

POTAWATOMI LAW AND ORDER CODE

**TITLE 21
SOLID WASTE, ENVIRONMENTAL/SANITATION & BUILDING CODES**

**CHAPTER 21-1
SOLID WASTE MANAGEMENT CODE**

Section 21-1-1. Solid Waste Management.

(A) **Title.** These regulations, including other items incorporated by reference, shall be known, and may be cited and referenced to as the “Solid Waste Management Code of the Prairie Band Potawatomi Nation,” and shall be hereinafter referred to as “this Code.”

(B) **Authority.** The Tribal Council (Governing Body) is authorized to develop and adopt a Code for control of solid waste and a Tribal solid waste management program under its inherent power as a sovereign body. This power emanates from the Tribe’s Constitution and Bylaws, as approved by the Secretary of the Interior on February 19, 1976, as amended August 28, 1985. The constitution details the Tribe’s right of self-government that was authorized by the Indian Reorganization Act of 1934. Article V of the Tribe’s Constitution and Bylaws enumerates the powers of the Tribal Council. These powers specifically include:

- (i) To promote and protect the health, peace, morals, education, and welfare of the tribe and its members;
- (p) To regulate the use of all lands and property within the jurisdiction of the Tribe, and to adopt and enforce zoning and land use codes and ordinances.

(C) **Declaration of findings and policy.** The Governing Body finds and declares as follows:

(1) The increasing volume and variety of solid waste and hazardous waste being generated on the Reservation and throughout the County and the often inadequate methods of managing these wastes are creating conditions that threaten and have a direct, serious and substantial effect on the health and welfare of the Tribe and that threaten public health, safety, and welfare by contributing to land, air, and water pollution, to the production of flies, rodents, and litter, to the waste of decreasing natural resources, and to the general deterioration of the environment.

(2) The economic and population growth of the Reservation due to improvements to U.S. Highway 75, the development of a casino and the resulting improvement in the standard of living of Reservation residents, the demolition of old buildings and construction of new ones, and the improvements of Reservation roads will result in an increase of scrap, discarded, and waste materials.

(3) Open dumping is particularly harmful to health, contaminates drinking water from underground and surface sources, and pollutes the land, air, and water.

(4) Methods of solid waste management that emphasize source reduction, recovery, and recycling of all solid waste are essential to the long-range preservation of the health, safety, and welfare of the public, to the economic productivity of the Tribe, to the environmental quality of the Reservation, and to the conservation of natural resources.

(5) Disposal of solid and hazardous wastes in or on the land without careful planning and management will present a danger to public health and the environment.

(6) Significant savings can be realized by conserving material and recycling in order to reduce the volume and quantity of material that ultimately becomes solid waste. Solid waste contains valuable energy and material resources that can be recovered and used, thus conserving increasingly scarce and expensive fossil fuels and virgin materials.

(7) It is in the public interest to establish and maintain a comprehensive Tribal solid waste management policy, the objectives of which will be to manage and control solid waste and to prohibit the introduction of hazardous waste into the Reservation in order to protect the health, safety, and welfare of the public, to preserve the environmental quality of the Reservation, and to provide for the conservation of natural resources.

(D) Purpose and intent. This Code, adopted pursuant to the sovereign powers of the Prairie Band Potawatomi Nation, are intended to serve the following purposes:

(1) To promote the health, safety, comfort, welfare, and economic development of the residents of the Potawatomi Reservation.

(2) To protect property values and conserve energy resources.

(3) To encourage the recycling of solid waste as a resource.

(4) To implement the goals, objectives, and strategies of the General Plan for the Prairie Band Potawatomi Nation.

(E) Jurisdiction. This Code shall apply to all land within the boundary of the Prairie Band Potawatomi Nation's Reservation. For the purpose of this Title, the term Reservation shall be as defined in Article I of the Prairie Band Potawatomi Nation's Constitution.

(F) Notice to other Governments. Written notice of any amendments to the text of this Code shall be given to the governing body of Jackson County and to the governing body of any incorporated city within three (3) miles of the Reservation. This notice of proposed action shall be given to the governing body at least twenty (20) days prior to the proposed action.

(G) Prohibition of Hazardous Waste. In order to protect the limited land, air, and water resources of the Reservation from pollution by hazardous wastes and to

protect the health, safety, and welfare of all residents of the Reservation and surrounding communities, the receiving, handling, transportation, treatment, storage, composting, processing, and disposal of hazardous waste is expressly prohibited within the exterior boundaries of the Reservation. The Planning and Environmental Protection Department (the Department) may permit the establishment of a program for the collection, transportation, transfer, storage, and disposal off the Reservation of hazardous waste generated or found on the Reservation, subject to such conditions as the Department may impose.

(H) Prohibition on Disposal in Open Dumps. In order to protect the limited land, air, and water resources of the Reservation from pollution by solid and hazardous wastes and to protect the health, safety, and welfare of all residents of the Reservation and surrounding communities, disposal of solid and/or hazardous waste in any open dump is expressly prohibited within the exterior boundaries of the Reservation.

Section 21-1-2. Planning and Environmental Protection Department.

(A) Designation as Lead Tribal Agency. The Potawatomi Planning and Environmental Protection Department is designated as the lead Tribal department to develop and enforce a solid waste management program for the Nation. The responsibilities of the Planning and Environmental Protection Department are as follows:

- to develop a Solid Waste Management Program with a Plan and update it on an annual basis;
- to regulate solid waste handling, treatment, composting, recycling and disposal within the Reservation;
- to establish, review, and modify the Tribe's Solid Waste Program; and
- to regulate solid waste handling services within the Reservation.

The Planning and Environmental Protection Department is designated as the Tribal solid waste management program for all purposes under the Resource Conservation and Recovery Act (RCRA) of 1976 and any other applicable federal act heretofore and hereafter enacted.

(B) Tribal Solid Waste Management Policy. The Planning and Environmental Protection Department (Department) shall formulate and recommend to the Tribal Council a policy for solid waste management, including but not limited to minimum standards for solid waste handling, treatment, composting, and disposal for the protection of land, air, and water from pollution, and, during the process of formulating or revising such policy for solid waste management, the Department shall consult with and carefully evaluate the recommendations of all concerned federal, state, and local agencies.

(C) **Powers and Duties.** In addition to its other powers and duties, Planning and Environmental Protection Department (Department) shall have the following powers and duties:

(1) **Enforce regulations.** The Department with assistance from Tribal Police shall enforce such regulations that are adopted by the Tribal Council to implement and carry out the policies, requirements, and duties described in this Code, and establish standards by regulations to govern the hauling, treatment, composting, and disposal of solid waste and the design, construction, operation, and monitoring after closure of solid waste facilities.

(2) **Annual Report.** The Department shall prepare and file an annual report with the Tribal Council no later than the General Council meeting in July of each year, commencing in 2000. This report shall state the progress achieved under the program as described herein and containing recommended additional administrative and legislative actions necessary to implement such policies and programs.

(3) **Solid Waste Management Plan.** The Department shall prepare and implement a comprehensive, coordinated Solid Waste Management Plan, consistent with Tribal policy, for solid waste handling, treatment, composting, and disposal within the Reservation.

(4) **Procedures for permit and inspection program.** The Department shall develop procedures for carrying out a permit and inspection program, including but not limited to requiring operators (contract services or Tribal), to file reports with the Department in order to monitor solid waste handling, treatment, composting, or disposal within the Reservation.

(5) **Studies, investigations, and information systems.** The Department may conduct studies and investigations regarding new or improved methods of solid waste handling, treatment, composting, and disposal and prepare and implement a solid waste management information storage and retrieval system coordinated with other information systems.

(6) **Public information program.** The Department may implement a public information program to provide information to other governments, private industries, and the general public concerning maximum environmental protection, effective reuse of solid waste, and recycling.

(7) **Studies of litter.** The Department may conduct studies of the nature, extent, and methods of reducing and controlling litter problems on the Reservation, including but not limited to methods of improving public education and incentives not to litter, necessary additional legislation, and improved methods of implementing existing litter laws.

(8) **Contracts.** The Department, with approval of Tribal Council, may enter into such contracts as deemed necessary, provided that nothing the Department does or contracts to do shall be or shall be construed to be a waiver of the sovereign rights or immunities of the Prairie Band Potawatomi Band or any agency, entity, employee, or official thereof.

(9) Specification of exempt wastes. The Department may, by regulation, specify classifications of solid waste that shall be exempt from the requirements of the Solid Waste Management Plan, provided that:

- (a)** The exemption is not contrary to the public interest;
- (b)** The quantity of exempt solid waste to be disposed of at any disposal facility is insubstantial; and
- (c)** The nature of the exempt solid waste poses no significant threat to the public health, the public safety, or the environment.

(10) Coordination and cooperation with other agencies. The Department may coordinate solid waste handling, treatment, composting, and disposal with federal, state, and local agencies and with persons in the solid waste industry; may render technical assistance to Tribal, state, and local agencies and officials thereof and others involved in the planning and operation of solid waste programs and facilities; may assist other Tribal, state, and federal agencies in the development, implementation, and maintenance of their inspection, enforcement, training, and regulatory programs; may organize, operate, and conduct any solid waste enforcement activity as it deems advisable upon the request of the governing body of any city, county, or tribe upon the appropriation for solid waste enforcement purposes by that city, county, or tribe for a sum adequate to compensate the Department for the full cost of that activity; and may request, as necessary, any Tribal, federal, state or local agency having jurisdiction to investigate and report on any questions or matters involved in solid waste handling, treatment, composting, and disposal affecting the Reservation.

Section 21-1-3. Solid Waste Management Plan and Consideration.

(A) Approval of Plan. A Solid Waste Management Plan, describing the location, design, operation, maintenance, and ultimate reuse of solid waste facilities, shall be prepared by the Department and submitted for approval to the Tribal Council.

(B) Contents of Plan. The Solid Waste Management Plan shall contain the following:

- (1)** an implementation schedule;
- (2)** the estimated volume and composition of solid waste generated on or imported to the Reservation;
- (3)** an identification of the responsibilities of other Tribal agencies and entities in the implementation of the Plan, the distribution of federal funds to the authorities responsible for development and implementation of the Plan, and the means for coordinating all planning and implementation under the Plan;
- (4)** (a) a prohibition on the disposal of solid waste in open dumps within the exterior boundaries of the Reservation and the handling, treatment, composting, or disposal of hazardous waste within the exterior boundaries of the Reservation, and (b) requirements that all solid waste (including but not

limited to solid waste originating off-Reservation) shall be used for resource recovery, disposed of in sanitary landfills, or otherwise disposed of in an environmentally sound manner;

(5) a provision for closing all existing open dumps within the Reservation pursuant to this Code and any applicable federal law;

(6) a provision for the establishment of such Tribal regulatory systems as may be necessary to implement the Plan and delineate an enforcement program;

(7) a provision for resource conservation and recovery, for disposal of solid waste in sanitary landfills, and for any combination of practices as may be necessary to handle, treat, compost or dispose of solid waste in a manner that is environmentally sound and in compliance with Tribal rules and regulations;

(8) establish and specify a goal of recycling the solid waste accepted by any facility within the Reservation to the maximum extent feasible, consistent with applicable federal and Tribal air quality maintenance plans, area-wide wastewater treatment plans, and regional solid waste management plans;

(9) adhere to federal guidelines for the disposal of solid waste and incorporate the recommended procedures, design, and operations described in 40 C.F.R. Parts 241 and 257, as such may be amended from time to time; and

(10) identification and reservation of areas for the establishment or expansion of solid waste facilities.

(C) Solid Waste Facility Sites.

(1) **Site considerations.** Identifying and reserving areas for the establishment or expansion of solid waste facilities, the Department shall insure that the land uses adjacent to or near such area are compatible with such solid waste facilities and shall consider the following:

(a) The varying geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to prevent leachate contamination of ground and surface waters, the protection of surface water from surface runoff contamination, and the protection of ambient air quality;

(b) Characteristics and conditions of handling, treatment, composting, and disposal methods, techniques, and practices, and locations of solid waste facilities where such methods, techniques, and practices are conducted, taking into account the nature of the material to be handled;

(c) Methods for closing open dumps for purposes of eliminating potential health hazards;

(d) Population density, distribution, and projected growth;

(e) Geographic, geologic, climatic, and hydrologic characteristics;

(f) The types and locations of transportation facilities;

(g) The profiles of industries;

(h) The constituents and generation rates of solid waste;

- (i) The political, economic, organizational, financial, and management problems affecting comprehensive solid waste management;
 - (j) Types of resource recovery facilities and resource conservation systems that are appropriate; and
 - (k) Available new and additional markets for recovered materials and energy resources recovered from solid waste as well as methods for conserving such material and energy.
- (2) **Determination of prerequisites for reservation of site.** The Department may not reserve a site for a solid waste facility without making a determination that the distance from the site to the nearest residential structure is in compliance with minimal Tribal standards for solid waste facilities and is sufficient to permit adequate control of noise, odor nuisances, traffic congestion, litter, and vectors.
- (3) **Periodic Review of Plan.** The Department shall review and evaluate the Solid Waste Management Plan at least once every three (3) years to obtain maximum consistency with Tribal and federal policy. After such review and evaluation, the Department shall propose appropriate amendments to the Solid Waste Management Plan for the consideration of the Tribal Council.

Section 21-1-4. Permit and Inspection Program.

The Department shall control the management of solid waste generated within and brought to the Reservation by regulation of the handling, treatment, composting, and disposal of solid waste within the Reservation.

(A) Solid Waste Facility and Transportation Permit.

- (1) **Permit Required.** No person shall construct or operate a solid waste facility within the exterior boundaries of the Reservation except as authorized by a facility permit. No person shall engage in the transportation of solid waste facility originating or terminating at a location within the exterior boundaries of the Reservation except as authorized by a solid waste transportation permit.
- (2) **Issuance of Permit; Contents.** The Department may issue, modify, or revise a permit that shall contain all terms and conditions that the Department determines to be appropriate for the construction and/or operation of a solid waste facility or for the transportation of solid waste. A permittee must comply with all terms and conditions of the permit and/or any modifications or revisions.
- (3) **Conditions for Issuance of Permit.** The Department shall not issue, modify, or revise a facility permit or solid waste transportation permit unless it is convinced that primary consideration is given by the permittee to preventing environmental damage and that the long-term protection of the environment is the guiding criterion. To achieve these purposes, the Department may prohibit or condition the handling, treatment, composting, or disposal of solid waste to

protect, rehabilitate, or enhance the environmental quality of the Reservation or to mitigate adverse environmental impacts. A permit will be issued only if:

- (a) the proposed solid waste facility or transportation operation will be in full compliance with all applicable rules and regulations in effect on the date of permit issuance;
- (b) feasible mitigation measures identified in any EIS prepared pursuant to the Nation Environmental Policy Act, 42 U.S.C. Sections 4321-370a (NEPA), have been incorporated as permit conditions; and
- (c) there has been opportunity for public review and comment at relevant stages of the permitting process.

(4) The Department may deny the permit or may impose permit conditions that will adequately protect against unreasonable defilement or degradation of the environment and natural resources of the Reservation, if the Department determines that:

- (a) The proposed method of transportation, the place or manner in which the solid waste is to be handled, treated, composted, or disposed of, or the method or location of temporary storage will be detrimental to, or substantially damage or pollute the environment or natural resources of the Reservation; or
- (b) The applicant is likely not to comply with permit conditions.

(5) **Additional Conditions for Facility Permit.** The Department shall not issue, modify, or revise a facility permit unless a land use permit has been issued by the Tribe to insure compliance with applicable zoning regulations. The decision to issue, modify, or revise a facility permit requires a finding by the Department that the proposed permit is consistent with the Potawatomi Solid Waste Management Plan and with the standards adopted by The Department and the Tribe.

(6) **Additional Conditions for Solid Waste Transportation Permit.** As a condition for the issuance of a solid waste transportation permit, the Department shall require every vehicle operated by the transporter to be conspicuously marked or placarded to identify the solid waste transported and its principal hazard. Any such vehicle shall be marked in a like manner with the full first name or legally registered trade name or names of the transporter and the number of the solid waste transportation permit issued pursuant to this Section. As a further condition for the solid waste transportation permit, the Department shall require the transporter to make an annual report to the Tribe indicating:

- the number and type of installations emptied or cleaned;
- the volume and nature of the solid waste disposed of;
- the place and manner in which such solid waste was finally disposed; and
- such other information as the Department may require.

A renewal may be denied by the Department for failure of the permittee to properly report or otherwise comply with this Code.

(7) **Periodic Review.** Any permit issued, modified, or revised hereunder shall be reviewed and, if necessary, revised by the Department at least every year. Solid waste transportation permits may be issued for a period of up to twelve (12) months and must be renewed annually.

(8) **Compliance with Applicable Law.** Receipt of a permit shall not relieve any person of the responsibility to construct and operate all solid waste facilities and collection systems in a manner that complies with any and all applicable laws, rules, or regulations.

(B) Permit Application; Hearing; Fees.

(1) **Application for Permit.** Any person who proposes to become an operator of a solid waste facility or transporter of solid waste shall file with the Department an application for a facility permit or a solid waste transporter permit, respectively, at least 120 days in advance of the date on which such person desires to commence construction of a solid waste facility or transport of solid waste. The decision to issue or not to issue the permit shall be made by the Department within 120 days of the time the application is filed.

(2) **Contents of Application.** Applications filed pursuant to this Section shall contain the following information:

-the mechanical and other equipment, holding tanks, vehicles, and places of temporary storage used or to be used by the applicant;

-a site evaluation report describing the geographic, geologic, climatic, and hydrologic characteristics of the place or places to be used;

-the manner in which the applicant will handle, treat, compost, or dispose of the solid waste;

-the practices that will be employed to ensure adequate protection of the quality of groundwater and surface water from leachate contamination, adequate protection of the quality of surface waters from surface runoff contamination, and adequate protection of ambient air quality;

-the manner in which the applicant will meet the financial assurance requirements established pursuant to this Code;

-a training program for employees of the solid waste facility to educate employees on environmental concerns in managing solid waste and to provide such employees with the needed skills for the safe operation of the solid waste facility or transportation equipment; and

-such other information as the Department deems necessary.

(3) Application for Revision of Permit. If a permittee wishes to modify his operation, he/she shall file an application for revision of his/her existing permit at least 120 days in advance of the date when the proposed modification is to take place. Under circumstances that the Department determines present an immediate danger to public health, the 120 days filing period may be waived by the Department. No operator of a permitted solid waste facility or transportation service shall make any significant change in the design or operation of any solid waste facility or transportation service except in conformity with the terms and conditions of the permit issued to such operator.

(4) Application Submitted Under Oath; Filing Fee. Each report and application filed hereunder shall be submitted under oath and under penalty of perjury and shall be submitted in a form approved by the Department. Each application shall be accompanied by a reasonable filing fee established by the Department according to a fee schedule to reflect the cost of processing such applications, including but not limited to the cost of technical and legal consultants, office staff, and overhead. This fee is in addition to the fees authorized for operation and enforcement.

(5) Closure and Post-Closure Maintenance of Solid Waste Facilities. The Department shall, as needed, adopt standards and make rules and regulations requiring that, as a condition for the issuance, modification, revision, or review of a facility permit, the operator shall provide assurance of adequate financial ability to respond to personal injury claims, public or private damage claims, and natural resource damage claims, that may result from the construction and/or operation of the solid waste facility. The operator of the facility must maintain evidence of financial ability for closure and post-closure maintenance at all times during operation of the facility and for the post-closure maintenance period.

The Department shall, as needed, adopt standards and make rules and regulations specifying closure plan and post-closure maintenance plan adoption procedures and uniform post-closure maintenance plans for compliance with this Code and the regulations. If the plans comply with this Code and the regulations, the Department shall approve the plans.

Any person operating or intending to operate a solid waste facility within the exterior boundaries of the Reservation shall submit to the Department a satisfactory plan for the closure and post-closure maintenance of the solid waste facility prior to commencing operation of the facility. This closure plan shall include the following:

- (a)** Evidence that the operator has the financial ability to provide for the cost of closure and the estimated post-closure maintenance costs for a period of thirty (30) years of post-closure maintenance. These

funds shall be deposited on an annual basis into a trust fund in amounts sufficient to meet closure and post-closure maintenance costs; and

(b) Any other information the Department may request.

(C) **Hearing on Permit Application.** No permit shall be issued except after a public hearing at which the applicant and all interested parties have an opportunity to present evidence on whether the application should be granted and the conditions to be included in the permit. A hearing to determine whether a permit should be issued shall be held in conjunction with a hearing for a special use permit to fulfill zoning requirements and meet all notification requirements of the Tribe's Zoning Regulations.

If after the hearing, the Tribal Council, serving as the Board of Zoning Appeals and/or the Department denies a permit, or if the applicant deems the terms and conditions of the permit inappropriate, the applicant may request a re-hearing in writing within fifteen (15) days after the applicant receives notice of the denial or of the terms and conditions of the permit.

(D) **Investigation; Reports; Inspections.**

(1) **Investigations.** The Department, in issuing or reviewing any facility permit or solid waste transportation permit or in connection with any action related to or authorized by this Code, may investigate the construction, maintenance, and operation of any solid waste facility or transportation service owned or operated by the permittee or applicant.

(2) **Reports by Operators.** In such an investigation, the Department may require that the permittee or applicant furnish, under penalty of perjury, such technical or monitoring program reports or other reports as the Department may specify.

(3) **Inspection.** In such an investigation, the Department may inspect any facility, equipment, or vehicle used for, and any records relating to, the handling, treatment, composting, or disposal of solid waste to ensure compliance herewith and to determine that operators are complying with applicable permit requirements.

(E) **Protection of Proprietary Information.** Upon the Department's approval of the request of any person furnishing any reports, notice, application, or other document required hereby, the Department shall not make available for inspection by the public those portions of such report, notice, application, or other document that contain proprietary information; however, such report, notice, application, or other document or portions thereof shall be made available to the Prairie Band Potawatomi or its agencies and to any other government agency or agencies if such agency or agencies has the authority by law to protect the confidentiality of such information and has entered into an agreement with the Department guaranteeing confidentiality of such information.

(F) **Regulations.** The Department may make rules and regulations implementing this Title in order to carry out and enforce the intent and purposes thereof. Such rules and regulations shall govern permit applications, permit conditions, and permit renewals under this Title.

Section 21-1-5. Enforcement Program.

The Department, in association with the Tribal Police, is hereby designated as the enforcement agency entrusted with the duty and responsibility of ensuring the proper handling, treatment, composting, and disposal of solid waste on the Reservation and of ensuring compliance by all persons with this Code.

(A) **Duties.** The Department and Tribal Police shall:

(1) **Enforcement of Code.** Enforce all provisions of this Code and regulations adopted hereunder that pertain to the minimum standards for solid waste handling, treatment, composting, and disposal, all for the protection of the public health and safety and of land, air, and water.

(2) **Enforcement of mitigation measures.** Enforce compliance with feasible mitigation measures identified within Environmental Impact Statements prepared pursuant to NEPA.

(3) **Enforcement by other agencies.** Request enforcement by federal, state, and local agencies of their respective laws governing solid waste handling, treatment, composting and disposal.

(4) **Provide information to Tribal Council.** Provide to the Tribal Council information that the Tribal Council requests.

(5) **Development of programs.** Develop, implement, and maintain inspection, enforcement and training programs.

(6) **Record keeping.** Keep and maintain records of its inspection, enforcement and training programs.

(7) **Consultation with health agencies.** Consult with appropriate health agencies concerning all actions involving solid waste handling, treatment, composting and disposal.

(B) **Periodic Review.** The Tribal Council shall periodically review the Department. The Tribal Council may impose reasonable fees or taxes on each operator of a solid waste facility and solid waste transportation service. The fee or tax may be based on the weight, volume, or type of solid waste received, handled, treated, composted, or disposed of by any such operator, or on any other appropriate basis or combination thereof.

(C) **Fees and Taxes.** In order to cover operating costs for the Department, the Tribal Council may impose reasonable fees or taxes on each operator of a solid waste facility and solid waste transportation service. The fee or tax may be based on the weight, volume, or type of solid waste received, handled, treated, composted, or

disposed of by any such operator, or on any other appropriate basis or combination thereof.

(D) Enforcement Actions.

(1) Notice of Chairperson of Tribal Council. Within ten (10) days before issuing an enforcement order that is not for an emergency; within five (5) days after issuing an enforcement order for an emergency; and within fifteen (15) days after discovering a violation of a Tribal law, regulation, or permit that is likely to result in an enforcement action, the Department and Tribal Police shall provide a written statement providing an explanation of and justification for the enforcement order or a description of the violation to the Chairperson of the Tribal Council.

(2) Action and Complaints.

(a) If the Department receives a complaint concerning the violation of applicable Tribal or federal environmental or solid waste laws, regulations, or permit conditions, the Department and Tribal Police shall investigate to ensure proper consideration of the complaint. The Department's investigation may include the inspection of the facility or transporter to determine whether any applicable Tribal or federal law, regulation, or permit condition has been or is being violated.

(b) If the Department receives a complaint concerning a solid waste facility, collection system, or other activity subject to the Tribe's jurisdiction and the Department is not able or authorized to take action concerning the complaint, the Department shall refer the complaint within ten (10) days of receipt to the appropriate Tribal, federal, or state agency.

(c) If the Department receives a complaint concerning a solid waste facility, collection system, or other activity subject to the Tribe's jurisdiction and the Department does not refer it to another agency, or if the Department receives a complaint referred to it by another agency, the Department shall either take enforcement action concerning that facility or transporter or provide the person who filed the complaint with a written statement within thirty (30) days explaining why an enforcement action would not be appropriate.

(E) Cease and Desist Orders; Remedial Actions.

(1) Cease and desist orders; remedial actions by operators. Any person who constructs or operates a solid waste facility in violation of his/her facility permit, who constructs or operates solid waste facility without a permit; who transports solid waste in violation of his/her solid waste transportation permit, who transports solid waste without a solid waste transportation permit; who violates any requirements found in this Code; or who violates any standard adopted by the Tribe for the handling, treatment, composting, or disposal of solid waste shall, upon the order of the Department or Tribal Police, cease and

desist any improper action, clean up any solid waste, abate the effects thereof, and take any other remedial action directed by the Department. Whenever, the department determines that the construction or operation of a solid waste facility or the transportation of solid waste is causing or threatening to cause a condition of hazard, pollution, or nuisance due to migration of hazardous waste, the Department may require the operator of the solid waste facility or the solid waste transporter to take corrective action necessary to abate any hazard, pollution, or nuisance to protect public health and safety and the environment.

(2) Imminent threats; remedial actions by the Department. If any of the circumstances set forth herein above pose an imminent threat of life or health, the Department may expend any available moneys to perform any cleanup, abatement, and remedial work required.

(3) Remedial actions by the Department. If any of the circumstances set forth herein above do not pose an imminent threat to life or health, but the Department deems it necessary for the public health and safety to perform cleanup, abatement work, or remedial work, the Department may perform such work and expend moneys thereon.

(4) Remedial actions by the Department contracts. Any action taken may be taken in the absence of, or in addition to, cleanup, abatement, or remedial work by the operator or other person. The Department may perform the work itself or by or in cooperation with other Tribal, state, or federal agency or private contractor. To this end and notwithstanding any other provisions of the law, the Department may enter into oral or written contracts for such work, and the contracts, whether written or oral, may include provisions for equipment rental and the furnishing of labor and materials necessary to accomplish the work.

(5) Liability of operators and other persons. 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 Department/Tribe for the reasonable costs actually incurred in cleaning up any solid or hazardous waste, abating the effects thereof, or taking other remedial action. The amount of such costs shall be recoverable in a civil action in the Potawatomi Tribal Court, together with costs of suit incurred by the Department in recovering such moneys. A judgment ordering the payment of these costs to the Tribe and/or Department will bear interest at the rate of fifteen percent (15%) a year or at the rate of interest allowable on judgments under Tribal law or Kansas law, whichever is greater.

(F) Compliance Schedule. The Department shall develop a compliance schedule for any permitted solid waste facility or solid waste transporter that violates the Tribe's 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 Tribe's minimum standards within a specific period of time determined by the Department. If the solid waste facility or solid waste transporter is

not in compliance within the period specified, the Department may revoke, suspend, or modify the permit until such time as violations of the minimum standards are remedied.

(G) 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 Department for cause, including but not limited to any or all of the following:

(a) Any violation of any term or condition contained in the permit, this Code or regulations promulgated hereunder, or the underlying lease or land use permit.

(b) Obtaining the permit by misrepresentation or failing to disclose fully all relevant facts.

(c) 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 Code or regulations promulgated hereunder, 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 Department 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, rules, or regulations 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.

(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 twenty days (20) and no later than forty-five (45) days from the Department's mailing or personal delivery of the Statement of Charges. The Notice shall inform the permittee that he/she has the right to inspect and copy documents relative to the Statement of Charges.

(4) Notice of Defense.

(a) Within fifteen (15) days after service upon him/her, the permittee may deliver to the Department a Notice of Defense in which he/she may object to the Statement of Charges upon the ground that it does not state acts or omissions upon which the Department may proceed or to the form of the Statement of Charges on the ground that it is so indefinite or uncertain that he/she cannot identify the acts or omissions or prepare his/her defense.

(b) The Notice of Defense shall be deemed a specific denial of all parts of the Statement of Charges not expressly admitted. Failure to file a Notice of Defense shall constitute a waiver of the right to a hearing.

(c) The Notice of Defense shall be in writing signed by or on behalf of the permittee.

- (d) A copy of any Statement of Charges and Notice of Defense shall be sent by the Department to the Chairperson of the Tribal Council.
- (5) **Hearing panel.** All hearing shall be conducted by a three-person hearing panel. One member of the hearing panel shall be appointed by the Chairperson of the Tribal Council and one member by the Department. The third member shall be appointed by agreement of the other two appointees.
- (6) **Discovery; subpoenas and subpoenas duce tecum.**
- (a) Prior to the hearing, any party, upon written request made to any other party prior to the hearing, is entitled to:
- (i) obtain the names and addresses of witnesses to the extent known to the other party including but not limited to those intended to be called to testify at the hearing; and
- (ii) inspect and make a copy of any relevant documents in the possession or custody or under the control of the other party, including but not limited to statements made by any person pertaining to the subject matter of the proceeding, and investigative reports pertaining to the subject matter of the proceeding. Nothing in this Section shall authorize the inspection or copying of any writing or thing that is privileged from disclosure by law or otherwise made confidential or protected as attorney's work product or otherwise.
- (b) Before the hearing has commenced, the hearing panel shall issue and have served subpoenas and subpoenas duces tecum at the request of any party for attendance of witness or production of documents at the hearing. No witness shall be obliged to attend unless the distance is less than 150 miles from his place of residence, except that the hearing panel, upon affidavit of any party showing that the testimony of such witness is necessary, may endorse on the subpoena an order requiring the attendance of such witness. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.
- (7) **Evidence and witnesses.**
- (a) Oral evidence shall be taken only on oath or affirmation. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, to impeach any witness regardless of which party first called him/her to testify, and to rebut the evidence against him/her. Any party who does not testify in his/her own behalf may be called and examined as if under cross-examination.
- (b) The hearing need not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons may rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions. Hearsay

evidence may be used solely for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(c) In reaching a decision, official notice may be taken, prior to submission of the case for decision, of any generally accepted technical or scientific matter pertaining to solid waste management, and of any fact that may be judicially noticed by the courts of Kansas or the Potawatomi Tribal Court. Parties present at the hearing shall be informed of matters to be noticed, and those matters shall be noted in the record. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority.

(8) **Issuance of decision.** Within thirty (30) days after the case is submitted for decision, the hearing panel shall issue its decision. 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 Chairperson of the Tribal Council.

(9) **Reduction of penalty or reinstatement.** A person whose permit has been revoked or suspended by the Department may petition the Department for reinstatement after a period of not less than one (1) year has elapsed from the effective date of the revocation or suspension or from the date of the denial of a similar previous petition. If the Department declines to take the action requested, the petitioner, if he/she so requests, shall be afforded a hearing.

(H) Civil Penalties.

(1) **Civil penalties for violations.** Any person who engages in the unauthorized handling, treatment, composting, or disposal of solid or hazardous waste within the exterior boundaries of the Reservation; who constructs or operates a solid waste facility in violation of his/her facility permit; who constructs or operates a solid waste facility without a facility permit or a solid waste transportation permit; who transports solid waste in violation of his/her solid waste transportation permit; who violates any requirements found in the Prairie Band Potawatomi Solid Waste Management Code; or who violates any standard adopted by the Tribe for the handling, treatment, composting, or disposal of solid waste shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000.00) for each day such violation or operation occurs, to be assessed by the Potawatomi Tribal Court in an action filed by the Department after an opportunity to be heard. Any person who commits any of the above prohibited acts may be subject to criminal penalties and also be liable for any civil damages caused by the commission of such acts and may be excluded from the Reservation. Any persons who commit any of the above prohibited acts, or whose employees or agent in the course of their employment or agency commit any of the above prohibited acts,

may have their rights to engage in activities of the Reservation suspended or terminated.

(2) **Penalties for disposal of solid waste in open dumps.** Any person who disposes of solid waste in an open dump, not on his/her property, shall be liable for a civil penalty of two hundred and fifty dollars (\$250.00) plus court costs, to be assessed by the Potawatomi Tribal Court in an action filed by the Department after an opportunity to be heard. Any property owner who is found to have an open dump on his/her property shall be notified, in writing by the Department, of this violation and be given fifteen (15) days to clean up the open dump. If the property owner fails to clean up the dump within this fifteen (15) day period, the property owner shall be liable for a civil penalty of two hundred and fifty dollars (\$250.00) plus court costs, to be assessed by the Potawatomi Tribal Court in an action filed by the Department after an opportunity to be heard.

(3) **Disposition of civil penalty funds.** Civil penalty funds collected shall be paid one-half (1/2) to the Department and one-half (1/2) to the Potawatomi Tribe. Penalty funds paid to the Department shall be retained in a fund designated for meeting the costs of responses to environmental emergencies on the Reservation.

(4) **Penalties in addition to others.** Penalties under this Section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal. In any civil action brought pursuant to this Code in which injunctive relief is sought, it shall not be necessary to allege or prove at any stage of the proceedings that irreparable damage will occur should the injunctive relief not be issued, or that the remedy at law is inadequate, and any form of injunctive relief shall issue without such allegations and without such proof.

Section 21-1-6. Definitions.

(A) **Definitions.** For the purpose of interpreting the provision of this Code in Title 21-1 of the Potawatomi Law and Order Codes, certain terms or words used herein shall be interpreted or defined as follows, unless the context clearly indicates otherwise:

(1) **Applicant.** Any person who has filed an application with the Department of Planning and Environmental Protection for approval to operate a solid waste facility or collection system.

(2) **Closure.** The termination of the receiving, handling, recycling, treatment, composting, or disposal of solid waste at a solid waste facility, and including all operations necessary to prepare the facility or area for post-closure maintenance.

(3) **Collection.** The act of collecting solid or hazardous waste at the place of generation by an approved collection agent and excluding removal.

(4) **Composting.** The controlled microbial degradation of organic solid waste yielding a safe and nuisance free product.

- (5) **Construction.** The erection or building of new structures or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures.
- (6) **County.** Jackson County, Kansas.
- (7) **Disposal.** The discharge, abandonment, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any soil, air, or water.
- (8) **Energy recovery.** The production of energy or energy resources from the handling or disposal of solid waste.
- (9) **Enforcement program.** The rules, regulations, and procedures adopted by the Department, Tribal Police and the Tribe to enforce this Code.
- (10) **Handling.** The collection, transportation, storage, transfer, or processing of solid or hazardous waste.
- (11) **Hazard.** Any condition, practice, or procedure that is or may be dangerous, harmful, or perilous to individuals, property, the natural environment, or the general public.
- (12) **Hazardous waste.** Any waste substance, material, smoke, gas, particulate matter, or combination thereof that:
- (a) Because of its quantity, concentration, or physical, chemical, or infectious characteristics, may either cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating illness, or pose a substantial present or potential hazard to human health, living organisms, or the environment when improperly handled, treated, composted, or disposed of;
 - (b) Is defined to be hazardous or toxic by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or the Resource Conservation and Recovery Act of 1976, as either Act may be amended from time to time, and by any regulations promulgated thereunder, including but not limited to any waste substance, material, smoke, gas, particulate matter, or combination thereof containing asbestos, petroleum or its byproducts, or polychlorobiphenyls (“PCBs”); or
 - (c) Is hazardous, toxic, ignitable, reactive, or corrosive, and that is defined and regulated as such by the Prairie Band Potawatomi Tribe, the State of Kansas, or the United States of America.
- (13) **Implementation schedule.** A schedule that indicates approximate dates for the orderly, timely implementation of Plan policies and programs, and includes approximate dates for the establishment, expansion, and closure of any solid waste facility identified and reserved in the Plan.
- (14) **Open burning.** The combustion of solid waste without (a) control of combustion air to maintain adequate temperature for efficient combustion, (b) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and (c) control of the emission of the combustion products.
- (15) **Open dump.** Any facility or site at which solid waste or hazardous waste is disposed of in a manner that does not protect the environment, is

susceptible to open burning, or is exposed to the elements, vectors, and scavengers, and includes any facility that fails to satisfy standards found in this Code, Tribal regulations, and/or 40 C.F.R. Part 258.

(16) Operator. The person to whom the approval to construct and/or operate a solid waste facility or collection system is granted, any person who has filed an application with the Department for such approval, and with respect to solid waste facilities owned by the Tribe.

(17) Permit. Any authorization, license, or equivalent control document issued by the Department under the authority of the Prairie Band Potawatomi Nation regulating the siting, design, construction, operation, monitoring, corrective actions, closure, post-closure maintenance, and financial assurance of solid waste facilities.

(18) Permittee. A person, including but not limited to an operator, authorized and permitted to construct and/or operate a solid waste facility under this Code.

(19) Person. Any individual, trust, firm, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(20) Plan. The Prairie Band of Potawatomi Solid Waste Management Plan.

(21) Pollution. The condition caused by the presence in or on soil, air, or water of any solid waste, hazardous waste, or substance derived therefrom in such quantity, of such nature and duration, or under such condition that the quality, appearance, or usefulness of the soil, air, or water is significantly degraded or adversely altered.

(22) Post-closure maintenance. All activities undertaken at a closed solid waste facility to maintain the integrity of containment features and to monitor compliance with applicable performance standards.

(23) Processing. The reduction, separation, recovery, treatment, or recycling of solid or hazardous waste.

(24) Proprietary information. Information relating to the ownership, construction, management, or operation of a solid waste facility that is:

- (a) solely related to internal personnel rules and practices;
- (b) a trade secret;
- (c) commercial or financial information, the disclosure of which would cause substantial harm to the competitive position of the solid waste facility or its management organization; or
- (d) personnel, medical, and similar information files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(25) Recoverable. The capability and likelihood of a waste or byproduct being recovered from solid waste for a commercial or industrial use.

(26) Recovered material. Material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from and commonly reused within an original manufacturing process.

(27) Recovery. The recovery of material, byproducts, or energy from solid waste.

(28) Recycling. The process of sorting, cleaning, treating, and reconstituting solid waste or discarded material in order to prepare the altered form for reuse.

(29) Removal. The act of taking solid or hazardous waste from the place of generation or improper disposal.

(30) Reservation. The Prairie Band Potawatomi Reservation. For the purpose of this Title, the term Reservation shall be as defined in Article I of the Prairie Band Potawatomi Nation's Constitution.

(31) Resource recovery system. A solid waste management system that provides for collection, separation, recycling, and recovery of solid waste, including disposal of nonrecoverable waste residue.

(32) Salvage Yard. Any land or building used for the collection or storage or sale of wastepaper, trash, rags, fibrous material, scrap metal, or other discarded material; or for the collecting or dismantling or storage or salvaging of machinery or vehicles not in running condition, or for the sale of parts thereof, or materials from the demolition of building or structures. In the agricultural and residential districts, no more than two (2) licensed or unlicensed motor vehicles which are in the process of restoration to operating condition may be stored; provided however, such vehicles are stored inside a structure or screened from public view.

(33) Sanitary Landfill. A lot or parcel of land used primarily for the disposal, abandonment, dumping, burial, or burning of garage, sewage, trash, refuse, junk, discarded machinery, or motor vehicles or parts thereof or other waste and which is in conformance with all applicable laws.

(34) Segregated from other waste material. Any of the following:

- (a) the placement of recyclable materials in separate containers;
- (b) the binding of recyclable material separately from the other solid waste; or
- (c) the physical separation of recyclable material from other solid waste.

(35) Solid waste. All putrescible and nonputrescible solid, semisolid, and liquid waste, including but not limited to garbage, trash, refuse, paper, rubbish, ashes, industrial waste, construction and demolition waste, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid waste, other discarded solid, liquid and semisolid waste from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, or other discarded containerized gaseous material resulting from industrial, commercial, mining, or agricultural operations, or community activities; but not including hazardous waste; solid or dissolved material in domestic sewage; solid or dissolved material in irrigation return flows; industrial discharges that are point sources subject to permits under 33 U.S.C. Section 1342; or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq.

(36) Solid waste facility. A disposal facility; a transfer/processing station; a recycling facility; a composting facility, any resource recovery system or

component thereof; any system, program, or facility for resource conservation; and any facility used for the handling, treatment, composting, or disposal of solid waste; whether such facility is associated with facilities generating such solid waste or otherwise; and includes all contiguous land and structures, other appurtenances, and improvements on the land.

(37) Solid waste management. A planned program for effectively controlling the generation, handling, treatment, composting, disposal of solid waste in a safe, sanitary, aesthetically acceptable, and environmentally sound manner.

(38) Solid Waste Management Plan or Plan. The comprehensive plan for solid waste handling, treatment, composting, and disposal within the Reservation, and prepared by the Planning and Environmental Protection Department.

(39) Trade Secret. A secret, commercially viable plan, formula, process, or device that is used for making, preparing, compounding, or processing trade commodities and that can be said to be a product of either innovation or substantial effort.

(40) Transfer/processing Station. A facility used to receive, temporarily store, process, or transfer solid waste directly from smaller to larger vehicles for transport. It does not include:

(a) A facility the principal function of which is to receive, handle, process, treat, or compost manure in accordance with Tribal minimum standards;

(b) A facility the principal function of which is to receive or handle solid waste that has already been separated for reuse and is intended for disposal; or

(c) The operations of a duly licensed solid waste collection operator who handles solid waste as an activity incidental to the conduct of a refuse collection and disposal business.

(41) Treatment. Any method, technique, or process designed or intended to change the physical, chemical, or biological characteristics of solid wastes or hazardous waste to render it less harmful to the quality of the soil, air, and water; safer to handle; or easier to contain, manage, or use as fuel, nutrient, soil amendment, or additive.

(42) Tribe or Nation. The Prairie Band of Potawatomi Nation, and “Tribal” refers to such Tribe or Nation.

(43) Vector. Any insect, arthropod, rodent, or other animal capable of transmitting a pathogen from one organism to another or of disrupting the normal enjoyment of life by adversely affecting the public health and well being.

Other Words or Terms

Words or terms not herein defined shall have the meaning as defined in other Codes and ordinances of the Prairie Band of Potawatomi Nation, or, if not elsewhere defined by the Tribe, their ordinary meaning in relation to the context.

Section 21-1-7. Validity and Severability.

If any provisions of this Code are held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, then such provisions shall be considered separately and apart from the remaining provisions of this Code, said provisions to be completely severable from the remaining provisions of this Code, and the remaining provisions of this Code shall remain in full force and effect.

Section 21-1-8. Effective Date.

This Code shall take effect and be in full force from and after their adoption by the Tribal Council by resolution and publication of such resolution once in the official county newspaper.

(Enacted by PBP TC No. 2000-24, February 1, 2000; amended by PBP TC No. 2000-69, April 4, 2000; amended by PBP TC No. 2005-024, March 3, 2005.)

CHAPTER 21-2
ENVIRONMENTAL/SANITATION CODE

Section 21-2-1. Authority and Policy.

(A) **Legal Authority.** This code is adopted under the authority granted to the Tribal Council, governing body for the Prairie Band Potawatomi Nation program under its inherent power as a sovereign body. This power emanates from the Tribe's Constitution and Bylaws, as approved by the Secretary of the Interior on February 19, 1976, as amended August 28, 1985. The constitution details the Tribe's right of self-government that was recognized by the Indian Reorganization Act of 1934. Article V of the Tribe's Constitution and Bylaws enumerates the powers of the Tribal Council. These powers specifically include the power:

- (i) To promote and protect the health, peace, morals, education, and welfare of the tribe and its members; and
- (p) To regulate the use of all lands and property within the jurisdiction of the Tribe, and to adopt and enforce zoning and land use codes and ordinances.

This code shall be enforced pursuant to authority granted to the Tribal Council, or the duly constituted tribal governing body of the Prairie Band Potawatomi Reservation.

(B) **Title.** This code shall be designated as the Prairie Band Potawatomi Environmental/Sanitation Code, hereinafter referred to as the "Code."

(C) **Declaration of Finding and Policy.** The Tribal Council finds that the environmental and sanitary problems on the reservation and regulated by this code have a direct, serious and substantial effect on the health and welfare of the Tribe. The provisions in this code for adequate and reasonable control over the environmental conditions within the reservation are necessary and desirable; and it is necessary to adopt a sanitation code to:

- (1) Eliminate and prevent the development of environmental conditions that are hazardous to health and safety, and
- (2) Promote the economical and orderly development of the land and water resources of the Reservation

For these reasons and objectives it will be the policy of the Tribal Council to amend this code from time to time with respect to any matter affecting environmental sanitation and safety.

(D) Purpose and Intent. The purpose and intent of this chapter is:

- (1) To prescribe the administrative procedures to be followed in administering this code or any amendments thereto;
- (2) To prescribe rules and regulations for controlling practices to minimize health and safety hazards.
- (3) To establish administrative procedures to facilitate fair and equitable regulation while recognizing the rights of affected persons to receive reasonably prompt processing and to appeal administrative decisions.

(E) Applicability. This code shall be in effect for all areas within the Prairie Band Potawatomi Reservation and other lands subject to the Tribe's governmental jurisdiction. For the purpose of this Title, the term Reservation shall be as defined in Article I of the Prairie Band Potawatomi Nation's Constitution.

(F) Effective Date. This code shall become effective on and after its adoption by Tribal Council resolution and public notice, as maybe required.

Section 21-2-2. Definitions.

(A) The following words and phrases, when used in this code shall have the meaning ascribed to them in this section unless indicated otherwise.

(1) Administrative Rules. Those rules and regulations contained in Section 21-2-3. of this code which prescribe general procedures to be followed in the administration of this code.

(2) Environmental/ Sanitation Code. Procedures, standards, and regulations adopted by the Tribe designed to minimize or control those environments and environmental conditions that may adversely affect the health and well being of the Tribe and the public. Such environments and environmental conditions may include, but are not restricted to:

- (a)** Wastewater and wastewater disposal
- (b)** Nuisances
- (c)** Water supply
- (d)** Food and food handling

Whenever the term "code" is used herein, such reference shall be to this Environmental/Sanitation Code of the Prairie Band Potawatomi Reservation, Kansas.

(3) Agricultural Purpose. This code shall not apply to any premises under one ownership which exceeds 10 acres in area, and which is used only for agricultural purposes. For the purposes of this code "agricultural purpose" means a purpose related to the production of livestock or crops. It does not include the dwelling unit.

(4) Administrative Agency. The Planning and Environmental Protection Department, also referred to herein as "Department." The Indian Health Service is a cooperator and the Northeast Kansas Coalition of Environmental

Services is a consultant with the Potawatomi Planning and Environmental Protection Department.

(5) **Administrator.** The appointed director of the Potawatomi Planning and Environmental Protection Department.

(6) **Board of Health.** The Northeast Kansas Multi-County Board of Health authorized by K.S.A. 65-205. and/or the Indian Health Service.

(7) **Authorized Representative.** Any employee of the Potawatomi Planning and Environmental Protection Department who is designated by the administrator to administer this code or serve as a sanitary inspector.

(8) **Person.** Any municipality, political subdivision, institution, corporation, partnership, association or individual.

(9) **Premises.** Any one or more lots or tracts of land, including all buildings, structures, or facilities located thereon.

(10) **Tribal Council.** Means the Tribal Council of the Prairie Band Potawatomi Nation.

(11) **Hearing Officer.** Means any person designated by the Tribal Council to hear appeals from decisions of the Administrative Agency relating to the administration of this code.

(12) **Dwelling Unit.** Any building or structure occupied for residential purposes and containing facilities for living, eating, sleeping and sanitation.

(13) **KDHE.** The Kansas Department of Health and Environment.

(14) **Permit/License.** A document to grant permission; to authorize or to consent to an action.

Section 21-2-3. Administrative Powers and Procedures.

(A) **Right of Entry.** Representatives of the administrative agency and/or its designees shall have the right to enter upon private property to inspect, to examine, and/or to survey for any purpose related to enforcement of this code.

(B) **Obstruction of Administrative Agency.** No person shall willfully and knowingly impede or obstruct representatives of the administrative agency in the discharge of official duties under the provisions of this code. Any representative denied access to any premises for the purposes authorized in this code shall have authority to seek such injunctive or other legal or equitable relief from the Tribal Court as is necessary to insure access and compliance with this code.

(C) **Applications for Permits and Licenses.** All persons required by this code to obtain a permit or license shall make application for such permit or license to the department on standard forms provided for that purpose.

(D) **Issuance of Permit of License.** Within ten (10) working days after the receipt of an application for a permit or license required by this code, the Administrator or designee shall begin such investigations and inspections as he/she shall deem necessary to determine whether the permit or license should be issued or denied, and shall issue or deny the permit or license within thirty (30) days or in conjunction with

another permit application. If the permit or license is denied, the Administrator or designee shall send the applicant a written notice with the reasons for rejection stated thereon.

(E) Permit Non-Transferable. No permit or license shall be transferable, nor shall any fees required and paid therefore be refunded.

(F) Standard Fees. The Tribal Council shall establish a schedule of fees for all permits and licenses required by the code, payable upon submission of the application of such permit or license.

(G) Receipts for Fees and Deposits. The administrative agency shall issue receipts for all fees and deposits required by the code, and the money received therefrom shall be deposited with the Tribal Council, Finance Department, in a separate account to be used for administration of the code.

(H) Notice of Violations. Whenever the Administrator determines that there has been or is likely to be a violation of any provision of this code, he/she shall give notice of such violation. This notice:

- (1) Shall be in writing;
- (2) Shall identify the code violation and the factual basis therefore;
- (3) Shall specify necessary corrective action;
- (4) Shall specify a reasonable period of time for performance of any corrective action and/or work required by the notice; and
- (5) Shall be properly served upon the occupant or owner of the premises: provided, that such notice shall be deemed properly served upon such owner or occupant when a copy thereof has been sent by registered mail to the last known address of the owner or occupant as identified on the latest tribal planning department address rolls.

(I) Appeal for Hearing. Any person aggrieved by any notice or order issued by the Administrator under the provisions of this code shall be entitled to a hearing on the matter before a Hearing Officer. The hearing:

- (1) Shall occur after the date of issuance of the notice or order; and
- (2) Shall occur after a written petition, requesting a hearing and setting forth the grounds upon which the objection is made, has been filed with the Tribal Council Secretary. Such petition shall be filed within 30 days of the date of service of the notice of violation.

The filing of the request for hearing shall act as a stay of the notice or order, except as provided in Section 21-2-3(K) of this code entitled "Emergency Orders." Upon receipt of such petition, the Hearing Officer:

- (1) Shall set a time and place for such hearing;

(2) Shall give the petitioner seven (7) working days written notice of the hearing, the time of the hearing and the place of the hearing;

(3) Shall continue the hearing from its original time and setting upon request of and good cause shown by the petitioner.

(J) Report of Hearing. Within ten (10) working days after such a hearing, the Hearing Officer shall submit a written report of his finding to the Tribal Council with a recommendation that the Council issue an order sustaining, modifying or withdrawing the notice or order of the Administrator. Upon receipt of the report of the Hearing Officer, the Tribal Council shall consider the report and issue an order confirming, modifying or withdrawing the notice or order of the Administrator and shall notify the appellant in the same manner as is provided for in Section 21-2-3(H). Any appeal from a finding and determination of the Tribal Council shall be to the Tribal Court.

(K) Emergency Orders. Whenever the Administrator finds that an emergency exists which requires immediate action to protect the public health, he/she may, without notice or hearing, issue an order reciting the existence of such an emergency and require that such action be taken as he/she may deem necessary to meet the emergency, including the suspension of the permit. Notwithstanding any other provisions of this code, such order shall be effective immediately and shall be enforceable in Tribal Court.

(L) Permit Applications. Applications for permits of licenses required by this code shall be filed with the department.

(M) Disclaimer of Liability. This code shall not be construed or interpreted as imposing upon the Tribe or its officials or employees any guarantee or assurance that any system installation or portion thereof constructed or repaired under permits and inspections required by this code will function properly.

(N) Separability. No decision of a court of competent jurisdiction declaring any section, subsection, paragraph, sentence, clause or phrase of the code invalid shall affect the remaining portion of this code, which shall remain in full force and effect; and to this end the provisions of this code are hereby declared to be severable and shall be presumed to have been adopted knowing that the part of section declared invalid would be so declared.

(O) Enforcement Procedure. The Tribal Attorney shall enforce the provisions of this code and other environmental/sanitary codes adopted by the Tribe and is hereby authorized and directed to file appropriate actions for such enforcement, upon request of the Administrative Department. Actions of injunction, mandamus, and quo warrants may be utilized for enforcement of these codes and shall be governed by the provisions of tribal law.

(P) Penalties. In addition to, and independently of, the enforcement procedures provided in Section 21-2-3 herein, any violation of any provision of the

environmental/sanitary code shall be subject to a civil fine not to exceed two hundred dollars (\$200) for each offense. Each day's violation shall constitute a separate offense.

Section 21-2-4. Wastewater and Disposal.

The provisions of this chapter are adopted for the purpose of regulating and controlling the location, construction, maintenance, and use of septic systems, alternate wastewater systems, privies, and the removal and disposal of materials from such facilities in order to protect the health of the citizens and environment of Prairie Band Potawatomi Reservation.

Section 21-2-5. Applicability.

The Provisions of this chapter shall apply to all land located within the Prairie Band Potawatomi Indian Reservation. For the purpose of this Title, the term Reservation shall be as defined in Article I of the Prairie Band Potawatomi Nation's Constitution.

Section 21-2-6. Definitions.

(A) **Definitions.** In addition to the definitions provided in Section 21-2-2 of this code, the words, terms and phrases listed below, for purposes of Section 21-2-4, are defined as follows:

- (1) **Absorption Field.** The term "absorption field" means a configuration of onsite trenches installed to absorb wastewater effluent from a septic tank or other waste solids removal devices.
- (2) **Absorption Bed.** An excavation no more than three (3) feet in depth, greater than three (3) feet in width containing an effluent distribution system which effectively spreads the discharge over the effective absorption area.
- (3) **Absorption Trench.** The term "absorption trench" means a trench in which perforated drain pipe is laid to convey and distribute septic tank effluent.
- (4) **Alternative onsite Wastewater Management System.** The term "alternative onsite wastewater management system" means any onsite wastewater management system which has proven reliability and performance in field use, but which differs in design or operation from approved conventional septic tank and absorption-field systems.
- (5) **Approval and Approved.** The terms "approval" or "approved" means accepted or acceptable by the Department in accordance with applicable specifications stated herein or with additional criteria accepted by the Department.
- (6) **Available Sewer.** Any public sewer within 200 feet of a building.
- (7) **Buildable Space.** The entire area of the lot, tract or parcel on which an individual septic tank or other onsite wastewater management system is to be located, exclusive of all established public road rights-of-way.

(8) **Distances.** Means horizontal distances unless otherwise designated. Measurements referred to as “not less than,” “minimum,” “at least” and other similar designations shall mean horizontal distances unless specifically indicated otherwise.

(9) **Distribution Box.** The term “distribution box” means a water tight structure which receives wastewater from a septic tank or other wastewater device and equally distributes it to two or more absorption trenches.

(10) **Domestic Wastewater.** Means wastewater originating primarily from kitchen, bathroom and laundry sources, including waste from food preparation, dishwashing, garbage-grinding, toilets, baths, showers and sinks.

(11) **Experimental or Innovative Onsite Wastewater Management System.** The term “experimental or innovative onsite wastewater management system” means any onsite wastewater management system installed for testing and observation.

(12) **Grade.** The term “grade” means the ratio of vertical drop of pipe invert, trench bottom, or ground surface to the horizontal distance transversed.

(13) **Grease Trap.** The term “grease trap” means a device in which the grease content of wastewater is intercepted and congealed and from which the grease may be removed for proper disposal.

(14) **Industrial Wastewater.** The term “industrial wastewater” means the effluent originating from a facility serving an industrial or commercial enterprise or group, or a combination thereof, for the purposes of treating wastewater or process-generated wastewater other than domestic wastewater by physical, chemical or biological means or by a combination of those methods. Industrial waste treatment facilities include municipally-owned electricity generating facilities and water treatment plants.

(15) **Commercial Wastewater.** The term “commercial wastewater” means the effluent originating from a facility serving and owned by an industrial or commercial enterprise or group, or a combination thereof, for the purposes of treating primarily domestic wastewater by physical, chemical or biological means, or by a combination of those methods. Commercial waste treatment facilities include slaughter houses with an average slaughter rate of 50 animals or less per week.

(16) **Lagoon or Wastewater Lagoon.** The term “lagoon” shall mean an artificial pond designed to exclude surface water and receive raw wastewater through a submerged sewer from biological decomposition with no discharge.

(17) **Lot.** The term “lot” means the portion of a subdivision or other tract of land, normally intended to be developed and transferred individually.

(18) **Lateral Rock.** The term “lateral rock” means washed hard rock ranging in size from three-quarter (3/4) inch to one and one-half (1 ½) inches in size, used as a distribution median in lateral trenches and absorption beds.

(19) **Onsite Wastewater Management System.** The term “onsite wastewater management system” means a system intended to be used for management and disposal of wastewater onsite.

(20) **Package Plant.** The term “package plant” means an approved water tight structure installed to receive, agitate and aerate wastewater from a

building sewer, effecting separation and organic decomposition of wastewater solids and discharging effluent.

(21) **Private Water Supply.** The term “private water supply” means a water system serving a single family residence and not ordinarily available to the public.

(22) **Privy.** A facility designed for the containment of non-water carried wastes from the human body.

(23) **Public Water Supply.** The term “public water supply” means any water system other than a private water supply.

(24) **Public or Community Wastewater System (Sewer District).** The term “public or community wastewater system” means any wastewater collection, treatment and disposal system, including sewers, treatment plants, pumping stations, force mains and all other elements owned, operated or managed by a public entity (including agents thereof) and serving more than one residential premises.

(25) **Regulatory Flood.** The term “regulatory flood” means the flood having a one percent chance of being equaled or exceeded in any given year.

(26) **Regulatory Floodway.** The term “regulatory floodway” means an area designated by the Federal Insurance Administration which shall include the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the regulatory flood without cumulatively increasing the water surface elevation of more than one foot on the adjacent land.

(27) **Sanitary Service.** Means the pumping out and/or removal of wastes, sludge, or human excreta from privies, septic systems, or alternative wastewater systems, and the transportation of such material to a point of final disposal

(28) **Septic Tank.** The term “septic tank” means an approved water tight structure installed underground to receive wastewater from a building sewer, effecting separation and organic decomposition of wastewater solids and discharging effluent to an absorption field.

(29) **Subdivision.** Means any tract of land that is or has been subdivided into two or more lots for the purpose of sale or building development, whether immediate or future, including the streets, alleys, or other portions thereof intended to be dedicated for public use; and any re-subdivision of lands or lots.

(30) **Toilet.** The term “toilet” means a sanitary fixture meeting Department and plumbing code requirements for receipt and conveyance of human body wastes.

Section 21-2-7. Sanitary Services.

(A) Disposal of Wastewater.

(1) No one may dispose of any human waste except in a toilet. Flush toilets must be connected to a public sewer or an approved onsite wastewater management system. Privies must meet requirements of the Department as to

design and installation in lieu of a flush toilet and must be specifically approved by the Department.

(2) All sinks, lavatories, garbage disposals, dishwashers, clothes washing machines, shower baths, bathtubs, basins and similar plumbing fixtures or appliances shall be connected to a public sewer or to an approved onsite wastewater management system.

(3) Foundation drain water or other non-domestic wastewater or surface water MUST NOT GO INTO the septic tank or onsite wastewater management system.

(4) No household, industrial or commercial wastes shall be discharged into any water course, impoundment, storm sewer or public thoroughfare. The discharge of wastewater into seepage pits, abandoned wells, cisterns, streams or upon the surface of the ground shall be prohibited. In no case shall treated or untreated wastewater, or the effluent from a septic tank or onsite wastewater management system be permitted to drain directly or indirectly into a ditch or stream, nor shall it be allowed to surface or run or drain across any adjacent land owner.

(5) In the event that a failure of an onsite wastewater management system occurs and it is determined by the Department or sanitarians that the system cannot be repaired, then either connection to a public sanitary sewer shall be made or a new approved onsite wastewater management system shall be installed.

(6) Where no sewer is available or where onsite wastewater management is not possible, alternative systems may be considered for approval by the Department.

(7) Onsite wastewater management systems shall be maintained in sanitary condition by regular maintenance and/or repair.

(B) Toilets.

(1) Every premises shall be provided with at least one flush toilet in accordance with the provisions of this regulation. Privies shall not be permitted if a public sewer is available or an onsite wastewater management system can be approved.

(2) Every flush toilet shall be connected to a public sewer or to an approved onsite sewage management system.

(3) Flush toilets shall at all times be provided with sufficient water and pressure to provide adequate flushing.

(C) Connection to Non-approved Public Wastewater System. No premises shall be permitted to connect to any public wastewater system that does not hold a valid permit from Potawatomi Planning and Environmental Protection Department.

(D) Connection to Sewer.

(1) The owner, lessee or agent of any building, residence or other facility designed or used for human occupancy or congregation, shall provide on the premises a system to dispose of the wastewater generated within the building, residence or other facility.

(2) If a public or community wastewater system is available and a new building is being constructed, then the building sewer shall be connected to the available wastewater system.

(3) A public or community wastewater system shall be considered available if it is within two hundred (200) feet of the building.

(4) When a public or community wastewater system has become available to a premises served by an onsite wastewater management system and failure of the onsite wastewater management system occurs, the owner, lessee or agent shall be required to connect properties affected to the public or community wastewater system immediately.

(5) No tribal planning commission or zoning board, authorized to review plats or subdivisions of land, shall recommend for approval any plat containing one or more lots or building sites having less than 5 acres of land, no more than one-half acre of which may be roads, streets, lakes or waterways, unless a public wastewater system is provided to serve all properties within the subdivision or a surety bond in an amount stipulated by the Tribal Council is filed with the Tribal Treasurer to guarantee the installation of such public system.

(E) Sewage Conduits for Onsite Wastewater Management Systems.

(1) **Size of Sewage Conduits.** Sewage conduits connecting component parts of onsite wastewater management systems shall be a minimum of 4 inches in diameter.

(2) **Materials.** All pipe and fittings used in sewage conduits and/or in absorption fields shall meet nationally recognized standards for their designated use, such as standards published by the American Society for Testing and Materials of the National Sanitation Foundation and shall have been approved by the Health Department for use in onsite wastewater management systems. Sewage conduits under driveways or similar areas of load or impact shall be of material capable of withstanding maximum anticipated loads. All sewage and lateral pipe shall be marked to indicate it meets or exceeds a 1000 pounds “crush test” rating (Schedule 40).

(3) **Construction.** Sewage conduits (other than perforated pipe used in absorption fields) shall be installed with sealed, water tight, root resistant joints and shall be laid on a firm foundation. This shall not be subject to settling, and shall be installed at a grade not less than one-eighth (1/8) inch per foot. All pipe from the structure to the lateral field shall be laid “bells up” if bell and spigot pipe is used.

(4) **Cleanouts.** Cleanouts shall be placed at the junction of the building drain and building sewer at intervals not to exceed 100 feet in straight runs and as required by the Department.

(F) **Data Requirements.**

(1) **Residential.** The following shall be submitted to and accepted by the Department before issuance of a permit to construct an onsite sewage management system:

(a) A drawing (on 8 ½" by 11" paper; pencil is recommended), showing the following:

(i) Name, address and phone number of applicant and owner.

(ii) Location of building site, including legal description with section, township, and range.

(iii) Size of house in square feet of finished area, number of bedrooms, number of persons to live in the home and a list of all water using appliances.

(iv) A drawing of the lot showing:

- Overall dimensions of the lot;
- Location of building, driveways, and geographical features near the proposed lateral field;
- Location and type of water supply, and water service lines;
- Layout of entire onsite wastewater management system; septic tank, laterals and inter-connecting lines; and
- A cross section of lateral trench, with dimensions.

(v) Foundation, footing or any other non-sewage drain location.

(vi) Arrow indicating the North direction.

(b) Other supportive data or information required by the Department.

(2) **Commercial.** The following data shall be submitted to and accepted by the Department prior to issuance of a permit to construct an onsite wastewater management system:

(a) Name, address, and phone number of applicant and owner;

(b) Type of establishment;

(c) Location of building site, including legal description with section, township and range; lot or parcel identification;

(d) Anticipated water usage and peak daily sewage flow;

(e) Type of material to be used;

(f) All water-using equipment or appliances;

(g) Copies of a site plan of the entire property under development showing the following:

(i) Overall dimensions of the lot, area in square feet;

- (ii) Location of buildings, structures, driveways, parking access roads, loading areas, receptacle locations buffers, public and private easements, and any geographical features near the proposed onsite wastewater management system;
 - (iii) Location and type of water supply, and location of water service lines;
 - (iv) Proposed type, size and location of onsite wastewater management systems;
 - (v) Existing and proposed topography; and
 - (vi) Proposed drainage.
- (h) Other supportive data or information required by the Department.
- (i) A letter from the owner or agent for the owner estimating the maximum number of customers, employees, etc., size of building and the specific use of the facilities including whether the sanitary facilities are for public use.

(G) Field Data Requirements – Prior to Construction.

- (1) Water Table Borings. Borings to determine groundwater elevation in low areas shall be required by the Department. Borings shall be made to a minimum depth of seven (7) feet. Water table elevations shall not be recorded until sufficient time has elapsed for stabilization of groundwater (such stabilization in clay soils may require several hours or overnight). Location, identification number and depth to water table shall be recorded on the plat or site plan which shall indicate topography, if required. Other records of water table elevation, including seasonal peaks, shall be submitted or required.
- (2) Rock Borings. Where surface outcroppings or subsurface rock or hardpan exist or are suspected, a sufficient number of boring to a minimum depth of four (4) feet shall be required by the Department to determine if such conditions may interfere with installation, performance or repair of the proposed onsite wastewater management system. Boring locations and data shall be recorded by number on the plat or site plan which shall indicate topography, if required.
- (3) Evidence of the presence of water in the borings shall negate the use of conventional onsite wastewater management systems in that area. Alternative systems shall be reviewed on an individual basis. Evidence of rock in the borings shall negate the use of a system in that area.
- (4) Soil analysis and other field tests may be required. The number, depth and location shall be determined by the Department.
- (5) The development area must be staked and/or flagged. Markings shall show the site boundaries, the location of structures, and the location of the soil absorption system.

(H) Septic Tanks.

(1) Approval Procedures. Any person seeking approval of septic tanks to be used in onsite wastewater management systems other than those of standard size and configuration made with reinforced concrete, shall submit detailed plans and specifications, test, and performance data and quality control procedures as may be required by the Department for an evaluation of the product. No other septic tanks shall be installed unless specific written approval is granted by the Department.

(2) Minimum Design and Construction. Septic tanks shall be watertight and constructed of a material not subject to excessive corrosion or decay, such as concrete, coated metal, or any other material which has been approved by the Department prior to installation. Precast concrete tanks shall have a minimum wall thickness of 2 ½ inches, and must be adequately reinforced to facilitate handling. When precast slabs are used as covers, they should have a thickness of at least three (3) inches and be adequately reinforced. The distance from the top of the tank and liquid line shall be at least twenty (20) percent of the liquid depth.

(3) Compartments. A single compartment septic tank is acceptable. A two compartment septic tank shall meet the following criteria:

(a) The inlet compartment shall have not less than one-half to two-thirds of the total capacity of the tank nor less than 1,000 gallons liquid capacity.

(b) Venting between compartments must be provided to allow free passage of gas.

(c) Baffles shall be made of fiberglass, acid-resistant concrete, or other material approved by the Department.

(4) Capacity. The minimum liquid capacity of septic tanks shall be 1,000 gallons.

(5) Location.

(a) The septic tank shall be located as set forth in Table A. The lid of the septic tank shall be covered with earth and the septic tank shall be installed at least:

(i) Twenty-five (25) feet from a house or structure (if set below the lowest floor), a property line, domestic water supply line, foundation drain, driveway, stream, pond, basement, cellar, cistern, public water main and buried utility lines; and

(ii) Fifty (50) feet from any water well supply.

(b) The absorption field shall be located as set forth in Table A, shall not be covered by buildings or pavement and shall not be used for vehicular traffic or parking. The absorption field shall be installed at least:

(i) Twenty-five (25) feet from a house or structure (if set below the lowest floor), a property line, domestic water supply line, foundation drain, driveway, stream, pond, basement, cellar, cistern, public water main and buried utility lines;

(ii) One hundred (100) feet from any water well supply.

(c) The sewer line must be separated from any water line by undisturbed soil and the sewer line and any water line cannot be in the same trench.

(d) Individual on-lot septic tank-lateral systems must have a minimum of three (5) acres of ground, no more than one-half (1/2) acres which may be roads, streets, lakes, or waterways.

(e) The Department after site inspection, may stipulate in writing to variations of these distances other than cited herein, due to adverse onsite conditions, including location of a well onsite or nearby; site configuration or structural placement; sub-surface soil characteristics and/or groundwater interference. No part of the absorption field shall be covered by buildings or pavement or be used for vehicular traffic or parking.

(6) **Foundation and Backfill.** Septic tanks shall be constructed or installed level on a foundation that will prevent settling. Backfill shall be free of voids, stumps, broken masonry, or other such materials.

(7) **Access and Inspection.** Access to each compartment shall be provided by at least one manhole. Inspection holes or manholes should be located over the inlet and outlet pipes.

(8) **Inlet Pipe.** The inlet invert should be located at least three (3) inches above the liquid level in the tank. A vented inlet tee or baffle must be used to divert the incoming sewage downward. It should extend at least twelve (12) inches below the liquid level, but the penetration must not be greater than that provided by the outlet device.

(9) **Outlet Pipe.** The outlet device must extend below the liquid surface a distance equal to forty (40) percent of the liquid depth. A vented outlet tee should be provided when an overhead distribution line is used.

(10) **Sealed.** A watertight seal shall be made around the inlet and outlet pipes with a bonding compound that will adhere both to the concrete septic tanks and the exterior surfaces of the inlet and outlet pipes. The lid shall be sealed to the walls of the tank. Any holes in the tank must be sealed so that the tank is watertight.

(I) **Absorption Fields.**

(1) **Area Computation.** The following criteria shall be used to determine the amount of lateral required:

(a) **Single Family Residence.** An absorption field sewage disposal system shall be designed after considering soil conditions, anticipated water usage, and wastewater produced. The minimum of absorption area for any one bedroom single family residence will be 400 square feet. An additional 400 square feet of absorption area will be required for each bedroom. A minimum of 1200 square feet of absorption area shall be required for any three or four bedroom house.

(b) **Commercial** (including Day Care facilities, Churches, etc., which treat domestic wastewater). Commercial septic tanks and absorption field wastewater disposal systems shall be designed on loading and anticipated water usage and wastewater produced. A minimum of 100 lineal feet of lateral shall be required for each 1,000 gallons of water used per month.

(c) These standards are based on “average” soil conditions found in Jackson County. The total number of lineal feet of required lateral shall be adjusted if soil conditions and other conditions found are different than the average.

(2) **Absorption field Location Restrictions.**

Same as in Section 21-2-7(H)(5).

(3) **Minimum Design and Construction.**

(a) An absorption trench shall not exceed one hundred (100) feet in length from where it is fed unless specific approval is given by the Department. Absorption trenches shall be between twenty-five (25) inches and thirty-two (32) inches in depth. The trench shall be a minimum of twenty-four (24) inches wide. Each line shall be at least seven (7) feet apart.

(b) Installations of laterals must be along contour lines so that level trenches of uniform depth can be constructed. The bottom of the lateral trench is to be level.

(c) A six (6) inch depth of $\frac{3}{4}$ to 1 $\frac{1}{2}$ inches washed lateral rock (i.e., aggregate) shall be provided in the bottom of the trench. Perforated pipe shall be laid on top of the lateral rock; perforations shall be oriented toward the bottom of the trench. Lateral rock shall be placed around the perforated pipe and at least two (2) inches of one thousand (1,000) pound “crush” rock shall cover the pipe.

(d) Ten (10) inch minimum to eighteen (18) inch maximum earth cover shall be placed over the lateral rock. The earth cover over the lateral rock must be of uniform depth.

(e) A continuous layer of two to four inches of hay or straw as a permeable material, shall be placed over the lateral rock before backfilling with the earth cover.

(f) Excavation for absorption trenches in wet clay soils and smearing of trench walls and bottoms shall be avoided since reduced permeability may result and approvals may be denied thereby.

(g) The ground surface of the lateral field area shall be so graded as to prevent the accumulation of surface water and to minimize the flow of surface water over the lateral field. Test holes, diverter ditches or flow control devices will be required under some circumstances. It may be necessary to prepare the ground for the lateral field, such as removal of rocks, trees or replacement of soil.

(h) There shall be a minimum of four (4) feet between the bottom of the absorption trench and a water table.

(4) Field Layout Methods.

(a) Sequential Step-Down or “Overhead System.” This method is well suited to terrain with a slope.

(i) In this system, effluent is not distributed equally to all the lateral lines. Instead, the lines are filled sequentially, and diversion to the next line does not occur until the fluid level in the preceding trench reaches slightly above the top of the rock fill.

(ii) The installation of laterals, must be along contour lines so that level trenches of uniform depth can be constructed. The bottom of the lateral trench of uniform depth can be constructed. The bottom of the lateral trench is to be level. The overhead distribution line must be connected at the center of each lateral line so that the bottom of the overhead line is two (2) inches above the lateral rock in the absorption trench. The overhead distribution line must be set on a firm foundation of undisturbed earth. The sequential system is illustrated in Figure A.

(b) Level Field Method. On flat terrain the level field method may be used. When this method is used, all distribution trenches shall be installed level and at the same elevation; shall not exceed one hundred (100) feet in length and shall be connected at the ends to form a continuous system. A standard tee fitting shall be used to distribute treated sewage. A standard tee fitting shall be used to effect a juncture of the ends of any three distributions lines. The level field methods is illustrated in Figure B.

(J) Alternative and Experimental Onsite Wastewater Management Systems. Consideration of Alternative Systems or Experimental Wastewater Disposal System:

(1) Where appropriate, and after thorough assessment of alternatives, the Department will consider alternative onsite wastewater management systems and/or site modifications for conventional or alternative systems that does not violate any statute or provision of this code.

(2) The Department shall require the alternative, experimental and innovative wastewater disposal systems to be designed by a professional engineer and shall ask for review of the proposal by NE Kansas Coalition for the Environmental or other agency of its choice. Additional monitoring and reporting requirements of alternative systems shall be required by the Department.

(K) Waste Stabilization Pond (Lagoon).

(1) The use of individual waste stabilization ponds, usually referred to as “lagoons,” will be considered in place of a Septic tank-lateral field disposal

system based on usable acreage, suitable soils or other parameters as deemed necessary by the Department.

(2) No permit shall be issued until a suitable site has been approved by the Department. No one shall occupy a residence until the Department has approved the Waste Stabilization Pond.

(3) Waste Stabilization Ponds must have a minimum horizontal separation of 100 feet from the designed operational water surface to other properties, allowing public right-of-way to be counted as part of the separation.

(4) Model perimeters for construction of lagoon systems are found in Figure C for M55 and Figure D for M60. These systems shall be used on the Prairie Band Potawatomi Reservation.

(5) Waste Stabilization Ponds shall be maintained in good working condition and fences maintained in good repair.

(L) Sewage Lift Pump. In the event that the wastewater generated from a building or residence cannot be plumbed to an absorption field or sanitary sewer by gravity, then a sewage lift pump with the necessary appurtenances as determined by the Department shall be required. The pump chamber must be sealed, odor proof, and watertight. The pump(s) must be kept in good working order.

(M) Portable/Chemical Toilets (Privies). The use of privies and other types of dry or chemical toilets shall be allowed in special cases subject to the approval of the Department, and meeting specified design requirements.

(N) Other. Cesspools and sand filters shall be prohibited for new or permanent installations. However, portable holding tanks serving camping, recreation vehicles, and boats are acceptable. Portable toilets equipped with holding or storage tanks, chemical or otherwise, shall be prohibited except on a temporary basis as determined acceptable by the Department. Pits shall be prohibited.

(O) Traps.

(1) Grease traps shall be required for commercial and/or industrial facilities when wastewaters will contain those materials. Grease trap design. Grease trap plans and specifications shall be submitted to the Department for approval. No human waste shall pass through the grease trap. No grease trap shall have less than one hundred twenty-five (125) gallons capacity and effluent shall be directed to the Wastewater System. Grease traps shall be sized with a minimum capacity by multiplying three (3) gallons times the maximum occupancy (as set forth by the appropriate Fire Department) times two (2). Grease traps must be maintained properly and emptied regularly.

(2) **Grit Trap.** Grit traps such as those in commercial or industrial establishments, (i.e., car washes, service stations) shall be emptied by a licensed hauler and transported to a point of disposal approved by the Department.

(P) Sanitary Services.

(1) Notification. All individuals who remove treated domestic wastes, human excreta or other septage from any septic system or alternative wastewater system, including their own, must notify the Department before removing the wastes. They shall follow all rules, regulations, and requirements of the Environmental Protection Agency 503 rules and Kansas Department of Health and Environment rules which address septage management.

(2) Site. The disposal site used by the haulers of domestic wastes, human excreta or other septage from any septic system must comply with all rules, regulations and requirements of the Environmental Protection Agency 503 rules and Kansas Department of Health and Environment rules which address septage management.

(3) License required. No person shall remove or transport any waste from any wastewater system or privy unless that person holds a valid license issued by a recognized health department. A valid sanitary service license issued to a sole proprietor, a partnership or a corporation shall be valid as to all its agents and employees.

(4) Minimum Standards for Sanitary Service Vehicles. All sanitary service vehicles used for rendering of sanitary services shall be of water tight construction, maintained in good working condition and provided with hoses, couplings, valves, pumps, and other necessary equipment to insure that all material removed from the systems will be transported to a point of disposal approved by the Department without spillage. All hoses and valves shall be capped or plugged. All equipment shall be in good workable condition and the operator shall demonstrate that the equipment is in good operating condition and will perform its function without leakage or spillage. The operator will contact the Department for equipment inspection initially and annually before license will be approved.

(5) Application and Inspection Fee. Every person wishing to obtain a sanitary service license shall make application for a license on forms provided for this purpose and shall pay the inspection fees for sanitary service vehicles prescribed in Section 21-2-7(P)(6) before filing the application with the Department. A receipt showing such payment shall be attached to the application form. In case the license is denied, no portion of the inspection fee will be refunded. A copy of a written contract between the applicant and a public wastewater system or the owner of a land disposal site approved by the Department allowing the applicant to dispose of all waste matter at that particular site shall be attached to the application.

(6) Fees. The fees shall be established by resolution of the Tribal Council.

(7) Contracting with Unlicensed Persons Prohibited. A person responsible for operating an alternative wastewater system, septic system or privy shall not contract, or offer to contract, with any person for sanitary service unless that person holds a valid permit or license to provide such service from the Department.

(8) **Records.** Records will be kept at all times in the vehicle used on loads hauled, dates, from what site to what location.

(Q) Wastewater System Installer and Repair/Maintenance Contractor.

(1) **License Required.** No person shall offer service as a waste water system installer, nor shall perform this service on the Prairie Band Potawatomi Reservation without a valid license from the Department. A valid wastewater system installer license issued to a sole proprietor, a partnership, or a corporation shall be valid as to all its agents and employees.

(2) **Applications.** Applications for wastewater systems installation license shall be applied for through the Department. License approval is based on meeting minimum standards for wastewater system installation.

(3) **Minimum Standards for Wastewater System Installer.** Knowledge of Prairie Band Potawatomi Environmental Code. Needs at least two (2) references. (Prefer references from other counties or cities). Must have served a one year apprenticeship with an approved installer or have successfully passed the installer's license examination.

(4) **Fees.** Fees for licensure shall be established by the Tribal Council. Fees will be paid annually for license renewal. After application is approved the installers name goes on a list of licensed installers. An Installation supervisory fee shall be established by the Tribal Council. (See Exceptions, 21-2-7(Q)(6).)

(5) **Contracting with Unlicensed Persons Prohibited.** A person responsible for operating an alternative wastewater system, septic system, or privy shall not contract or offer to contract with any person for sanitary service unless the person holds a valid permit or license to provide such service from the Department.

(6) **Exceptions.** If an individual landowner intends to install or repair his/her own wastewater system, the Department will grant such request without requiring said license based on the installation meeting tribal environmental codes, the willingness of the individual to pay an installation supervisory fee to the Department and that he/she constructs no more than one system in any one calendar year.

**TABLE A
LOCATION OF SEWAGE DISPOSAL SYSTEM**

Minimum Horizontal Distance Required From	Septic Tank	Disposal Field
House or structure	25 feet	25 feet
Property Line	25 feet	25 feet
Public water supply well	100 feet	100 feet
Private water supply well	50 feet	50 feet
Streams	25 feet	25 feet
Water Line (pressurized)	25 feet	25 feet
Water Line (suction)	50 feet	50 feet
Driveway	25 feet	25 feet
Buried utility lines	-----	25 feet
Foundation drains	25 feet	25 feet
Drop-offs	-----	25 feet
Basement	25 feet	25 feet
Cellar	25 feet	25 feet
Pond	25 feet	25 feet
Cistern	25 feet	25 feet
Water mains	25 feet	25 feet

FIGURE A.

"SEQUENTIAL", "STEP-DOWN" "OR OVERHEAD" SYSTEM

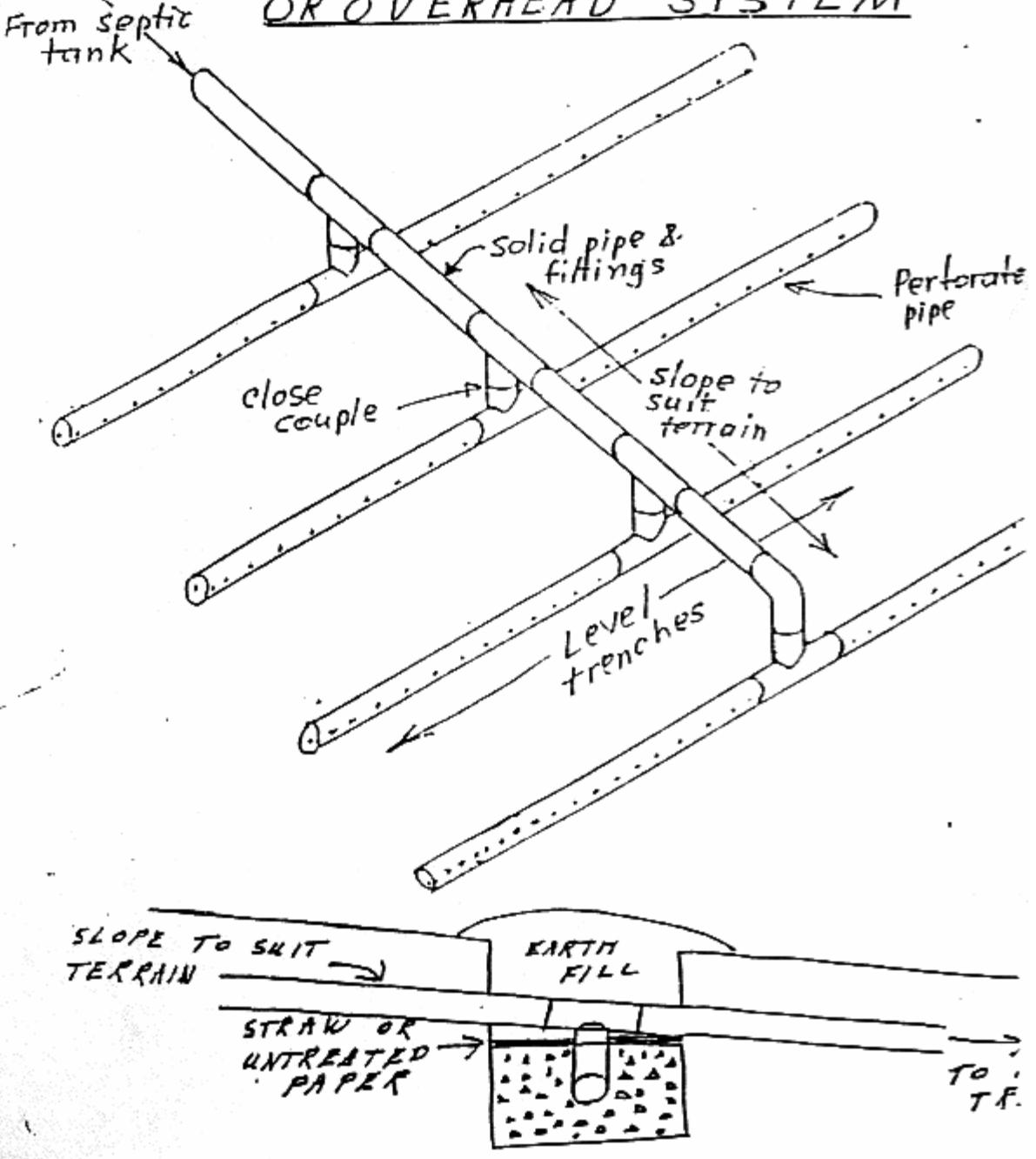
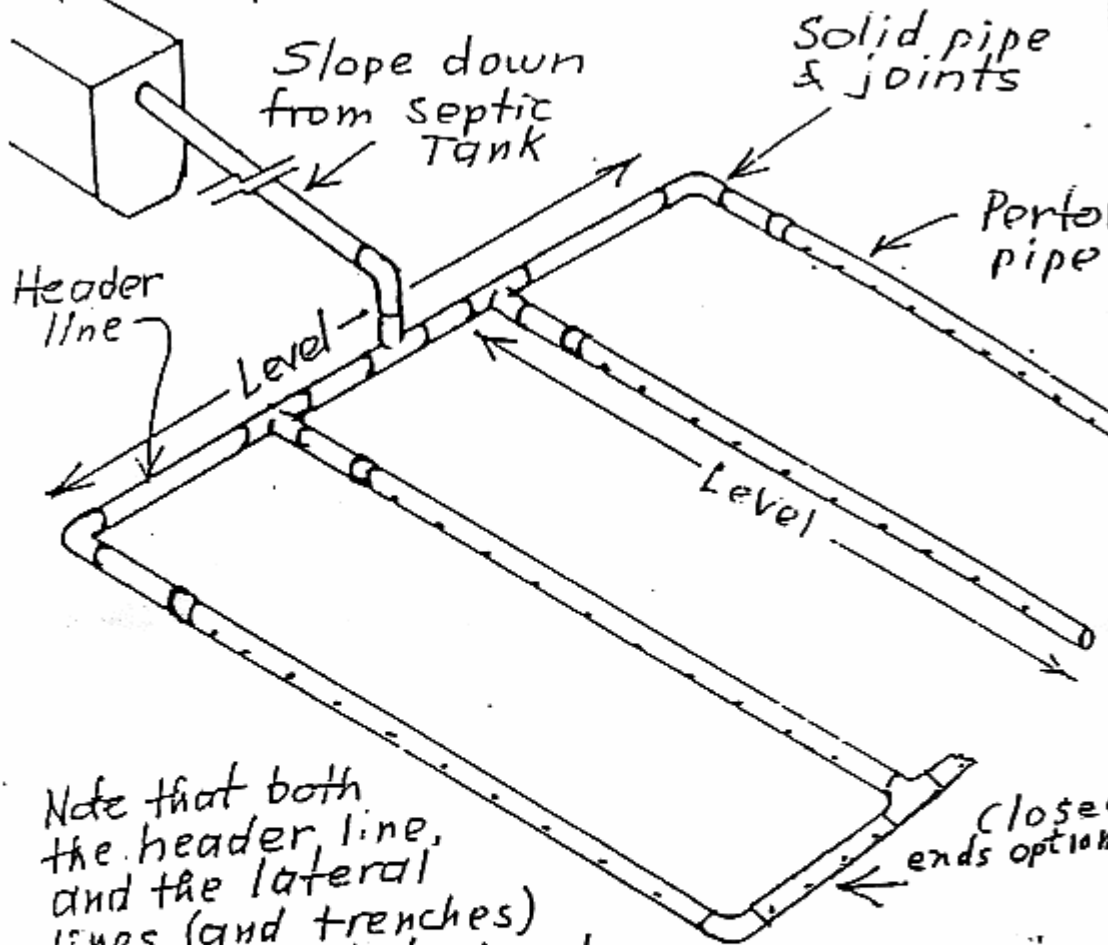


FIGURE 8.

System for Level Ground only



Note that both the header line, and the lateral lines (and trenches) are absolutely level.

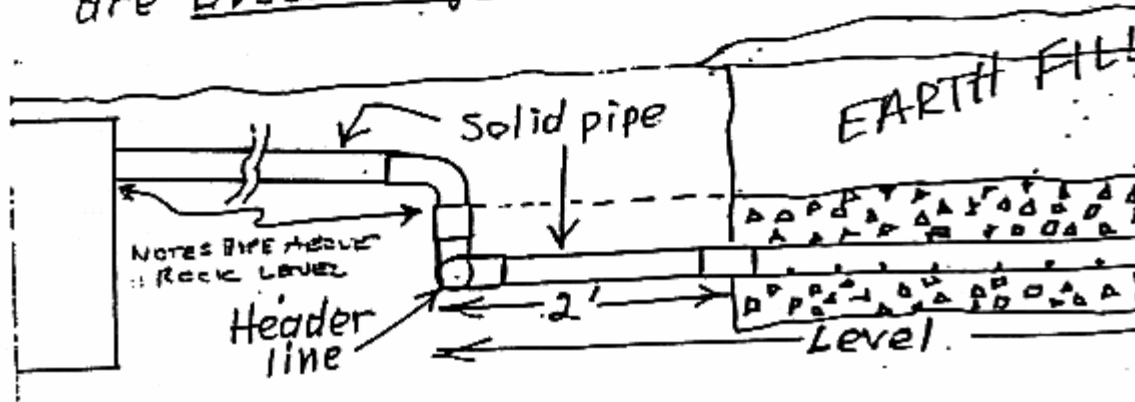
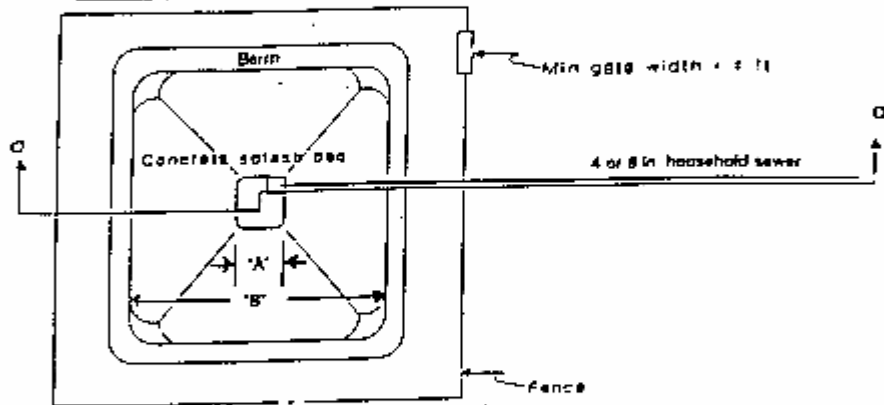
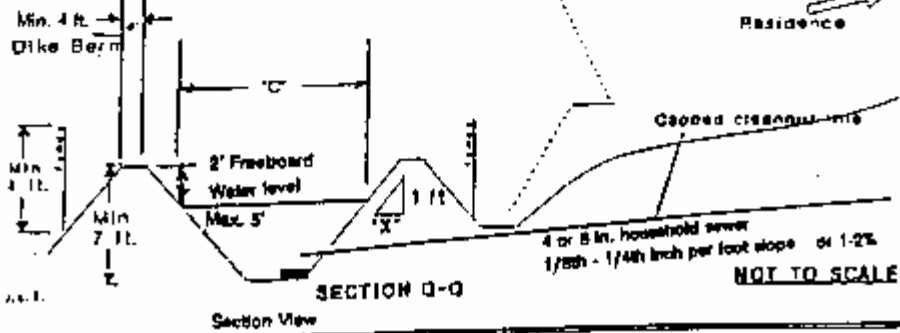


TABLE 8
Pond Design

WASTEWATER STABILIZATION POND DESIGN				
Pond Type	Dimensions			
	'A'	'B'	'X'	'C'
M-40	10'	52'	3	40
M-45	10'	59'	3.5	45
M-50	15'	64'	3.5	50
M-55	20'	69'	3.5	55
M-60	25'	74'	3.5	60



TOP VIEW



Section 21-2-8. Water Supplies.

(A) **Purpose and Intent.** The provisions of this code are also for the purpose of regulating and controlling the development, maintenance, and use of private or semi-public water supplies in the unincorporated area of Prairie Band Potawatomi Reservation, in order that public health will be protected and contamination and pollution of water resources will be prevented.

(B) **Area of Applicability.** This code shall apply to all land located within the exterior boundaries of the Prairie Band Potawatomi Reservation. For the purpose of this Title, the term Reservation shall be as defined in Article I of the Prairie Band Potawatomi Nation's Constitution.

Section 21-2-9. Compliance Required.

After the effective date of this code, no person shall construct on any property subject to this code, any public, semi-public or private water supply that does not comply with the requirements of this code.

Section 21-2-10. Definitions.

(A) **Definitions.** In addition to the definitions provided in Chapter 21-2 of this code, the words, terms and phrases listed below are defined as follows:

(1) **Potable water.** Water free from impurities in amounts sufficient to cause disease or harmful physiological effects in humans and conforming with the latest KDHE or BOR, IHS regulations.

(2) **Domestic Purpose.** Water used for drinking, culinary, and abolitionary purposes.

(3) **Public Water Supply.** A water supply that is used for domestic purpose by ten (10) or more users or serves an average of twenty-five (25) individuals daily at least sixty (60) days out of the year.

(4) **Semi-public Water Supply.** A water supply used for domestic purposes serving two (2) to nine (9) residential units (rental or under separate ownership) on a piped system.

(5) **Private Water Supply.** A water supply used for domestic purposes which serves not more than one (1) dwelling on a piped system.

(6) **Water District.** A special district operating under state or tribal statutes to plan, construct and/or operate a public water supply system.

(7) **Abandoned Water Well.** A well which meets one or more of the following conditions;

(a) Which has been permanently discontinued from use;

(b) From which the pumping equipment has been permanently removed;

- (c) Which is in such a state of disrepair that it cannot be used to supply water, or it has the potential for transmitting surface contaminants into the aquifer or both;
 - (d) Which possesses potential health and safety hazards; or
 - (e) Which is in such a condition it cannot be placed in active or inactive status.
- (8) **Grout.** Material such as cement grout, neat cement grout, bentonite clay grout or other material approved by KDHE or BOR used to create a permanent impervious watertight bond between the casing and the undisturbed formation surrounding the casing or between two (2) or more strings of casing.
- (a) Neat cement grout: A mixture consisting of one (1) ninety-four (94) pound bag of Portland cement to five (5) to six (6) gallons of clean water.
 - (b) Cement grout: a mixture consisting of one ninety-four pound bag of Portland cement, an equal volume of sand having a diameter no greater than 0.080 inches (2 millimeters), and five to six gallons of clean water.
 - (c) Bentonite clay grout: A mixture consisting of water and commercial grouting or plugging sodium bentonite clay containing high solids such as that manufactured under the trade name of “volclay grout,” or an equivalent as approved by KDHE or BOR.
 - (i) The mixture shall be as per the manufacturer’s recommendations to achieve a weight of not less than 9.4 pounds per gallon of mix. Weighting agents may be added as per the manufacturer’s recommendations.
 - (ii) Sodium bentonite pellets, tablets or granular sodium bentonite may also be used provided they meet the specifications listed in K.A.R. 28-30-2.
 - (iii) Sodium bentonite products that contain low solids, are designed for drilling purposes or that contain organic polymers shall not be used.
- (9) **Pitless Well Adapter or Unit.** An assembly of parts installed below frost line which will permit pumped groundwater to pass through the wall of a casing or extension thereof and prevent entrance of contaminants.
- (10) **Test Hole.** Any excavation constructed for the purposes of determining the geologic and hydrologic characteristics of underground formations.
- (11) **Static Water Level.** The highest point below or above ground level which the groundwater in the well reaches naturally.
- (12) **Annular Space.** The space between the well casing and well bore or the space between two (2) or more strings of well casing.
- (13) **Sanitary Well Seal.** A manufactured seal installed at the top of the well casing which, when installed, creates an air and watertight seal to prevent contaminated or polluted water from gaining access to the groundwater supply.

- (14) **Treatment.** The stimulation of production of groundwater from a water well through the use of Hydrochloric Acid, Muriatic Acid, Sulfuric Acid, Calcium or Sodium Hypochlorite, Polyphosphates or other chemicals and mechanical means, for the purpose of reducing or removing Iron and Manganese Hydroxide and Oxide deposits, Calcium and Magnesium Carbonate deposits and slime deposits associated with Iron or Manganese or bacterial growths which inhibit the movement of groundwater into the well.
- (15) **Reconstructed Water Well.** An existing well that has been deepened or has had the casing replaced, repaired, added to or modified in any way for the purpose of obtaining groundwater.
- (16) **Pump Pit.** A water tight structure constructed at least two (2) feet away from the water well and below ground level to prevent freezing of pumped groundwater and which houses the pump or pressure tank, distribution lines, electrical controls, or other appurtenances.
- (17) **Grout Tremie Pipe or Grout Pipe.** A steel or galvanized steel pipe or similar pipe having equivalent structural soundness that is used to conduct pumped grout to a point of selected emplacement during the grouting of a well casing or plugging of an abandoned well or test hole.
- (18) **Uncased Test Hole.** Any test hole in which casing has been removed or in which casing has not been removed or in which casing has not been installed.
- (19) **Active Well.** A water well which is an operating well used to withdraw water, monitor or observe groundwater conditions.
- (20) **Inactive Status.** A water well which is not presently operating but is maintained in such a way it can be put back in operation with a minimum of effort.
- (21) **Heat Pump Hole.** A hole drilled in installed piping for an earth coupled water source heat pump system, also known as a vertical closed loop system.
- (22) **Aquifer.** An underground formation that contains and is capable of transmitting groundwater.
- (23) **Confined Aquifer.** An aquifer overlain and underlain by impermeable layers. Groundwater in a confined aquifer is under pressure greater than atmospheric pressure and will rise in a well above the point at which it is first encountered.
- (24) **Unconfined Aquifer.** An aquifer containing groundwater at atmospheric pressure. The upper surface of the groundwater in an unconfined aquifer is the water table.
- (25) **Groundwater.** That part of the subsurface water which is in the zone of saturation.
- (26) **Water Well.** An excavation that is drilled, cored, bored, washed, driven, dug jetted, or otherwise constructed, when the intended use of such excavation is for the location, diversion, artificial recharge, or acquisition of groundwater.

(27) Construction of Water Wells. All acts necessary to obtaining groundwater by any method for any use including, without limitation, the location of and excavation for the well.

(28) Water Well Contractor or Contractor. Any governmentally licensed individual, firm, partnership, association or corporation who shall construct, reconstruct or treat a water well. The term shall not include:

(a) An individual while in the act of constructing a water well on land which is owned by him/her and is used by him/her for farming, ranching, or agricultural purposes or at his/her place of abode, but only when the well is constructed in compliance with minimum well standards and the requirement of well logs set forth in K.A.R. 28-30-4 and any amendments.

Section 21-2-11. Requirements for Semi-Public Water Supplies.

(A) No person shall operate or maintain a semi-public water supply system that has been:

- (1)** Constructed or reconstructed after adoption of this code, until it has been inspected and a permit issued by the Department.
- (2)** Temporarily or permanently enjoined as a public health nuisance by a court of competent jurisdiction.
- (3)** Found by the Department not to comply with the provisions of this code and written notice thereof has been given to the owner or his/her agent.

(B) Use of a Semi-Public Water Supply. In addition to the requirements which pertain to private water wells, the following shall be done and reviewed by the Department prior to the issuance of a permit to assure water quality for the public:

- (1)** An initial and at least annual bacterial analysis.
- (2)** A partial chemical analysis is to be done initially and every three (3) years thereafter.
- (3)** Other tests such as a screen for pesticides, volatile organic chemicals, and heavy metals shall be required, at the direction of the Department, to protect the public's health.

The water samples shall be collected by the Department and sent to KDHE or other certified lab for analysis. The fee for the analysis and investigation is the responsibility of the owner of the water supply or his representative.

Section 21-2-12. Requirements for Private Water Supplies.

(A) Permit. No person shall drill, develop or construct any private water supply on any premises subject to the regulations of this code until he/she has obtained a permit therefore from the Department.

(B) Approved Plans. No permit to construct or develop a private water supply on premises subject to the regulations of this code shall be issued until the plan showing the location and construction of the supply has been approved by the Department.

(C) Use Limitation.

(1) No permit for drilling a well for private water supply purposes shall be issued to any person when, as determined by the Department, the property can be served by a public water supply or the water supply to be accessed constitutes a significant, quantified health risk.

(2) No use of surface water (lakes, ponds, or streams) as a source of water for private water supply shall be permitted.

(a) Where a satisfactory ground water source is available;

(b) Where adequate treatment is not provided. (In no case shall surface water be used without filtration and chlorination); or

(c) Where the pond or lake receives any drainage or discharge from septic tanks, or sewage treatment plants.

Section 21-2-13. Minimum Standards for All Ground Water Supplies.

(A) Location. The horizontal distance between the well and the potential sources of pollution or contamination, such as septic tanks, lateral fields, pet privy, seepage pits, fuel or fertilizer storage, pesticide storage, feed lots or barnyards shall be 100 feet or more.

(B) Construction. All wells that are to serve as a source of private or semi-public water shall be constructed in accordance with K.A.R. 28-30-6.

(C) General Operating Requirements.

(1) Water well record. Within thirty (30) days after construction or reconstruction of a water well, the water well contractor shall submit a report of such work, to the Department and to the landowner on the water well record form, (KDHE Form WWC-5). The contractor shall report to the Department and the landowner on the water well record or attachments made thereto any polluted or other noncompliant conditions which the contractor was able to correct and any conditions which the contractor was unable to correct. The contractor shall report to the Department, and the landowner the plugging of any abandoned water well. The report shall include the location, landowner's name, method, type of plug material, its placement and amount used to plug the abandoned water well. A landowner who constructs, reconstructs, or plugs a water well, which will be or was used by the landowner for farming, ranching or agricultural purposes or is located at the landowner's place of abode, shall submit a water well record on (KDHE Form WWC-5) of such work to the Department within thirty (30) days after the construction,

reconstruction or plugging of the water well. No fee shall be required from the landowner for the record.

(2) **Artificial recharge and return.** The construction of artificial recharge wells and freshwater return wells shall comply with all the standards of the tribe and state.

(3) **Well tests.** When a pumping test is run on a well, results of the tests shall be reported on the water well record, (KDHE Form WWC-5), or a copy of the contractor's record of the pumping tests shall be attached to the water well record.

(4) **Water Samples.** Within thirty (30) days after receipt of the water well record, (KDHE Form WWC-5), the Department may request the contractor, or landowner who construct or reconstructs his or her own water well to submit a sample of water from the well for chemical analysis.

(D) **Plugging of Abandoned Wells, Cases and Uncased Test Holes.** All water wells abandoned by the landowner on or after July 1, 1979, and all water wells that were abandoned prior to July 1, 1979 which pose a threat to ground water supplies, shall be plugged or caused to be plugged by the landowner in accordance with K.A.R. 28-30-7.

(E) **Pollution Sources.** Well locations shall be approved by the Department with respect to distances from pollution sources and compliance with local regulations. The minimum standards set forth in K.A.R. 28-30-8 are hereby adopted for the Prairie Band Potawatomi for the Reservation.

(F) **Water Well Disinfection for Wells Constructed or Reconstructed for Human Consumption or Food Processing.** Disinfection standards set forth in K.A.R. 28-30-10 are hereby adopted for the Prairie Band Potawatomi Reservation and shall apply to all water wells used for public consumption or food processing.

(G) **Appeals.**

(1) Requests for exception to any of the foregoing rules and regulations, as set out within this Chapter 21-2, shall be submitted to the Administrator in writing and shall contain all information relevant to the request.

(a) Those requests shall specifically set forth why such exception should be considered.

(b) The Administrator may grant exceptions in writing when geologic or hydrologic conditions warrant an exception and when such an exception is in keeping with the purposes of this code; provided, however, no such exception shall be granted without a prior written concurrence of EPA.

(2) Appeals from the decision of the Administrator shall be made to the Tribal Court, who after due consideration may affirm, reverse, or modify the decision.

Section 21-2-14. Requirements for Subdivision Development.

After adoption of this code, no person shall develop any subdivision until the plans and specifications for water supply for such subdivision have been approved by the administrative agency.

Section 21-2-15. Requirements for Food and Food Handling.

To ensure the health and well being of the Tribe and the public, all food service retail and wholesale establishments within the area of applicability of this Title shall at a minimum meet the requirements of the current version of the U.S. Food and Drug Administration's Food Code.

(Amended by PBP TC No. 2008-186, August 13, 2008)

(Enacted by PBP TC No. 2000-24, February 1, 2000; amended by PBP TC No. 2000-69, April 4, 2000; amended by PBP TC No. 2005-024; amended by PBP TC No. 2008-186, August 13, 2008)

**CHAPTER 21-3
BUILDING CODE**

Section 21-3-1. Title, Authority, Purpose, Amendment, and Scope.

(A) **Title.** These regulations shall be known as the Uniform Building Code, may be cited as such and will be referred to herein as “this Code.”

(B) **Authority.** Building Code. There is hereby adopted and incorporated by reference, for the purpose of establishing rules and regulations for the erection, construction, enlargement alteration, repair, moving, removal, demolition, conversion occupancy, equipment, use, height, area, and maintenance of all buildings or structures, the 1997 edition of the Uniform Building Code, Volumes 1, 2, and 3, as published by the International Conference of Building Inspectors, such code being made a part of the Codes of the PBP as if the same had been set out in full herein. No fewer than three copies of the Uniform Building Code shall be marked or stamped “Official Copy as Incorporated by Resolution No. 2000-24,” shall be filed with the Tribal Council Secretary to be open to inspection and shall be available to the public at reasonable business hours.

(C) **Purpose.** The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all specific buildings and structures within the Nation's jurisdiction and certain equipment specifically regulated herein, as hereinafter defined in Section 21-3-1(E). This code is necessary to regulate activities which have a direct, serious and substantial effect on the health and welfare of the Nation and all other residents of the reservation. For the purpose of this Title, the term Reservation shall be as defined in Article I of the Prairie Band Potawatomi Nation’s Constitution.

This purpose of this code is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code.

(D) **Amendment.** That the Uniform Building Code 1997 Edition, as published by the International Conference of Building Inspectors be amended as follows: None.

(E) **Scope.** The provisions of this code shall apply to the erection, construction, enlargement, demolition, or conversion for a different use of any building or structure within this jurisdiction, except work located primarily in a public way, public utility towers and poles, mechanical equipment not specifically regulated in this code.

Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most practical shall govern. Where there is a conflict between a general requirements, the most practical shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirements shall be applicable.

Section 21-3-2. Unsafe Buildings or Structures.

All buildings or structures regulated by this code which are structurally unsafe or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life are, for the purposes of this section, unsafe. Any use of buildings or structures constituting a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is, for the purpose of this section, an unsafe use. Parapet walls, cornices, spires, towers, tanks, statuary and other appendages or structural members which are supported by, attached to, or a part of a building and which are in deteriorated condition or otherwise unable to sustain the design loads which are specified in this code are hereby designated as unsafe building appendages.

All such unsafe buildings, structures or appendages are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with such procedures as may have been or as may be adopted by this jurisdiction. As an alternative, the building inspector, or other employee or official of this jurisdiction as designated by the governing body, may institute any other appropriate action to prevent, restrain, correct or abate the violation.

Section 21-3-3. Violations.

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use occupy or maintain any building or structure or cause or permit the same to be done in violation of this code.

(A) Any person, group, or corporation found in willful violation of this ordinance shall be subject to a civil fine of not less than \$100.00, nor more than \$1,000.00. Each day that a violation occurs or continues shall be considered a separate offense.

Section 21-3-4. Organization and Enforcement.

(A) **Creation of Enforcement Agency.** There is hereby established in this jurisdiction a code enforcement agency which shall be under the administration and operational control of the building inspector. The code enforcement agency shall be the Nation's Planning and Environment Protection Department.

(B) Powers and Duties of Building Inspector.

(1) General. The building inspector shall have the power to enforce this code and other codes adopted by the Nation. For such purposes the officer shall have powers of a law enforcement officer. This officer shall be appointed by the Department Director.

The building inspector shall have the power to render interpretations of this code and to adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformance with the intent and purpose of this code.

(2) Deputies. In accordance with prescribed procedures and with the approval of the appointing authority, the building inspector may appoint such number of technical officers and inspectors and other employees from time to time. The officer may deputize such inspectors or employees as may be necessary to carry out the functions of the code enforcement agency.

(3) Right of Entry. When it is necessary to make an inspection to enforce the provisions of this code, or when the building inspector has reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to or in violation of this code which makes the building or premises unsafe, dangerous or hazardous, the building inspector may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such building or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the building inspector shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the building inspector shall have recourse to the remedies provided by law to secure entry.

(4) Stop Orders. Whenever any work is being done contrary to the provisions of this code, or other pertinent laws or ordinances implemented through the enforcement of this code, the building inspector may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the building inspector to proceed with the work.

(5) Occupancy Violations. Whenever any building or structure or equipment therein regulated by this code is being used contrary to the provisions of this code, the building inspector may order such use discontinued and the structure, or portion thereof, vacated by notice served on any person causing such use to be continued. Such person shall discontinue the use within the time prescribed by the building inspector after receipt of such notice to make the structure, or portion thereof, comply with the requirements of this code.

(6) Liability. The building inspector charged with the enforcement of this code, acting in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance shall not thereby be rendered personally liable for damages that may accrue to persons or property as a result of an act or by reason of an act or omission in the discharge of such duties. A suit brought against the building inspector or employee in the enforcement of any provision of such codes or other pertinent laws or ordinances implemented through the enforcement of this code or enforced by the code enforcement agency shall be defended by this jurisdiction until final termination of such proceedings.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating or controlling any building or structure from any damages to persons or property caused by defects, nor shall the code enforcement agency or its parent jurisdiction be held as assuming any such liability by reason of the inspections authorized by this code or any permits or certificates issued under this code.

(7) Modifications. When there are practical difficulties involved in carrying out the provisions of this code, the building inspector may grant modifications for individual cases. The building inspector shall first find that a special individual reason makes the strict application of this code impractical and that the modification is in conformance with the intent and purpose of this code and that such modification does not lessen any fire protection requirements or any degree of structural integrity. The details of any action granting modifications shall be recorded and entered in the files of the code enforcement agency.

(8) Alternate Materials, Alternate Design and Construction Methods. The Provisions of this code are not intended to prevent the use of alternate materials, alternate design or methods of construction not specifically prescribed by this code, provided any alternate has been approved and its use authorized by the code enforcement agency.

The building inspector may approve any such alternate, provided the building inspector finds that the proposed design is satisfactory and complies with the provisions of this code and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation.

The building inspector shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding its use. The details of any action granting approval of an alternate shall be recorded in the files of the code enforcement agency.

(9) Tests. Whenever there is insufficient evidence of compliance with any of the provisions of this code or evidence that any material or construction does not conform to the requirements of this code, the building inspector may require tests as proof of compliance to be made at no expense to this jurisdiction.

Test methods shall be as prescribed by this code or by other recognized test standards. If there are no recognized and accepted test methods for the proposed alternate, the building inspector shall determine test procedures. All tests shall be made by an approved agency. Report of such tests shall be retained by the building inspector for the period required for the retention of public records.

Section 21-3-5. Board of Appeals.

(A) **General.** The Tribal Council shall hear and decide appeals of decision or determinations made by the building inspector relative to the application and interpretation of this code.

Section 21-3-6. Permits.

(A) **Permits Required.** Except as specified in Section 21-3-6 (B) of this section, no building or structure regulated by this code shall be erected, constructed, enlarged, demolished or converted for a different use without a permit. There will be no permit fee for a demolition permit.

(B) **Work Exempt from Permit.** A building permit shall not be required for the following:

- (1) One-story detached accessory buildings used as tool and storage sheds, playhouses and similar uses, provided the projected roof area does not exceed 120 square feet.
- (2) Fences not over 6 feet high.
- (3) Oil derricks.
- (4) Re-roofing of existing building structures.
- (5) Retaining walls which are not over 4 feet in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or III-A liquids.
- (6) Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons and the ratio of heights to diameter or width does not exceed 2 to 1.
- (7) Platforms, walks and driveways not more than 30 inches above grade and not over any basement or story below.
- (8) Painting, papering and similar finish work.
- (9) Temporary motion picture, television and theater stage sets and scenery.
- (10) Window awnings supported by an exterior wall of Group R, Division 3, and Group M Occupancies when projecting not more than 54 inches.
- (11) Prefabricated swimming pools accessory to a Group R, Division 3 Occupancy in which the pool walls are entirely above the adjacent grade and if the capacity does not exceed 5,000 gallons.
- (12) Cook shacks.

Unless otherwise exempted, separate plumbing, electrical and mechanical permits will be required for the above-exempted items.

Exemption from the permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

(C) Application for Building Permit.

(1) Application. To obtain a building permit, the applicant shall first file an application in writing on a form furnished by the code enforcement agency for that purpose. Every such application shall:

- (a)** Identify and describe the work to be covered by the permit for which application is made.
- (b)** Describe the land on which the proposed work is to be done by legal description or street address or similar description that will readily identify and definitely locate the proposed building or work.
- (c)** Indicate the use or occupancy for which the proposed work is intended.
- (d)** Be accompanied by plans, diagrams, computations and specifications and other data as required in Section 21-3-6(C)(2).
- (e)** State the valuation of any new building or structure or any addition, remodeling or alteration to an existing building.
- (f)** Be signed by the applicant, or the applicant's authorized agent.
- (g)** Give other such data and information as may be required by the building inspector.
- (h)** Include a sketch or diagram of improvement showing, but not limited to, foot print, roof print, height at corners and highest point and distance to property and easement boundaries.

(2) Submittal Documents. Plans, specifications, engineering calculations, diagrams, soil investigation reports, special inspection and structural observation programs and other data shall constitute the submittal documents and shall be submitted in one or more sets with each application for a permit. When such plans are not prepared by an architect or engineer, the building inspector may require the applicant submitting such plans or other data to demonstrate that applicable law or licensing does not require that the plans be prepared and designed by a licensed engineer or architect.

EXCEPTION: The building inspector may waive the submission of plans, calculations, construction inspection requirements and other data if it is found that the nature of the work applied for is such that reviewing of plans, soil tests, specifications and other data is not necessary to obtain compliance with the code.

(3) **Architect or Engineer of Record.**

(a) **General.** When it is required that documents be prepared by an architect or engineer, the building inspector may require the owner to engage and designate on the building permit application an architect or engineer who shall act as the architect or engineer of record.

If the circumstances require, the owner may designate a substitute architect or engineer of record who shall perform all of the duties required of the original architect or engineer of record. The building inspector shall be notified in writing by the owner if the architect or engineer of record is changed or is unable to continue to perform the duties.

The architect or engineer of record shall be responsible for reviewing and coordinating all submittal documents prepared by others, including deferred submittal items, for compatibility with the design of the building.

(b) **Deferred Submittal.** For the purposes of this section, deferred submittals are defined as those portions of the design which are not submitted at the time of the application and which are to be submitted to the building inspector within a specified period.

Deferral of any submittal items shall have prior approval of the building inspector. The architect or engineer of record shall list the deferred submittals on the plans and shall submit the deferred submittal documents for review by the building inspector.

Submittal documents for deferred submittal items shall be submitted to the architect or engineer of record who shall review them and forward them to the building inspector with a notation indicating that the deferred submittal documents have been reviewed and that they have been found to be in general conformance with the design of the building. The deferred submittal items shall not be installed until their design and submittal documents have been approved by the building inspector.

(c) **Inspection and Observation Program.** When special inspection is required, the architect or engineer of record shall prepare an inspection program which shall be submitted to the building inspector for approval prior to issuance of the building permit. The inspection program shall designate the portions of the work that require special inspection and the name or names of the individuals or firms who are to perform the special inspections, and indicate the duties of the special inspectors.

The special inspector shall be employed by the owner, the engineer or architect of record, or an agent of the owner, but not the contractor or any person responsible for the work.

When structural observation is required, the inspection program shall name the individuals or firms who are to perform structural observation and describe the stages of construction at which structural observation is to occur.

The inspection program shall include samples of inspection reports and provide time limits for submission of reports.

(D) Permits Issuance.

(1) Issuance. The application, plans, specifications, computations and other data filed by an applicant for a permit shall be reviewed by the building inspector. Such plans may be reviewed by other departments of tribal jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the building inspector finds that the work described in an application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this code and other pertinent laws and ordinances, and that the fees specified in Section 21-3-7 have been paid, the building inspector shall issue a permit therefore to the applicant.

When the building inspector issues the permit where plans are required, the building inspector shall endorse in writing or stamp the plans and specifications APPROVED. Such approved plans and specifications shall not be changed, modified or altered without authorization from the building inspector, and all work regulated by this code shall be done in accordance with the approved plans.

The building inspector may issue a permit for the construction of part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this code. The holder of a partial permit may proceed without assurance that the permit for the entire building or structure will be granted.

(2) Retention of Plans. For public, commercial and industrial buildings the following shall apply: One set of approved plans, specifications and computations shall be retained by the building inspector for a period of not less than 90 days from date of completion of the work covered therein; and one set of approved plans and specifications shall be returned to the applicant, and said set shall be kept on the site of the building work at all times during which the work authorized thereby is in progress.

(3) Validity of Permit. The issuance or granting of a permit or approval of plans, specifications and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid.

The issuance of a permit based on plans, specifications and other data shall not prevent the building inspector from thereafter requiring the correction of errors in said plans, specifications and other data, or from preventing building operations being carried on thereunder, when in violation of this code or of any other ordinance of this jurisdiction.

(4) Expiration. Every permit issued by the building inspector under provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days.

Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefore shall be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons.

The building inspector may extend the time for action by the permittee for a period not exceeding 180 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

(5) Suspension or Revocation. The building inspector may, in writing, suspend or revoke a permit issued under the provisions of this code whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinances or regulation or any of the provisions of this code.

Section 21-3-7. Fees.

(A) General. Fees shall be assessed in accordance with the provisions of this section or shall be as set forth in the fee schedule adopted by this jurisdiction.

(B) Permit Fees. The fee for each permit shall set forth in Table 1.

The determination of value or valuation under any of the provisions of this code shall be made by the building inspector. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire extinguishing systems and any other pertinent equipment.

**TABLE 1
PERMIT FEES**

<u>TOTAL VALUATION</u>	<u>FEES</u>
\$1 TO \$500	\$15
\$501 TO \$2,000	\$15 for the first \$500 plus \$0.50 for each additional \$100 or fraction thereof, to and including \$2,000.
\$2,001 to \$25,000	\$22.50 for the first \$2,000 plus \$2.00 for each \$1,000 or fraction thereof, to and including \$25,000.
\$25,001 to \$50,000	\$68.50 for the first \$25,000 plus \$1.75 for each \$1,000 or fraction thereof, to and including \$50,000.
\$50,001 to \$100,000	\$112.25 for the first \$50,000 plus \$1.50 for each \$1,000 or fraction thereof, to and including \$100,000.
\$100,001 to \$500,000	\$187.25 for the first \$100,000 plus \$1.25 for each \$1,000 or fraction thereof, to and including \$500,000.
\$500,000 to \$1,000,000	\$687.25 for the first \$500,000 plus \$1.00 for each additional \$1,000 or fraction thereof, to and including \$1,000,000.
\$1,000,000 and up	\$1,187.25 for the first \$1,000,000 plus \$0.50 for each additional \$1,000 or fraction thereof.
 Other Inspections and Fees:	
1. Inspections outside of normal business hours (minimum charge—two hours)	\$30.00 per hour
For use of outside consultants for plan checking and inspection, or both (Actual costs include administrative and overhead costs.)	Actual Costs

(C) Plan Review Fees. For public, commercial and industrial buildings the following shall apply: When submittal documents are required by Section 21-3-6(C)(2), a plan review fee shall be paid at the time of submitting the submittal documents for plan review. Said plan review fee shall be 65 percent of the building permit as shown in Table 1.

The plan review fees specified in this subsection are separate fees from the permit fees specified in Section 21-3-7(B) and are in addition to the permit fees.

When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittal items as defined in Section 21-3-6(C), an additional plan review fee shall be charged at the rate shown in Table 1.

(D) Expiration of Plan Review. Applications for which no permit is issued within 180 days following the date of application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building inspector. The building inspector may extend the time for action by the applicant for a period not exceeding 180 days on request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

(E) Investigation Fees: Work Without a Permit.

(1) Investigation. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work.

(2) Fee. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in Table 1. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

(F) Fee Refunds. The building inspector may authorize refunding of any fee paid hereunder which was erroneously paid or collected.

The building inspector may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

The building inspector may authorize refunding of not more than 80 percent of the plan review fee paid when no work has been done under a permit issued in accordance with this code or an application for permit is withdrawn or canceled before any plan reviewing is done.

The building inspector shall not authorize refunding of any fee paid except on a written application filed by the original permittee not later than 180 days after the date of fee payment.

Section 21-3-8. Inspection.

(A) General. All construction or work for which a permit is required shall be subject to inspection by the building inspector and all such construction or work shall remain accessible and exposed for inspection purposes unit approved by the building inspector. In addition, certain types of construction shall have continuous inspection as specified in Section 1701.5.

Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this code or of other laws of this jurisdiction shall not be valid.

It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the building inspector nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspections.

A survey of the lot may be required by the building inspector to verify that the structure is located in accordance with the approval plans.

(B) Inspection Record Card. Work requiring a permit shall not be commenced until the permit holder or an agent of the permit holder shall have posted an inspection record card such as to allow the building inspector to conveniently make the required entries thereon regarding inspection of the work. This card shall be maintained by the official.

(C) Inspection Requests. It shall be the duty of the person doing the work authorized by a permit to notify the building inspector that such work is ready for inspection. The building inspector may require that every request for inspection be filed at least one working day before such inspection is desired. Such request may be in writing or by telephone.

It shall be the duty of the person requesting any inspections required by this code to provide access to and means from inspection of such work.

(D) Approval of work. Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the building inspector. The building inspector, upon notification, shall make the requested inspections and shall either indicate that portion of the construction is satisfactory as completed, or shall notify the permit holder or an agent of the permit holder wherein the same fails to comply with this code. Any portions which do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the building inspector.

There shall be a final inspection and approval of all building and structures when completed and ready for occupancy and use.

(E) Required Inspections.

(1) General. Reinforcing steel or structural framework of any part of building or structure shall not be covered or concealed without first obtaining the approval of the building inspector. The building inspector, upon notification, shall make the inspections set forth in the following subsections.

(2) Foundation Inspection. To be made after excavations for footings are complete and any required reinforcing steel is in place. For concrete foundations, any required forms shall be in place prior to inspection. All materials for the foundation shall be on the job, except where concrete is ready mixed in accordance with U.B.C. Standard 19-3, the concrete need not be on the job. Where foundation is to be constructed of approved treated wood, additional inspections may be required by the building inspector.

(3) Concrete Slab or Under-Floor Inspection. To be made after all in-slab or under floor building service equipment, conduit, piping accessories and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including sub-floor.

(4) Frame Inspection. To be made after the roof, all framing, fire blocking and bracing are in place and all pipes, chimneys and vents are complete and the rough electrical, plumbing, and heating wires, pipes and ducts are approved.

(5) **Lath and Gypsum Board Inspection.** To be made after all lathing, and gypsum board, interior and exterior, is in place, but before any plastering is applied or before gypsum board joints and fasteners are taped and finished.

(F) **Other Inspections.** In addition to the called inspections specified above, the building inspector may make or require other inspections of any construction work to ascertain compliance with the provisions of this code and other laws which are enforced by the code enforcement agency.

(G) **Modulac.** Certified modular construction is exempt from Section 21-3-8(E)(4), 21-3-8(E)(5), and other field inspections not practical under modular construction practices.

(H) **Manufactured.** Certified manufactured home construction is exempt from Sections 21-3-8(E)(4), 21-3-8(E)(5), and other field inspections not practical under manufactured home constructions practices.

Section 21-3-9. Certificate of Occupancy.

(A) **Certificate of Occupancy.** No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building inspector has issued a certificate of occupancy thereof as provided herein.

EXCEPTION: Group R, Division 3 and Group M Occupancies.

Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Certificates presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid.

(B) **Change in Use.** Changes in the character or use of a building shall not be made except as specified in Section 3405 of this code.

(C) **Certificate Issued.** After the building inspector inspects the building or structure and finds no violations of the provisions of this code or other laws which are enforced by the code enforcement agency, the building inspector shall issue a certificate of occupancy which shall contain the following:

- (1) The building permit number.
- (2) The address of the building.
- (3) The name and address of the owner.
- (4) A description of that portion of the building for which the certificate is issued.
- (5) A statement that the described portion of the building has been inspected for compliance with the requirements of this code for the group and

division of occupancy and the use for which the proposed occupancy is classified.

(6) The name of the building inspector.

(D) Temporary Certificate. If the building inspector finds that no substantial hazard will result from occupancy of any building or portion thereof before the same is completed, a temporary certificate of occupancy may be issued for the use of a portion or portions of a building or structure prior to the completion of the entire building or structure.

(E) Posting. The certificate of occupancy shall be posted in a conspicuous place on the premises and shall not be removed except by the building inspector.

(F) Revocation. The building inspector may, in writing, suspend or revoke a certificate of occupancy issued under the provisions of this code whenever the certificate is issued in error, or on the basis of incorrect information supplied, or when it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.

(Enacted by PBP TC No. 2000-24, February 1, 2000; amended by PBP TC No. 2000-69, April 4, 2000; amended by PBP TC No. 2005-024, March 3, 2005.)

CHAPTER 21-4 STORM WATER

Section 21-4-1. Purpose and Intent.

The purpose and intent of this Chapter is to prescribe rules and regulations setting forth standards that prevent storm water runoff from construction sites from contaminating streams, rivers or lakes.

Section 21-4-2. Minimum Standards for Storm water Management

All construction activities that disturb more than one acre and take place within the Tribe's jurisdiction must at a minimum comply with applicable federal requirements regarding storm water discharge from construction activities. Any notice of intent submitted in accordance with those requirements must also be submitted to the Planning and Environmental Protection Department.

(Amended by PBP TC No: 2008-186, August 13, 2008)

**CHAPTER 21-5
SHAB-EH-NAY**

Section 21-5-1. Shab-eh-nay.

In all cases involving the Shab-eh-nay Reservation, the jurisdiction of the Nation and the substantive and procedural requirements of this Title shall apply, provided that, if the substantive requirements of this Title directly conflict with the substantive requirements of the laws of Illinois or DeKalb County, compliance with those requirements shall be sufficient for the purposes of tribal law. However, in no event shall the jurisdiction of the State of Illinois or DeKalb County or the procedural requirements of Illinois state law or DeKalb County code apply to any activity within the boundaries of the Shab-eh-nay Reservation.

(Enacted by PBP TC No. 2000-24, February 1, 2000; amended by PBP TC No. 2000-69, April 4, 2000; amended by PBP TC No. 2005-024, March 3, 2005.; amended by PBP TC No: 2008-186, August 13, 2008)

