all activities occurring under the lease agreement. The destruction and/or injury of any species of fish, benthic organism, and/or wildlife or its habitat as a result of contact with oil or salt water, siltation or suspended solids caused from erosion associated with any petroleum production activity, construction and/or maintenance activities, is a violation of this Chapter. In addition, any illegal take (death and/or injury) to any fish, benthic organism, and/or wildlife resulting from said contamination is hereby prohibited under this Chapter.
- (b) Oil and gas exploration and recovery activities including underground injection and surface mining activities shall be prohibited within an area 1000 feet from the banks of any stream or lake determined by the tribe to have the potential to support a population of native fishes or that serves as a spawning ground for the same.
- (c) All open tanks are prohibited at all times and are required to be fitted with a covering (solid or mesh) which prohibits the contact of bird and/or wildlife to the product.
- (d) All spills must be cleaned up immediately to minimize death and/or injury to fish and/or wildlife and/or their habitat.
- (e) Owner and/or operator shall be subject to penalties not less than \$400 per day per violation. Provisions of this part of the Act may be enforced by both federal and Tribal enforcement officials.

Section 1210. EPA-UIC

All Underground Injection Control activities must be conducted in accordance to USEPA requirements and federal law. Violations of federal permit conditions shall result in enforcement action by the Pawnee Nation, USEPA, BLM, BIA, and/or other federal or state agency.

Section 1211. Emergency Response / Notification

- (a) The lessee and/or its operator are responsible for notifying all agencies as required under this Section for all oil and/or saltwater spills;
- (b) All spills of oil and/or saltwater must be immediately upon discovery reported to the Pawnee Agency of the Bureau of Indian Affairs, and the Pawnee Nation Department of Environmental Conservation and Safety, and Bureau of Land Management;
- (c) In addition to subpart (b) of this Section, any spills of oil and/or salt water which enters or threatens any waterway must be immediately upon discovery reported to USEPA;
- (d) In addition to subparts (b) and (c) of this Section, all oil spills which enter or threaten any waterway must be reported immediately upon discovery to the National Response Center; and
- (e) Failure to report and/or failure to report immediately upon discovery may result in penalties at minimum of \$100 per barrel of released product (oil and/or salt water) and up to \$1,000 per barrel of product not contained and collected.

Section 1212. Remediation / Restoration of Contaminated Soil

- (a) Discharge of oil and/or salt water resulting in damages to the soils and/or vegetation is prohibited.
- (b) All discharges must be reported by the lessee in accordance to this Chapter and other Tribal and federal law.
- (c) Contaminated soil shall be restored to the ability to sustain native plant growth by the lessee in accordance to and under supervision by the Pawnee Agency of the B. I. A.
- (d) Sites which soil cannot be restored must be remediated by the lessee in accordance to and under supervision by the Pawnee Agency of the B. I. A.
- (e) All leases having existing soil erosion as result from oil and gas production activity shall be remediated and/or restored by the current lessee.

Section 1213. Inspections

- (a) Field inspections shall be provided by Pawnee Nation Department of Environmental Conservation and Safety staff and/or appropriate federal agencies. Findings of violation(s) of this Chapter shall be documented for further evaluation and/or enforcement action by Tribal, state, and/or federal agencies.
- (b) Facility owner and/or operator shall immediately provide inspection and maintenance logs to any requesting inspector as authorized and required under this Chapter.
- (c) Falsifying and/or withholding information as required by this Chapter is prohibited and shall result in a penalty no less than \$1,000 per violation.

Section 1214. Enforcement

- (a) Authority. The Pawnee Nation Department of Environmental Conservation and Safety is authorized to enforce the provisions of this Chapter. The DECS may, with and/or without warrant, make entry, inspect, search, investigate, stop vehicles, seize, arrest, detain, place under investigative detention, conduct pretext interviews, and/or refer for prosecution (criminal and/or civil) by appropriate jurisdiction, any individual, operator, and/or owner who in the course of due care should have known to be, and is observed to be in violation of this Chapter and/or any other regulation, or laws promulgated under this Chapter.
- (b) Jurisdiction. The DECS shall have the authority to enforce this Chapter throughout all of Pawnee Indian Country including but not limited all land (federal trust and/or fee status for surface and/or mineral) within the exterior boundaries of the Pawnee Nation and any area outside said boundaries having impact upon the resources protected under this Chapter, and any area under the authority of the Pawnee Nation outside the original boundaries.
- (c) Penalties.
 - (1) Any person subject to the criminal jurisdiction of the Pawnee Nation Court who is convicted of an offence in violation of any provision of this Chapter shall be fined up to \$25,000 for each offence, together with an amount sufficient for remediation of the site and/or resources involved in the violation.
 - (2) Any person who violates any provision of this Chapter for the purpose of knowingly endangering life and/or property to any degree may be subject for criminal arrest and/or referred for criminal prosecution.
 - (3) Any individual who under criminal prosecution of this Chapter is found guilty in violation of any provision of this Chapter shall be guilty of misdemeanor and be subject monetary penalties as prescribed in this Chapter and/or to imprisonment and/or community service to the Pawnee Nation for a period not to exceed one

year. Nothing in this Chapter prohibits additional enforcement action by federal and/or state agencies for violations of any part of this Chapter.

- (4) Any person who is not subject to the criminal jurisdiction of the Pawnee nation Court who violates any provision of this Chapter shall be subject to a civil fine of up to \$25,000 for each violation, together with an amount sufficient for remediation of the site and/or resources involved in the violation. Flagrant or intentional violation of the provision of this Chapter may be referred to appropriate federal and/or state enforcement officials for prosecution for trespass or other applicable criminal and/or civil provisions, at the discretion of the Department of Environmental Conservation and Safety Law Enforcement personnel and/or its designated official.
- (d) Forfeiture.
- (1) The Pawnee Nation retains the right to seize any vehicle, instrument, and, or tool(s) used in the course of violating any provision of this Chapter until final disposition.
 - (2) All seized property shall be turned over to the appropriate court of jurisdiction as evidence for prosecution.
 - (3) The Pawnee Nation may request possession and ownership of any seized property to be used and or sold for the purpose of enforcing this Chapter.
 - (4) Storage Cost. The responsible party and/owner of seized property shall incur and satisfactorily pay any and all cost associated with the transporting, storage, and/or disposal of any seized property within 30 days of court ruling to release said property.

Section 1215. Expedited Field Enforcement Program

- (a) Authority. The Pawnee Nation hereby establishes the Pawnee Nation Oil Pollution Prevention Expedited Field Enforcement Program.
- (b) Purpose. The Program shall resolve minor violations of this Chapter in a quick time frame with minimal financial impact on a facility. Authorized Tribal field inspectors shall present its inspection findings, alleged violations, proposed penalties, and corrective action to the facility representative following an inspection using the Pawnee Nation Compliance Order/Settlement Agreement, and/or other expedited complaint and settlement letter or form.
- (c) Violations. Facilities qualifying for the expedited enforcement action (minor violations) have the option to correct its violations and pay a small settlement amount within the prescribed time period (30 days) and avoid future enforcement action with substantially larger penalties. The issuance of the expedited enforcement action does not prohibit enforcement by other federal, state, or tribal agencies.
- (d) Appeals. There shall be no appeal for the expedited enforcement action. The expedited enforcement action is non-judicatory and if the facility representative does not meet the settlement terms of the settlement agreement or options not to accept its terms, the expedited enforcement offer is automatically removed.
- (e) Penalties. Penalties under the expedited enforcement action shall range from a minimum of \$100 to a maximum of \$2,500 per violation. Facilities accepting the terms of the expedited enforcement action shall correct the violation, pay prescribed settlement amount, sign the agreement, and submit the signed agreement to the issuing entity in a timely manner as indicated on the agreement. Facilities not meeting the terms of the expedited field enforcement shall be subject to more formal enforcement action which is

not limited to State, Tribal, and/or Federal action with penalties limited to \$25,000 for each day of violation. All funding received under the expedited enforcement agreement and/or court action under formal enforcement shall be deposited into an account under the supervision of the Pawnee Nation Department of Environmental Conservation and Safety which is set aside for education, administration, and enforcement of provisions of this Chapter.

CHAPTER THIRTEEN – Underground Storage Tanks

Section 1301. Definitions and Exemptions

For the purposes of this section -

- (a) "Underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per cent or more beneath the surface of the ground.
- (b) "Regulated substance" means – any substance regulated by the ERC in this Act, and petroleum.
- (c) "Owner" means –
- (d) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances,
- (e) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use.
- (f) "Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.
- (g) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils.
- (h) "Non-operational storage tank" means any underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after November 8, 1984.
- (i) "Petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

Comment § 701

Legislative history

Federal analog: 42 USC Sec. 6991

Section 1302. Notification

- (a) Underground storage tanks
 - (1) Within 18 months after October 1, 1994, each owner of an underground storage tank shall notify the ERC of the existence of such tank, specifying the age, size, type, location, and uses of such tank.
 - (2) For each underground storage tank taken out of operation after October 1, 1994, the owner of such tank shall, within 18 months after October 1, 1994, notify the DECS of the existence of such tanks (unless the owner knows the tank subsequently was removed from the ground). The owner of a tank taken out of operation on or before January 1, 1994, shall not be required to notify the DECS, state or local agency under this subsection.
 - (3) Notice under subparagraph (2) shall specify, to the extent known to the owner-
 - (i) the date the tank was taken out of operation,
 - (ii) the age of the tank on the date taken out of operation,

- (iii) the size, type and location of the tank, and
 - (iv) the type and quantity of substances left stored in such tank on the date taken out of operation.
- (4) Any owner that brings into use an underground storage tank after the initial notification period specified under paragraph (1), shall notify the DECS within 30 days of the existence of such tank, specifying the age, size, type, location and uses of such tank.
- (b) Pawnee Nation
 - (1) The DECS may make two separate inventories of all underground storage tanks on the lands of the Pawnee Nation containing regulated substances. One inventory shall be made with respect to petroleum and one with respect to other regulated substances.
 - (2) In making such inventories, the DECS may utilize and aggregate the data in the notification forms submitted pursuant to subsections (a) and (b) of this section.

Comment § 702

Legislative history

Federal analog: 42 USC Sec. 6991b

Section 1303. Release Detection, Prevention, and Correction Regulations

- (a) Regulations - The Pawnee Nation or its designee shall promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment. These regulations shall be at least as stringent as the federal regulations in this area. The Environmental Regulatory Commission shall be the designated permittee under this Section.
- (b) Distinctions in regulations
 - (1) In promulgating regulations under this section, the Pawnee Nation may distinguish between types, classes, and ages of underground storage tanks.
 - (2) In making such distinctions, the DECS may take into consideration factors, including, but not limited to: location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated.
- (c) Requirements – The regulations promulgated pursuant to this section shall include, but need not be limited to, the following requirements respecting all underground storage tanks -
 - (1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;
 - (2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing or comparable system;
 - (3) requirements for reporting of releases and corrective action taken in response to a release from an underground storage tank;

- (4) requirements for taking corrective action in response to a release from an underground storage tank;
 - (5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment; and
 - (6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from operating an underground storage tank.
- (d) Financial responsibility
- (1) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the DECS by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the DECS.
 - (2) In promulgating requirements under this subsection, the DECS is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.
 - (3) In any case where the owner or operator is in bankruptcy or reorganization, or other arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any state court of the federal courts cannot be obtained over an owner or operator likely to be insolvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor or surety providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.
 - (4) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other state, federal or Pawnee Nation statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under other sections of Pawnee Nation law.
 - (5) For the purpose of this subsection, the term 'guarantor' means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.
 - (6) The ERC, in promulgating financial responsibility regulations under this section, may establish an amount of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than the current federal guidelines for each occurrence with an appropriate aggregate requirement.
 - (7) The Pawnee Nation Business Council may set amounts lower than the amounts required by subparagraph (a) of this paragraph for underground storage tanks

containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

- (8) In establishing classes and categories for purposes of this paragraph, the DECS may consider the following factors:
 - (i) The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.
 - (ii) The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category.
 - (iii) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.
 - (iv) The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph.
 - (v) Such other factors as the DECS deems pertinent.
- (e) New tank performance standards
 - (1) The Pawnee Nation may issue performance standards for underground storage tanks brought into use on or after the effective date of such standards.
 - (2) The performance standards for new underground storage tanks shall include, but need not be limited to, design, construction, installation, release detection, and compatibility standards.
 - (3) These standards shall be at least as stringent as their federal counterparts.
- (f) Effective dates – All regulations, rules and standards issued pursuant to this section shall be effective immediately upon approval of this Act.
- (g) Interim prohibition
 - (1) Until the effective date of the standards promulgated by the Pawnee Nation no person may install an underground storage tank for the purpose of storing regulated substances unless such tank (whether of single or double wall construction):
 - (i) will prevent releases due to corrosion or structural failure for the operational life of the tank;
 - (ii) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and
 - (iii) the material used in the construction or lining of the tank is compatible with the substance to be stored.
 - (2) Notwithstanding paragraph (1), if soil tests conducted in accordance with ASTM Standard G57-78, or another standard approved by the DECS, show that soil resistivity in an installation location is 12,000 ohm/cm or more (unless a more stringent standard is prescribed by the DECS by rule), a storage tank without corrosion protection may be installed in that location during the period referred to in paragraph (1).
- (h) Pawnee Nation response program for petroleum
 - (1) Before Regulations
 - (i) Before the effective date of regulations under subsection (c) of this section, the DECS is authorized to -

- (I) require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum when the DECS determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs; or
 - (II) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the DECS to protect human health and the environment.
 - (ii) The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. The DECS shall request funds from the Leaking Underground Storage Tank Trust Fund for payment of costs incurred for corrective action under subparagraph (b), enforcement action under subparagraph (a), and cost recovery under paragraph (6) of this subsection.
- (2) After Regulations
- (i) Following the effective date of regulations under subsection(c) of this section, all actions or orders of the DECS and/or ERC described in paragraph (1) of this subsection shall be in conformity with such regulations.
 - (ii) Following such effective date, the DECS may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the DECS to protect human health and the environment and one or more of the following situations exists:
 - (I) No Person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is –
 - a. an owner or operator of the tank concerned,
 - b. subject to such corrective action regulations, and
 - c. capable of carrying out such corrective action properly.
 - (II) A situation exists which requires prompt action by the DECS under this paragraph to protect human health and the environment.
 - (III) Corrective action costs at a facility exceed the amount of coverage required by the DECS pursuant to the provisions of subsections (c) and (d)(5) of this section and, considering the class or category of underground storage tank from which the release occurred, expenditures from the Leaking Underground Storage Tank Trust Fund or other Pawnee Nation funds are necessary to assure an effective corrective action.
 - (IV) The owner or operator of the tank has failed or refused to comply with an order of the DECS and/or ERC under this subsection.
- (3) Priority of Corrective Actions – The DECS shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners

or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

- (4) Corrective Action Orders – The DECS is authorized to issue orders to the owner or operator of an underground storage tank to carry out subparagraph (A) of paragraph (1) or to carry out regulations issued under subsection (c)(4) of this section.
- (5) Allowable Corrective Actions – The corrective actions undertaken by the DECS under paragraph (1) or (2) may include recommendation of temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may undertake an exposure assessment as defined in paragraph (10) of this subsection or provide for such an assessment in a cooperative agreement with a state pursuant to paragraph (7) of this subsection. The costs of any such assessment may be treated as corrective action for purposes of paragraph (6), relating to cost recovery.
- (6) Recovery of Costs – Whenever costs have been incurred by the DECS for undertaking corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of such tank shall be liable to the DECS.
- (7) Effect on liability
 - (i) No Transfers of Liability – No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.
 - (ii) No Bar to Cause of Action – Nothing in this subsection, including the provisions of clause (i) of this subparagraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.
 - (iii) Facility – For purposes of this paragraph, the term 'facility' means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

Comment § 703

Legislative history

Federal analog: 42 USC Sec. 6991b

Section 1304. Inspections and Information

- (a) Furnishing information – For the purposes of developing or assisting in the development of any regulation, conducting any study, taking any corrective action, or enforcing the provisions of this subchapter, any owner or operator of an underground storage tank

shall, upon request of the DECS, furnish information relating to such tanks, their associated equipment, their contents, conduct monitoring or testing, permit such officer at all reasonable times to have access to, and to copy all records relating to such tanks and permit such officer to have access for Corrective Action. For the purposes of developing or assisting in the development of any regulation, conducting any study, taking corrective action, or enforcing the provisions of this section, the DECS is authorized:

- (1) to enter at reasonable times any establishment or other place where an underground storage tank is located;
 - (2) to inspect and obtain samples from any person of any regulated substances contained in such tank;
 - (3) to conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water or ground water; and
 - (4) to take corrective action.
- (b) Confidentiality
- (1) Any records, reports, or information obtained from any persons under this section shall be available to the public, except that upon a showing satisfactory to the DECS and/or ERC by any person that records, reports, or information, or a particular part thereof, is information entitled to protection under 18 USC Section 1905.
 - (2) In submitting data under this subchapter, a person required to provide such data may –
 - (i) designate the data which such person believes is entitled to protection under this subsection, and
 - (ii) submit such designated data separately from other data submitted under this subchapter.
- (c) A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

Comment § 704

Legislative history

Federal analog: 42 USC Sec. 6991d

Section 1305. Enforcement

- (a) Compliance orders
- (1) Except as provided in paragraph (2), whenever on the basis of any information, the DECS or ERC determines that any person is in violation of any requirement of this subchapter, the DECS or ERC may issue an order requiring compliance within a reasonable specified time period or the DECS and/or ERC may commence a criminal or civil action in the District Court of the Pawnee Nation in which the violation occurred relief, including a temporary or permanent injunction.
 - (2) The DECS and ERC shall cooperate with the Federal EPA to ensure enforcement of federal standards.
 - (3) If a violator fails to comply with an order under this subsection within the time specified in the order, he shall be liable for a civil penalty of not more than \$25,000 for each day of continued noncompliance.
- (b) Procedure – Any order issued under this section shall become final unless, no later than 30 days after the order is served, the person or persons named therein request a public

hearing. Upon such request the ERC and DECS shall promptly conduct a public hearing. In connection with any proceeding under this section the DECS and ERC may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(c) Contents of order – Any order issued under this section shall state with reasonable specificity the nature of the violation, specify a reasonable time for compliance, and assess a penalty, if any, which the DECS and/or ERC determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(d) Penalties

(1) Any owner or operator of an underground storage tank who fails to comply with any requirement or standard promulgated by the Pawnee Nation shall be subject to a civil penalty not to exceed \$5,000 for each tank for which notification is not given or false information is submitted.

(2) Any owner or operator of an underground storage tank who provide false information or prohibits the enforcement of this Section and is under the criminal jurisdiction of the Pawnee Nation shall be subject to criminal penalties and may be fined no more than \$5,000 per violation, or imprisoned for up to one year, or both. Any person not under the Criminal jurisdiction of the Pawnee Nation shall be subject to a civil penalty not to exceed \$5,000 for each violation. Each tank and/or day shall be deemed a separate violation.

Comment § 705

Legislative history

Federal analog: 42 USC Sec. 6991e

CHAPTER FOURTEEN – Timber Harvesting/Removal.

Section 1401. Prohibition

Forest logging or tree removal shall be prohibited within an area within one chain (66 feet) of the bank of any perennial stream determined by the Director to have the potential to support a population of native fishes or which serves as a spawning ground for the same.

Section 1402. Logging Roads

- (a) Logging roads are prohibited within the area described in Section 801 except for permitted activities under Section 803.
- (b) Any person proposing, for the purpose of timber harvesting, building access roads or trails or stream crossings along or over streams determined by the Director to have the potential to support a population of native fishes or which serves as a spawning ground for the same shall submit a written project proposal to the Director for a permit to conduct such activities.
- (c) The Director shall make the final decision as to whether such activities will be permitted and what conditions shall be required in order to preserve the species or species habitat.

Section 1403. Harvesting

Any person who seeks to harvest timber must submit a written project proposal to the Director for a permit to conduct such activities. The Director shall make the final decision whether such activities will be permitted and under what conditions such activity will be permitted in order to:

- (a) preserve the resulting water quality in order to meet the standards of that particular watershed, as established by the tribe pursuant to its Water Quality Standard; and
- (b) avoid general deterioration of water quality through erosion from the practice of removal of timber.