

**CHAPTER 5**  
**TRIBAL LAND MANAGEMENT**  
(first approval 1993- last revised July 2004)

**TITLE 1**  
**GENERAL PROVISIONS**

- SECTION 5.01.01: Purpose and Intentions
- SECTION 5.01.02: Tribal Council Powers in Land Management and Tribal Rights
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**SECTION 5.01.01**  
***Purpose and Intentions***

The land in and surrounding Gwichyaa Zhee is the heart and lifeline for the Gwichyaa Zhee Gwich'in Tribal Government. The Titles in this Ordinance are intended to provide guidelines for wise use of this Land resource, to give the Tribal Membership knowledge about land policies, decisions, and actions and to allow participation by Tribal Members in tribal land decisions. Overall, the land is to be protected for multiple uses by future generations while establishing an organized system for current land uses through a balance between protecting land for subsistence and developing land for economic development projects. All tribal administrative decisions involving tribal land shall be determined by what is in the best interest of the Tribe.

**SECTION 5.01.02**  
***Tribal Council Powers in Land Management and Tribal Rights***

The Gwichyaa Zhee Gwich'in Tribal Government has the rights and powers in the acquisition, ownership, sale, or any disposition of interest of real property in any manner not prohibited by applicable law and found to be in the best interest of the Gwichyaa Zhee Gwich'in Tribal Government. The Tribal Council has the authority to act on behalf of the Tribe in land management except that lands or interests in land owned by the Tribe may not be sold; or leased for more than a 10 year period; or otherwise disposed of without an affirmative vote of a least 70% of the qualified tribal voters. However, this restriction shall not prohibit the Tribal Council from establishing and administering a Tribal Land Assignment Program. As the Tribe will from time to time, operate under new management and newly elected officials, it is important that the Tribe establish a permanent policy and procedure manual for the prudent management of its' land base over a long term basis. For this reason, this Chapter is established to help the Tribal Council, Land Committee, Management and Tribal members protect and manage assets for future generations. This Chapter refers to all Tribal Land under Tribal Management Control.

**SECTION 5.01.03**  
***Tribal Goals***

The Tribal Council, Land Committee and management shall use the following goals as a basis for all land use decisions:

- a) To protect all lands and water for the future generations of tribal members and shareholders to use for time immemorial.
- b) To preserve the traditional rights of Tribal Members, and GZ shareholders to use corporation lands and resources.
- c) To further the economic and social standards of the Gwichyaa Zhee Gwich'in Territory.
- d) To manage Tribal Assets in a prudent manner that will produce long term profitability and encourage tribal member employment.
- e) Adoption of amendment to the Tribal structure that will guarantee Tribal Control of the land by allowing descendants of Tribal members to become voting members of the Tribe.
- f) To continue educational enhancement of Natural Resources

**SECTION 5.01.04**  
***Invalid Transactions***

A transaction that attempts the sale, lease, acquisition or assignment of tribally owned land shall be void under any of the following conditions, but not limited to the following conditions:

1. The transaction does not follow the procedures contained in this Ordinance; or
2. A tribal official or relative of a tribal official personally receives anything of value in exchange for the transaction beyond what any other tribal member might receive; or
3. The transaction violated any applicable federal, state, or tribal law, regulation, or contract provision governing an applicable state, federal, or tribal grant or contract.

**SECTION 5.01.05**  
***Consultation***

**A. With Gwitchyaa Zhee Corporation**

The Tribal Council will consult with the Gwitchyaa Zhee Corporation regarding land use decisions which may affect the GZ Corporation. In general, the Tribe will communication with the Yukon Flats Region on issues of regional importance.

**B. Gwichyaa Zhee Gwich'in Land Committee**

The Tribal Land Committee will be responsible for administering land use decisions governed by this Code. In actions that take Tribal Council action, management will first meet with the Land Committee and develop recommendations that will be presented to the C. Tribal Council for Approval This Land Committee shall only act as an advisory to make recommendations to the Natural Resource Department who presents them to the Tribal Council for approval. The selection of the Land Committee will be selected every year during the annual tribal membership meeting. The Land Committee shall review all land activity and work with the Natural Resource Department staff. The actions of the committee shall be by traditional majority vote. The Land Committee shall meet bi-monthly, the committee member will select amongst themselves a chairperson.

The terms of any proposed land sale, exchange, or trade shall be initially negotiated by the Land Committee. As such time as a majority of the Land Committee approves the terms and conditions of a proposed land transaction, the transaction shall be recommended to the Tribal Council for approval.

The Tribal will not sell, exchange or trade any surface, and /or subsurface estate, or interest that it may own in any real estate without the approval of the Tribal Council and GZ Corporation Board of Directors. It is the general policy of the Tribe to lease, exchange or trade land rather than to sell land whenever possible.

Major Issues that the Land Committee will be active in are:

- Development of new residential and commercial subdivisions
- Planning the old townsites
- Selection process of the 5 Acre plats
- Assist with finalizing the ANCSA 14c selections

**SECTION 5.01.06**  
***Definitions***

For the purpose of this Title, the following words shall have these meanings:

- **“Tribe”** means the Gwichyaa Zhee Gwich'in Tribal Government.
- **“Tribal Members”** means people enrolled to the Gwichyaa Zhee Gwich'in Tribal Government, (known as Native Village of Fort Yukon, IRA.)
- **“Tribal Council”** means the governing body of the Gwichyaa Zhee Gwich'in Tribal Council.
- **“Best Interest of the Tribe”** means that the Tribal Council shall determine what is in the best interest of the Tribe by majority vote of the full Council, under specific guidelines that may be provided by this Ordinances.

**TITLE 2**  
***ACQUISITION OF LAND***

SECTION 5.02.01: Purpose

SECTION 5.02.02: Procedures

**SECTION 5.02.01**

***Purpose***

The Tribe's major purposes in acquiring new lands shall be to provide land resources for subsistence, residential use, tribal business uses and to provide land protection for future generations.

**SECTION 5.02.02**

***Procedures***

**A.** In acquiring land, the Tribal Council may seek advice from the Elders, community residents and appropriate outside sources. All acquisitions of land shall be approved by a resolution passed by a majority vote of the full Tribal Council.

**B.** Unless otherwise directed by the Tribal Council, the First Chief is authorized to negotiate the terms of acquisitions. The terms of the acquisition are subject to final approval by the Tribal Council.

**C.** For all acquisitions of land the Tribal Council shall determine that acquiring the land is in the best interest of the Tribe.

**D.** Any paperwork that is necessary for the acquisition of land shall be signed by the First Chief and attested by the Tribal Governance Director and notarized.

**TITLE 3**  
**LAND USE PLANNING**

SECTION 5.02.01: Purpose  
SECTION 5.02.02: Procedure

**SECTION 5.02.01**  
***Purpose***

Good management of land is essential to the social, cultural and economic well-being of Gwichyaa Zhee. All activities on lands within the traditional territorial boundaries of the Gwichyaa Zhee Gwich'in Tribal Government shall be consistent with the Tribal Land Use Plan.

**SECTION 5.02.02**  
***Procedure***

Land use planning will be done by the following procedure:

- a) The Tribal Council shall appoint a Planning Team to develop a Land Use Plan. The planning team shall be an advisory team to the Tribal Council. The Tribal Council shall have final approval authority of any Land Use Plans. The Tribal Council may appoint Gwichyaa Zhee Corporation Board Members or Shareholders to the team along with Members of the Tribal Council and/or Tribal Members.
- b) The Planning Team shall begin development of a Land Use Plan by holding one or more scoping meetings with the village residents, making sure to include the Elders. Based on the scoping meetings, the planning team shall write general goals, determined by Village tribal members and corporation shareholders input, for the plan. When a draft Land Use Plan is completed, the Planning Team shall hold a public meeting in the village to gather public comments. The team shall wait at least 14 days after that meeting for further public comment. The team shall consider public comments and incorporate them into the plan, if the team believes the comments to be appropriate. All comments shall be kept by tape recording or writing.
- c) Classifications for land use may include but are not limited to the following: residential, commercial, recreation, customary and traditional use, religious and burial use, rights-of-way and resource development.
- d) After the public comment period ends and the Planning Team have taken the public's comments into consideration, the planning team shall present the plan to the Tribal Council for consideration.
- e) The Tribal Council shall approve or disapprove the plan in full by a majority vote of the full Council, or may approve the plan in part by a majority vote of the Council. If the plan is approved only in part, the controversial part of the plan shall be returned to the

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Planning Team for reconsideration. The Planning Team shall resubmit that portion of the plan to the Tribal Council within 60 days after the Council vote.

**f)** Proposed amendments to the Land Use Plan may be brought to the attention of the Tribal Council by any Tribal Member. The proposals shall be discussed at a regular session of an open Tribal Council Meeting after public notice with the proposed amendment has been posted in the Village for at least 10 days. The proposed amendment shall be discussed by the Tribal Council and any Tribal Member shall have an opportunity to address the Tribal Council on the proposed amendment at that time. The Tribal Council shall approve or disapprove the amendment by majority vote of the full Tribal Council.

**TITLE 4*****TRIBAL LAND ASSIGNMENT FOR RESIDENTIAL USE***

- SECTION 5.04.01: Authority and Purpose
- SECTION 5.04.02: Definitions
- SECTION 5.04.03: Priorities for issuing Land Assignments
- SECTION 5.04.04: Persons Eligible for Land Assignment
- SECTION 5.04.05 Length of Land Assignment
- SECTION 5.04.06: Use of Property
- SECTION 5.04.07: Ownership of Improvements on the Property
- SECTION 5.04.08: Inheritance of an Assignment
- SECTION 5.04.09: Relinquishment of Assignment and Divorces
- SECTION 5.04.10: Exchanges, Transfers, Leases or Sale of Assignments
- SECTION 5.04.11: Procedure for Applying for Assignment of Land
- SECTION 5.04.12: Land Assignment Fees and land Holding Fee
- SECTION 5.04.13: Records
- SECTION 5.04.14: Revocation of Assignments
- SECTION 5.04.15: Advisory Board
- SECTION 5.04.16: Disclaimer and Sovereign Immunity

**SECTION 5.04.01*****Authority and Purpose***

The purpose of this Tribal Ordinance is to state in writing the residential land use custom, practice, and policy of the Gwichyaa Zhee Gwich'in Tribal Government, as implemented under the inherent sovereign authority of our Tribal Government and in accordance with the, known as, Native Village of Fort Yukon, IRA Tribal Constitution and Tribal Code. This Tribal Ordinance intends to clarify the management practices of the Gwichyaa Zhee Gwich'in Tribal Government in regard to the assignment of tribally owned land to Tribal Members.

Land assigned to Tribal Members under this Tribal Ordinance will be issued with a Life-Estate Permit. The title to land assigned under this Tribal Ordinance shall remain in the name of the Gwichyaa Zhee Gwich'in Tribal Government. Tribal Members receiving Land Assignments shall have only residential use rights to the land as defined in Section 2 of this Tribal Ordinance.

**SECTION 5.04.02*****Definitions***

**“Assignable Land”** means land owned by the Tribal Government to be used for residential purposes on a permanent basis and does not include temporary residential use.

**“Assignee”** means a successful applicant for assignable land.

**“Life Estate Permit”** means the document issued by the Tribal Government to an assignee to demonstrate land use rights of the land assignment for life.



**“Residential Use”** means the construction and occupying of homes, outhouses, sheds, fences, dog yards and other structures for residential use. Home-based businesses shall be allowed on assigned lots provided that such businesses do not endanger the health, safety and well-being of Tribal Members.

**“Land Committee”** means an advisory committee assigned by the Tribal Council to make recommendations.

### **SECTION 5.04.03**

#### ***Priorities for Issuing Land Assignments***

Tribally owned land is a valuable, but limited resource. The Tribal Council is not obligated to assign land unless there is a genuine need as determined by the Land Committee. Land Assignments shall be issued based on the following priorities:

**A.** First priority shall be given to Tribal Members that do not own a house or land in or around Gwichyaa Zhee; are ready to build a home within five years; and are “committed to reside in Gwichyaa Zhee. “Committed to reside in” means that the person is committed to establishing their residence in Gwichyaa Zhee. The Tribal Council may require an affidavit of intent to reside in the village.

**B.** Second priority shall be given to Tribal Members who own land in or around Gwichyaa Zhee, but have a good reason for not using the land they own; are ready to build a home or move a home; and are committed to reside in Gwichyaa Zhee. The Land Committee will make a determination on whether or not to issue a Land Assignment and make a recommendation to the Gwichyaa Zhee Gwich'in Tribal Council.

### **SECTION 5.04.04**

#### ***Persons Eligible for Land Assignment***

Land Assignments shall only be made to Tribal Members who are at least eighteen (18) years of age or head of a household and who are ready to build a home within five years of assignment of land.

### **SECTION 5.04.05**

#### ***Length of Land Assignment***

**A.** Tribal Land Assignments shall last for the lifetime of the Assignee unless the person or couple relinquishes it or violates the terms of this Tribal Ordinance at the time the Land Assignment was made or under the terms of future amendments to this Tribal Ordinance.

**B.** Tribal Land Assignments may be terminated if the Assignee is permanently banished from the Village by the GZG Tribal Court for behavior that is harmful to the health, ~~and~~ safety and well-being of the Tribal Members.

C. Any buildings or structures on terminated Land Assignments fall under the provisions of Section 7, (below), of this Tribal Ordinance.

#### **SECTION 5.04.06**

##### ***Use of Property***

A. Tribal Land Assignments shall be used for permanent home sites and residential use as defined in Section 2, above, of this Ordinance.

B. Public right-of-ways across Land Assignments shall remain unobstructed for their specified uses.

C. Persons with Land Assignments must make Fort Yukon their permanent residence. Exceptions to this are given for the following temporary leave of absences:

1. Educational or Vocational Training
2. Military Service
3. Extended Illness
4. Temporary Employment
5. Other reasons will need to go to the Land Committee and Tribal Council.

D. Tribal Members with a Land Assignment must notify the Tribal Council in writing if they are absent from the Village for more than two (2) years, with their plans for returning.

E. Assignees away from the Village for the reasons listed in C of this Section may temporarily rent their homes on assigned land during their leave of absence.

#### **SECTION 5.04.07**

##### ***Ownership of Improvements on the Property***

A. Buildings or structures constructed on Land Assignments are the personal property of Assignees who construct them. If the Land Assignment is terminated, the terminated assignees are responsible for removing any personal property they may want or any personal property the Tribal Council wants removed. If such improvements are not removed within one (1) year, such improvements shall become the property of the Tribal Government unless another arrangement is made and is approved by the Tribal Council. If the Tribal Government removes such property, the terminated Assignee shall be responsible for removal costs.

B. Buildings or structures voluntarily or involuntarily relinquished to the Tribal Government may be granted to a new Assignee through a well defined and understood lease-purchase agreement.

C. Buildings or structures that the Tribal Government may acquire may be rented without making a Land Assignment at a fee determined at the time the rental agreement is made. The rental agreement shall be made in writing. Rental fees may be adjusted biannually

for inflation. Renters will be responsible for damages which they cause to rented property.

**D.** A written agreement may be made between an Assignee (who wishes to relinquish his or her Land Assignment) and the Tribal Government for selling improvements to either the Tribal government or to another qualified Assignee, provided that the Tribal Council approves of such an agreement. If the Tribal Council agrees, a new Life-Estate Permit will be issued.

#### **SECTION 5.04.08**

##### ***Inheritance of an Assignment***

**A.** People who are named in a Last Will & Testament to receive the Land Assignment must be eligible Tribal Members. If they are not, the immediate family members shall have two (2) years to request that the Tribal Council reassign the land to them. The immediate family member that applies must also be a Tribal Member and at least ~~16~~ eighteen (18) years of age or head of a household. The Land Assignment shall be subject to the same provisions as the original Assignee.

**B.** If the person named on the Assignees Last Will & Testament is a minor, their rights to the Land Assignment shall be maintained through their legal guardian until they reach the age of 18. If the guardian and minor do not live on the land until the minor reaches 18, an agreement between the guardian and the Tribal Government shall be made to determine what happens on the Land Assignment until the minor reaches the age 18 years. In the event that there is no guardian for a minor child, the Tribal Government shall protect the inheritance rights of the child until the child reaches the age of 18 years. If the Tribal Government rents out the property, a trust fund shall be established to deposit rental money for the child, provided that the Tribal Government shall allocate a minimum of 20% of the proceeds for maintenance of the property and may reserve a reasonable fee for property management.

**C.** In the event that the person named on the Assignee's Last Will & Testament does not name a person who is a Tribal Member, the Tribal Council shall reassign the Land Assignment based on the following priority list.

1. First priority is the surviving spouse, if the spouse is a Tribal Member.
2. If the surviving spouse is not a Tribal Member, the Tribal Government shall have the power to terminate the Land Assignment and reassign the land if there are no minor children who are Tribal Members. Or, the Tribe may allow the non-member surviving spouse to continue living on the Land Assignment. In this case, the Land Assignment shall remain in the deceased spouse's name until the surviving spouse no longer lives on the Land Assignment. After that time, the Land Assignment will be reissued.
3. If an Assignee dies leaving no spouse, the Land Assignment shall be reassigned to the oldest surviving child, provided they are a Tribal Member. If the oldest surviving child does not want the Land Assignment, he will relinquish his rights

and the next child in successive order from oldest to youngest shall be eligible to apply, provided they are Tribal Members. In case of a dispute, the Tribal Council shall decide which, if any, eligible child shall receive the Land Assignment according to need. If the needs are equal, the decision shall be made by lottery. If the eligible surviving child (ren) is/are under the age of 18, the guardian of the child (ren) may live on the Land Assignment for the benefit of the child (ren). If the guardian and child do not choose to live on the assigned land, a written agreement between the guardian and the Tribal Government shall be made to determine what happens on the Land Assignment until the minor reaches the age of 18.

4. If an Assignee dies without specifying a qualified heir and has no immediate family who qualifies for the Land Assignment, the Land Assignment automatically terminates, and reverts to the Tribal Government.

#### **SECTION 5.04.09**

##### ***Relinquishment of Land Assignment and Divorce***

**A. Relinquishment:** An Assignee may give a Land Assignment back to the Tribal Government at any time by signing a written, notarized statement to that effect and filing it with the Tribal Government. By signing a written, notarized statement, the Assignee is giving up all their rights and interests in the Land Assignment and any improvements on the land as of the date specified in the statement, provided that a written agreement for purchase may be made between the Assignee and the Tribal Government. If there is no date specified on the statement, the relinquishment is effective 90 days after the statement is received by the Tribal Government. Spouses may not relinquish for each other except in cases where the Tribal Government has determined that the Assignee is incompetent to make such a decision.

**B. Divorce:** In the event of a divorce of a couple who live on a Land Assignment, the Tribal Government shall make a determination as to what should happen to the Land Assignment. The Tribal Government may reissue the Land Assignment to the man or to the woman, or may allow a divorcing couple to enter into an agreement to sell the assets to a third party, provided that the third party is a Tribal Member and the agreement is approved by the Tribal Council.

**SECTION 5.04.10*****Exchanges, Transfers, Leases or Sale of Land Assignments***

**A.** No person shall exchange or transfer his or her Land Assignment to another person without the prior written approval of the Gwichyaa Zhee Gwich'in Tribal Council. A person may only transfer a Land Assignment to a person who is an eligible Tribal Member.

**B.** Assignees wishing to exchange or transfer their Land Assignment may do so only to eligible Tribal Members and shall request permission from the Tribal Council in writing, stating the reasons the exchange or transfer is desired. The Tribal Council has the authority to grant or deny the request based on what is in the best interest of the Tribal Government. If the request for exchange or transfer is approved, a new Life-estate Permit shall be issued.

**C.** Assignees shall not be permitted to lease, sell or mortgage their Land Assignments for consideration. Assignees may rent homes if absent for reasons listed in Section 6(C) of this Tribal Ordinance.

**SECTION 5.04.11*****Lease Criteria*****A. Evaluation of Lease Criteria:**

The Gwichyaa Zhee Gwich'in Tribal Government shall not authorize a right of way or easement without the approval of the Land Committee. The Natural Resource Department shall evaluate and make recommendations to the Land Committee and Tribal Council; all right of way and easement agreements by using the following criteria:

- 1.** The GZG Tribal Government shall obtain a land appraisal that determines the fair market value of any land being considered for a right of way or easement. The expense of an appraisal shall be included as part of the total cost of the right of way or easement. The Land Committee, at its' discretion, shall be authorized to waive the requirement for a land appraisal if the committee concludes that the Natural Resource Department has enough data to determine the fair market value of the land being considered for a right of way or easement.
- 2.** All right of way or easement agreements must be at fair market value. Rights of way and easements must be reviewed by comparing present to possible future uses, adjacent land use, environmental factors, and cultural concerns.
- 3.** All rights of way and easements will be approved only for the uses authorized under this policy. The width of rights of way and easements shall be kept to a minimum width and only encompass an area large enough to allow for the use intended. For example, a trail easement should not be much over 15 feet in width. Any greater width would allow large vehicle traffic.

4. Specific uses shall be included in all right of way and easement agreements. Unauthorized use may fall under trespass violations as specified under this Title of this Code.
5. Recordable Documents
6. Terms  
The terms of any proposed rights of way or easements shall be initially negotiated by the Natural Resource Department. At such time as a majority of the Land Committee approves the terms and conditions of a proposed right of way or easement, the transaction will be recommended to the Tribal Council for approval.

## **B. Resource Use**

The Tribal Government will work with the Bureau of Land Management and United States Department of Fish and Wildlife Service in establishing guidelines for management of ANCSA 17(b) public easements that are reserved on Tribal Lands. Individuals which are not tribal members or GZ shareholders shall use only ANCSA 17(b) easements unless authorized by permit under this policy for specific activities.

### **SECTION 5.04.12**

#### ***Procedure for Applying for Land Assignment***

- A.** A Tribal Member or Tribal Married Couple who wishes to have a Tribal Land Assignment shall apply by filling out an application at the Tribal Office and paying the non-refundable forty dollar (\$40) application fee. The application shall contain the name of the applicant(s), address, and date of birth, social security number, whether or not they own land or a house, proposed activity and whether or not they plan on building within five years. The applicant will also sign an affidavit stating that they fully intend to reside in Fort Yukon.
- B.** After the application is received, it will be reviewed by the Land Committee and the Land Committee will make a recommendation to the Tribal Council on whether or not the application should be approved.
- C.** Within 90 days after receiving an application, the applicant will be notified as to whether or not their application was approved or disapproved.
- D.** If the application is approved, a letter will be sent out to all approved applicants stating when a Land Selection will be held. They will also be sent a map showing which lots are available.
- E.** The Land Selection will be done semi-lottery style. All approved applicants names will be randomly chosen (drawn from the hat), the first name drawn will have the first choice of the available lots and the second name chosen will have the second choice and so-forth until all applicants have made a land selection.

F. After the Land Selection is completed, the applicant will be issued a Life-Estate Permit.

### **SECTION 5.04.13**

#### ***Land Assignment Fees and Land Holding Fee***

A. A non-refundable application fee of forty dollars (\$40) shall be charged to applicants. The fee shall be paid prior to the application going to the Land Committee.

B. The Tribal Council reserves the right to raise the application fee or to charge a reasonable monthly or annual fee for all Land Assignments, provided that prior to implementing or adjusting such fees, Tribal Members are notified at least 60 days in advance via newsletter, signs and radio.

C. The Tribal Council shall have the option of allowing an eligible Tribal Member to reserve a piece of land for their future use. There shall be a \$500 per year fee for holding land for a future Land Assignment, plus the party shall be required to have such a parcel surveyed. If the party fails to pay the \$500 or fails to survey the lot, the Tribal Government maintains a right to terminate the agreement without any compensation to the holder. All agreements under this provision shall be in writing and shall not be considered Land Assignments until the Tribal Member actually occupies the lot.

### **SECTION 5.04.14**

#### ***General Lease Provisions***

##### **A. Surveyed Residential Leases**

Surveyed residential lease subdivisions shall be identified by the Natural Resource Department for the purpose of leasing land to individuals for residential purposes. The following criteria shall be used by the Tribal Government in establishing and leasing land within surveyed residential lease subdivision:

The following general lease subdivisions shall be identified by the Land Committee and Tribal Council to ensure consistency in leasing Tribal Lands general provisions:

1. The GZG Tribal Government shall obtain a land appraisal that determines the market value of all the above described leases. The Tribal Government, at its' discretion, shall be authorized to waiver an appraisal if the Natural Resource Department has enough data to determine the fair market value of proposed land leases.

2. All leases shall be at fair market value. Leases must be reviewed to establish present worth to possible benefits of future usage, adjacent land ownership, environmental factors, and cultural concerns.

3. The size of a lease parcel shall be appropriate to the type of lease and shall not be excessive. Any additional land to be covered under a lease agreement must be

negotiated with the Tribal Government. Commercial and residential leases adjacent to each other must be approved under separate leases.

4. The terms of any proposed lease shall be initially negotiated by the Tribal Government. As such time as a majority of the Land Committee approves the terms and conditions of a proposed lease, the transaction shall be recommended to the Tribal Council for approval.

### **B. Commercial Business Leases**

Surveyed and Unsurveyed land leases for commercial business lease areas shall be identified, or reviewed by the Natural Resource Department for the purpose of leasing commercial land to individuals or businesses on a case by case basis compared to developing and surveying commercial subdivisions for commercial leasing. The following criteria shall be used by the Tribal Government and/or GZ Corporation in establishing and leasing land within commercial areas:

1. Commercial lease areas shall be identified by developing in-house land department under the Natural Resource Department, subdivision plats that identify lease areas by lot and block. Commercial leases shall be further identified by using the rectangular survey system of legally describing property boundaries, aliquot parts identification, and metes and bounds descriptions. Land parcels shall be tied to known monument, if possible, and corners shall be identified with ½ inch metal rear or wood stakes with a minimum width of 2x2 inches.

2 Commercial lease areas shall be further identified by platting parcels on aerial photographs, Bureau of Land Management Master title plats, United States Geological Service maps, or other plats that will help in identification of land area.

3. Commercial leases shall have a plan of improvements section that gives the Tribal Government and/or GZ Corporation the authority to approve all improvements placed on the lease property. Improvements shall be inspected to ensure that placement is within the exterior boundaries as identified by the lease. The Tribal Council may establish a first right of purchase with the lessee on all improvements. Leases shall contain language that specifies that improvements left on the property upon termination of the lease shall become the property of the Tribe, unless removed as specified in the lease agreement.

4. The terms of any proposed lease shall be initially negotiated by the Natural Resource Department. At such time as a majority of the Land Committee approves the terms and conditions of a proposed lease, the transaction shall be recommended to the Tribal Council for approval.



**SECTION 5.04.15*****Records***

**A.** The Natural Resources Department will be responsible for keeping a complete record of all actions taken by the Tribal Council on all applications for Land Assignments of Tribal Lands, including:

- 1.** A Copy of the Application
- 2.** A Copy of the Life-Estate Permit
- 3.** The Tribal Council's motion or Resolution Approving the Land Assignment
- 4.** Any Special Terms of the Occupancy.

**B.** The Life-Estate Permit shall be signed by the First Chief.

**C.** A new Life-Estate Permit shall be issued any time a Land Assignment is reassigned, including reassignments that result from death, divorce, moving from the village, exchanges or transfers, relinquishment and revocation.

**SECTION 5.04.16*****Revocation of Land Assignments***

**A.** The Tribal Council, by an affirmative vote of at least five, shall have the power to revoke any Land Assignment from any Assignee who is violating the provisions of this Tribal Ordinance. The Tribal Council shall also have the power to revoke a Land Assignment if an Assignee is permanently banished from the village for behavior that endangers the health, safety and well-being of Tribal Members.

**B.** Whenever a Land Assignment is subject to being revoked, the Tribal Council shall notify the holder of the Land Assignment in writing by certified mail, return receipt requested. The notice shall state the reason for the proposed action and shall inform the person that he or she may file a written request to appear in person or telephonically before the Tribal Council and present evidence as to why the Land Assignment should not be revoked. The written request must be filed with the Tribal Governance Director within 60 days after receiving notice from the Tribal Government. If the Tribal Council receives such a request, it shall notify the person of the date and time he or she is to appear before the Tribal Council.

**C.** If the Assignee appears before the Tribal Council, the Tribal Council shall make their decision within 30 days after such appearance. If the Assignee does not request to appear before the Tribal Council, the Tribal Council shall notify the Assignee of their decision and the reasons for the decision.

**D.** If an Assignee is gone from the village for more than three (3) years and has not contacted the Tribal Government, the Tribal Council may review the case at an open Tribal Council meeting and attempt to send a notice of the Tribal Council's intent to terminate the Land Assignment to the absent Assignee. The absent Assignee has 90 days

to respond to the notice after the receipt of the notice. If the absent Assignee has not responded at the end of 90 days, the Tribal Council may terminate the Land Assignment.

**E.** If the person cannot be located after a reasonable search by the Tribal Government, the Land Assignment may be terminated.

**SECTION 5.04.17**  
***Land Committee***

The Gwichyaa Zhee Gwich'in Tribal Council will establish a Land Committee (to act as an advisory board) consisting of adult Tribal Members to assist in making decisions regarding Tribal Land Assignments. All final decisions, however, shall be made by the Tribal Council.

**SECTION 5.04.18**  
***Disclaimer and Sovereign Immunity***

The Gwichyaa Zhee Gwich'in Tribal Council does not guarantee and hereby disclaims that any Tribal Land is fit for residential use. Furthermore, the Tribal Council and its individual members shall be held harmless by the respective Assignee from any action arising from this Tribal Ordinance. Nothing in this Tribal Ordinance should be construed as waiving the Gwichyaa Zhee Gwich'in Tribal Government's and Tribal Council's immunity from suit, or creating any right of action against the Tribal Council or its individual members.

**CHAPTER 6**  
**NATURAL AND CULTURAL RESOURCES**

**TITLE 1**  
**GENERAL PROVISIONS**

SECTION 6.01.01: Purpose

SECTION 6.01.02: Development of Resources

**SECTION 6.01.01**  
***Purpose***

The purpose of this Title is to provide guidelines for wise and continued use of the natural and cultural resources within the Tribal Lands of Gwichyaa Zhee; to reduce conflict over natural resources use; and to preserve the cultural heritage of our Tribal identity. The Tribe shall protect and enhance the natural resources on its' land. All Tribal Members and GZ Shareholders shall have equal access to subsistence resources on lands of the Gwich'in Territory. A management consideration shall be protection of subsistence resources.

**SECTION 6.01.02**  
***Development of Resources***

**A. Review**

All development of Tribal lands shall be reviewed by comparing present to possible future uses, adjacent land uses, environmental factors, and cultural concerns. The Natural Resource Department and the Land Committee will make recommendations to the Tribal Council upon evaluation of all land exchange, or trades for subsurface and/or surface estate, by using the following criteria:

1. The Tribe shall obtain a land appraisal that determines the fair market value of any land, or resource being considered for sale, exchange, or trade. The cost of the appraisal shall be included as part of the total cost of land or resource to be sold, exchanged or traded. The Land Committee, at its discretion, shall authorize to waive the requirements for a land appraisal, if the committee concludes that the Natural Resource Department has enough data to determine the fair market value of the land and resource being considered for sale, exchange or trade.
2. All land sales, exchanges, or trades must be at fair market value. Land sales, exchanges, or trades must be reviewed by comparing present to possible future uses, adjacent land use, environmental factors, and cultural concerns.

**B. Sand and Gravel Resources**

The Gwichyaa Zhee Gwich'in Tribal Government shall have a written agreement with Doyon Limited, for extraction of sand and gravel resources that are located under Tribal Lands. Extraction areas shall have excavated slopes with sides not less than a 1 to 3 ration. All gravel contracts shall require satisfactory bond or escrow arrangement to pay; for rehabilitation.

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**TITLE 2**  
**TIMBER TRESSPASS**

SECTION 6.02.01: Scope and Purpose  
SECTION 6.02.02: Severability and Non-Liability  
SECTION 6.02.03: Definitions  
SECTION 6.02.04: Implied Consent  
SECTION 6.02.05: Prohibited Acts  
SECTION 6.02.06: Procedures  
SECTION 6.02.07: Enforcement and Penalties

**SECTION 6.02.01**  
*Scope and Purpose*

**A.** The purpose of this code is to provide tribal remedies for trespass to timber interests of the Tribe or its members on tribal trust or allotted lands. This code is adopted pursuant to the powers of the Tribal Council as set forth in Article 4 of the Tribal Constitution and under federal law.

This code is not intended to provide the exclusive remedy for timber trespass. The Tribe recognizes that federal law provides for criminal penalties and treble damages for timber trespass, and this code is intended to operate in addition to the remedies available under federal or state law.

**B.** Interpretation. In their interpretation and application, the provisions of this Code shall be held to be minimum requirements and shall be liberally construed in favor of the Tribe and shall not be deemed as a limitation on or repeal of any other tribal power or authority.

**SECTION 6.02.02**  
*Severability and Non-Liability.*

If any section, provision, or portion of this Code is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Code will not be affected thereby. The Tribe declares there is no liability on the part of the Tribe, its agencies, or employees for damages that may occur as a result of reliance upon or conformance with this ordinance. The Tribe, by the adoption of this Code, does not waive sovereign immunity in any respect.

**SECTION 6.02.03*****Definitions***

As used in this code:

**“Allotted Land”** means land or any interest therein located within the boundary of the lands held in trust by the United States for the benefit of individual Indians.

**“Tribe”** means the Gwichyaa Zhee Gwich'in Tribe

**“Tribal Court”** means the Native Village of Fort Yukon Tribal Court.

**“Tribal Trust Land”** means land or any interest therein located within tribal boundaries that is held in trust by the tribe.

**SECTION 6.02.04*****Implied Consent***

Entry upon tribal land without the permission of the Tribe is prohibited. Entry upon allotted land without the permission of the allottees or the United States is prohibited. Such permission when given is expressly conditioned upon the consent of the person whose entry is permitted to the jurisdiction of the Tribe for purposes of enforcing this code. Any person who enters upon allotted land or tribal trust land shall be deemed to have given consent to the jurisdiction of the Tribe for purposes of enforcing this code.

**SECTION 6.02.05*****Prohibited Acts***

No person shall:

1. Willfully and in an unauthorized manner set fire to timber, underbrush, or grass or any other flammable material upon any allotted lands or tribal trust land.
2. Having kindling or caused to be kindled a fire in or near any forest timber or other flammable material on any allotted land or tribal trust land without a valid contract or permit to do so, or in a manner exceeding the scope of such contract or permit. No member seeking to harvest dead or downed wood for firewood shall be required to obtain a permit for that activity.
3. Excepting those trees harvested by members for personal Christmas use, cut trees standing or growing upon allotted land or tribal trust land without a valid contract or permit to do so, or in a manner exceeding the scope of such contract or permit. No member seeking to harvest dead or downed wood for firewood shall be required to obtain a permit for that activity.
4. Wantonly injure or destroy trees standing, growing, or being upon allotted land or tribal trust land.
5. Cut, or assist in any manner the cutting of trees under a firewood permit issued to a tribal member, unless such person is the spouse of the tribal member to whom the permit is issued.

**SECTION 6.02.06**  
*Procedure*

The Tribal Court shall hear matters pertaining to the violations of this code. Proceedings for violation of this code shall be governed by the Tribal Court Code Chapter 2, Title 2, Section 12; provided that citations for violations of this code may be served by mail.

**SECTION 6.02.07**  
*Enforcement and Penalties*

1. The provisions of this code shall be enforced by tribal law enforcement officers. In addition, any federal, state, or local law enforcement officers may institute proceedings to enforce this code.
2. Violations of the provisions of this code shall be punishable by a civil remedial money penalty of no more than \$500, plus \$20 court costs.
3. Any vehicle or other equipment used in the violation of this code may be seized and sold in accordance with Chapter 2, Title 4, Section 5 of the Tribal Court Code.
4. In addition to seeking a civil money penalty and/or seizure of and sale of equipment, the Tribe may bring an action to recover damages from the violator in an amount not to exceed three times the value of the timber injured, destroyed, or removed.

**TITLE 3**  
***ARTIFACTS AND HUMAN REMAINS***

SECTION 6.03.01: Purpose  
SECTION 6.03.02: Artifacts  
SECTION 6.03.03: Human Remains

**SECTION 6.03.01**  
***Purpose***

The purpose of this Tribal ordinance is to preserve the culture, heritage and traditions of the Tribal Members Gwichyaa Zhee Gwich'in Tribal Government. All historical and cultural sites designated by the GZG Tribal Government on/and by its' land will be given protection

**SECTION 6.03.02**  
***Artifacts***

No person shall enter the jurisdiction of the Gwichyaa Zhee Gwich'in Tribal Government for the purpose of buying, trading for, soliciting the purchase of or otherwise seeking to arrange the removal of artifacts without first requesting and obtaining permission to do so from the Tribal Council.

Protection of sites will be provided by the Tribe by stopping all activities that may damage the archaeological resources until the area can be investigated. Artifacts that become the property of the Tribe will be retained in Gwichyaa Zhee for the common pleasure of all local residents and visitors. If the GZG Tribal Government cannot provide adequate storage and display facilities in Gwichyaa Zhee, the GZG Tribal Government will work with outside entities to ensure the artifacts are protected and displayed in an environment suitable for archaeological findings.

**SECTION 6.03.03**  
***Human Remains***

No person shall enter the jurisdiction of the Gwichyaa Gwich'in Tribal Government for the purpose of buying, trading for, soliciting the purchase of, or otherwise seeking to arrange the removal of human remains without first requesting and obtaining permission to do so from the Tribal Council. If descendants of the persons whose human remains are in question can be determined, the Tribal Council shall not make any decisions in regards to those remains against the descendant's wishes. All Tribal ordinances related to Artifacts and human remains will follow the Native American Graves Protection and Repatriation Act (NAGPRA). The GZG Tribal Government will work with the Gwichyaa Zhee Corporation to develop ways to fence and post grave sites areas of tribal and adjacent land. Archaeological and burial sites found by individuals of tribal land must be immediately reported to the GZG Tribal Natural Resource Department.



**TITLE 4**  
***RELIGIOUS USE OF WILDLIFE***

SECTION 6.04.01: Purpose  
SECTION 6.04.02: Authorization  
SECTION 6.04.03: Regulation  
SECTION 6.04.04: Photos and Video Taping

**SECTION 6.04.01**  
***Purpose***

The purpose of this Title is to protect the culture of the Gwichyaa Gwich'in Tribe through the controlled use of wildlife resources used for religious purposes and customs of traditional ceremonies.

**SECTION 6.04.02**  
***Authorization***

Wild game shall be taken for use during ceremonial and memorial potlatches under the inherent authority of the Gwichyaa Zhee Gwich'in Tribal Government. The Tribal Council shall have the authority to terminate hunts when sufficient game has been obtained for purposes of potlatches.

**SECTION 6.04.03**  
***Regulation***

Taking of wildlife for use during ceremonial and memorial potlatches shall be regulated by the customary and traditional practices of the Tribe.

**SECTION 6.04.04**  
***Photos and Video Taping***

Photos and video taping may not take place during traditional cultural ceremonies without the express permission of the Tribal Council.

**TITLE 5**  
***FOREST MANAGEMENT***

SECTION 6.05.01: Tribal Policy  
SECTION 6.05.02: Forest Fires  
SECTION 6.05.03: Fire Suppression Plan

**SECTION 6.05.01**  
***Tribal Policy***

The Tribal Policy in land development is to balance current economic development needs with land protection for the future generations. Any forestry development and all contracts for forestry development on Tribal Lands must first be approved by the Gwichyaa Zhee Gwich'in Tribal Government. Developers shall provide the Tribal Council with detailed development plans at regular intervals. In general, Gwichyaa Zhee Gwich'in Tribal Government shall have first priority for contracts for forestry development projects and the Gwichyaa Zhee Corporation shall have second priority. Forestry projects shall not occur on customary and traditional use areas as defined by the Tribal Land Use Plan developed under the procedures outlined in Chapter 5, Title 3 of this Code.

**SECTION 6.05.02**  
***Forest Fires***

The Gwichyaa Zhee Gwich'in Tribal Council shall have the authority to make decisions regarding emergency activities when forest fires occur on Tribal Lands. The First Chief may make decisions by Executive Order if a quorum of the Tribal Council is not immediately available when a crisis is occurring.

**SECTION 6.05.03**  
***Fire Suppression Plan***

A Fire Suppression Plan shall be developed in conjunction with the Tribal Land Use Plan. Until a fire suppression plan is developed and in place the Gwichyaa Zhee Gwich'in Tribal Government hereby adopts the fire suppression plan of the Alaska Fire Service.

**TITLE 6*****RESEARCH ON THE GWICHYAA GWICH'IN TRIBE AND LAND***

SECTION 6.06.01: Purpose

SECTION 6.06.02: Research Requirements

**SECTION 6.06.01*****Purpose***

The purpose of this ordinance is to protect the sacred knowledge and cultural property of the Gwichyaa Zhee Gwich'in Tribal Government.

**SECTION 6.06.02*****Research Requirements***

Researchers shall abide by the following rules if it involves the Gwichyaa Zhee Gwich'in Tribal Government or Land:

- a) No research shall be conducted without the express permission of the Gwichyaa Zhee Gwich'in Tribal Government.
- b) The goals and time-frames of all research shall be reported to the Tribal Council as well as the data-gathering techniques and the positive and negative implications and impacts of the research.
- c) Tribal Members shall be involved through hiring and training in research projects to the maximum extent feasible.
- d) Any Tribal Members interviewed shall be compensated.
- e) Researchers shall guarantee confidentiality of surveys and sensitive material.
- f) Research cannot be used to represent the Gwichyaa Zhee Gwich'in Tribal Government without Tribal Council approval.
- g) Viewpoints of the Gwichyaa Zhee Gwich'in Tribal Government shall be included in final studies.
- h) The results of all research shall be reported back the Tribal Council for final approval and copies of all research projects provided to the Tribe.

**TITLE 7**  
***FISH AND GAME REGULATIONS***

SECTION 6.07.01: Regulation of Fish and Game

**SECTION 6.07.01**  
***Regulation of Fish and Game***

The Gwichyaa Zhee Gwich'in Tribal Government claims jurisdiction over the regulation of Fish and Wildlife within Tribal Lands. The Gwichyaa Zhee Gwich'in Tribal Government shall undertake the development of Fish and Wildlife Regulations. Until these regulations are developed and in place, the Tribe hereby adopts by reference fish and wildlife seasons, bag limits, and methods and means promulgated by the Alaska State Board of Fish and Game and the Federal Subsistence Board. Such regulations shall be enforced by the Gwichyaa Zhee Gwich'in Tribal Court.

**CHAPTER 7****GWICHYAA ZHEE GWICHYAA ZHEE GWICH'IN TRIBAL GOVERNMENT  
TRIBAL WATER QUALITY ORDINANCE****TITLE 1*****SHORT TITLE, FINDINGS AND PURPOSE***

SECTION 7.01.01: Short Title

SECTION 7.01.02: Findings

SECTION 7.01.03: Purpose

SECTION 7.01.04: Authority and Scope

SECTION 7.01.05: Consensual Relations among Non-members, the Tribe and Tribal Members

**SECTION 7.01.01*****Short Title***

This Ordinance shall be known as the Tribal Water Quality Ordinance of the Gwichyaa Zhee Gwich'in Tribal Government.

**SECTION 7.01.02*****Findings***

The Gwichyaa Zhee Gwich'in Tribal Government hereby finds as follows:

**A.** Since time immemorial, the Yukon and Porcupine Rivers, its tributary streams, the streambeds thereof and the riparian areas adjacent thereto, have been natural resources of profound significance to the Gwichyaa Zhee Gwich'in Tribal Government and the Gwich'in people have used these resources for cultural, ceremonial, religious, fishery, seasonal residential and other purposes fundamental to the Tribe's way of life.

**B.** The people of Gwichyaa Zhee Gwich'in Tribal Government have a primary interest in the protection, control and conservation of the water resources which flow into and through the Gwichyaa Zhee Gwich'in Tribal Government's Territory and the quality of such waters must be protected to insure the health, economic, aesthetic and cultural well-being of the Gwich'in People.

**C.** Various sites along the Yukon and Porcupine Rivers are or may be contaminated with toxic or hazardous materials as a result of previous land use activities, many of which were authorized without adequate review of impacts or without adequate disclosure to the Tribe of the potential for such impacts, and the contamination at these sites may pose significant risks to water quality and public health if not properly contained and cleaned up.

**D.** The Gwichyaa Zhee Gwich'in Tribal Government hereby finds that wellhead protection is a proactive approach to managing public groundwater supplies focusing on preventing contaminants from entering recharge areas to public water supply well. Protecting wellheads involves: knowing the location and boundaries of the recharge area; identifying any potential sources of contamination in the recharge area; controlling those potential sources to prevent the release of contaminants; and, controlling future land use in the recharge area to prevent activities which are known to threaten groundwater quality.

**E.** Pursuant to federal law as determined by the U.S. Supreme Court in such cases as *Montana v. United States*, 450 U.S. 544 (1981) and reaffirmed in *Strate v. A-1 Contractors* 117 S. Ct. 1404 (1997), the Gwichyaa Zhee Gwich'in Tribal Government possesses inherent sovereign authority to regulate on-Reservation pollution discharges that affect fundamental Tribal interests and public health and safety, including when such activities are conducted by non-members of the Tribe on privately owned land within the Reservation.

**F.** Under 1988 amendments to the Clean Water Act, 33 U.S.C. §1377, Indian Tribes are entitled to be certified by the U.S. Environmental Protection Agency as authorized to exercise exclusive jurisdiction (Tribal primacy) over all on-Reservation surface and ground water quality matters, including over on-Reservation portions of waters, such as those of the Yukon and Porcupine Rivers, that flow through other jurisdictions.

**G.** Regulation or elimination of all discharges of pollutants into the waters of the Gwichyaa Zhee Gwich'in Tribal Government's Territory is necessary at this time in order to maintain the quality of those waters for their beneficial use by members of the Gwichyaa Zhee Gwich'in Tribal Government and residents of the Reservation.

**H.** Such protection of Reservation waters is not adequately provided for under existing legislation, and such protection will be furthered by the passage, adoption and implementation of this Ordinance.

### **SECTION 7.01.03**

#### ***Purpose***

The purpose of this Ordinance is to exercise comprehensive Tribal regulatory authority over all surface and groundwater matters, and to protect fundamental Tribal cultural, ceremonial, religious, fishery, seasonal residential, public health and safety and water quality issues by ensuring adequate drinking water, protecting beneficial uses, prohibiting all point source discharges and restricting non-point source discharges of pollutants within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Government's Territory.

**SECTION 7.01.04**  
***Authority and Scope***

**A. Authority**

This Tribal Water Quality Ordinance is hereby adopted by Gwichyaa Zhee Gwich'in Tribal Government pursuant to Article 4 of the Tribe's Constitution authorizing the Gwichyaa Zhee Gwich'in Tribal Government to undertake such actions.

**B. Scope**

The provisions of this Ordinance shall apply to all existing and proposed point and non-point pollution discharges into surface or ground waters, and to all activities which have the potential to affect cultural, ceremonial, religious, fishery, seasonal residential, public health and safety, water quality and other fundamental interests of the Tribe, including such activities conducted by non-members of the tribe or on privately owned lands. Activities to be regulated hereunder include but are not limited to:

1. Landfills and open dumps;
2. Storage of animal waste;
3. Automobile graveyards and junkyards;
4. Land filling of sludge or septic system waste;
5. Individual, residential, industrial, commercial or agricultural sewage treatment facilities;
6. Individual, residential, industrial, commercial, fire protection or agricultural water control devices including but not limited to treatment facilities or systems, dams, reservoirs, ponds, pools, tanks, wells, pipelines, flumes, canals and intake or diversion systems;
7. Underground and above-ground liquid storage containers;
8. Surface and subsurface removal of mineral resources, overburden, rock or soil, including quarry operations (borrow pitting) for road surfacing or other uses;
9. All prospecting activities involving removal of soil or rock materials, including operations involving the reopening of existing mine pits, tunnels or quarries;
10. Sand and gravel operations;
11. Activities such as suction dredging, that have the potential to affect the riparian area, water quality or channel morphology;

**12.** Potential non-point source pollution problem areas including but not limited to agricultural, mining, construction, urban runoff, silviculture, salt water intrusion, hydrological modification and residential activities;

**13.** Identified point source pollution problem areas such as, but not limited to, the Old School building with asbestos pollutants

**14.** Application of herbicide, insecticide or other pesticide or toxic materials or fertilizer for non-domestic use.

The provision of this Ordinance shall apply to all wellhead protection areas within the exterior boundaries of the Reservation, to all persons and businesses on the Gwichyaa Zhee Gwich'in Tribal Government's Territory, to all land, trust or fee, and to all activities in areas with the potential to affect water quality, public health and safety and other fundamental interests of the Tribe.

#### **SECTION 7.01.05**

##### ***Consensual Relations among Non-members, the Tribe and Tribal Members***

Any person who is not a member of the Tribe who uses land anywhere within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Government's Territory, whether trust or non-trust land, enters into consensual relationships with the Tribe or its members, through commercial dealings, contracts leases or other arrangements. Such person's discharge of pollutants into or other activities which affect the water quality of surface or ground waters within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Territory will have demonstrably serious impact upon the environment, natural resources, public health and safety of the Tribe and its members, unless such use is in compliance with the provisions of this Ordinance and any regulations promulgated hereunder.



## TITLE 2

### SECTION 7.02.01: Definitions

For the purposes of this Ordinance, the following words and phrases shall have the following meanings:

**“Aquifer”** means any geologic formation capable of yielding a significant amount of potentially recoverable water.

**“Beneficial Uses”** means all lawful uses of waters identified in the water quality control plan. Uses may include but are not limited to domestic, commercial, industrial, agricultural, traditional, cultural and recreational, and uses by fish and wildlife for habitat or propagation.

**“Tribal Council”** means the Gwichyaa Zhee Gwich'in Tribal Council.

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

**“Existing Uses”** means all uses actually attained in the water body on or after passage of this code, whether or not they are explicitly stated as designated uses in the water quality standards or presently existing uses.

**“Hazardous Materials”** means: 1) any substance that poses a threat to human health or the environment. Typical hazardous substances are toxic, corrosive, ignitable, explosive or chemically reactive. 2) Any substance name by the EPA to be reported if a designated quantity of the substance is spilled in the waters of the United States or if otherwise emitted into the environment.

**“Herbicide”** means any chemical compound designed to control or destroy plants, weeds or grasses.

**“Historical Uses”** means all uses that have historical significance for the Gwichyaa Zhee Gwich'in Tribal Government.

**“Insecticide”** means any compound designed or used to kill or control the growth of insects.

**“Impervious Barrier”** means any material or structure on, above or below the ground that does not allow precipitation or surface water to penetrate directly into the underlying surface.

**“Mining”** means any activities designed for the extraction of minerals.

**“Mitigation”** means a measure taken to reduce adverse impacts on the environment.

**“Non-point Source”** means any pollution sources which are diffuse and do not have a single point of origin or are not introduced into a receiving stream from a specific outlet.

**“Person”** means any individual, corporation, partnership, association, agency, municipality, commission or department, including the Gwichyaa Zhee Gwich'in Tribal Government or other federally-recognized Tribal government.

**“Pesticide”** means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest. Also, any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

**“Point Source”** means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, culvert, well, discrete fissures, containers, rolling stock, concentration animal feeding operation, vessel or other floating craft.

**“Pollutant”** means any substance that will alter the quality of the waters of the Reservation.

**“Potential Uses”** means all uses attainable in the water body, whether or not they are explicitly stated as designated uses in the water quality standards or presently potential uses.

**“Quality of the Water or Waters”** means any chemical, physical, biological, bacteriological, radiological and other properties and characteristics of water which affect its use.

**“Tribal Land”** means all land, air and water located within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Government's Territory.

**“Riparian”** refers to land on the banks of a body of water, such as a lake, river or stream.

**“Toxic Materials”** means any chemical or mixture that presents an unreasonable risk or injury to human health or the environment.

**“Recharge Area”** means any area that collects precipitation or surface water and carries it to aquifers. Recharge areas may include areas designated as wellhead protection areas.

**“Variance”** means an authorized written permission for a delay or exception in the application of a given law, ordinance or regulation.

**“Waste”** includes waste water and any and all other substances, liquid, solid, gaseous, radioactive, heat laden, associated with human habitation, or of human or animal origin, or from any of man's activities including producing, manufacturing or processing operation of whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal.

**“Waters of the Tribal Lands or “Tribal Waters”** means any water, surface or underground, contained within, flowing through or bordering upon the Gwichyaa Zhee Gwich'in Tribal Government's Territory or any portion thereof.

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**“Water Quality Control Plan”** is a document designating or establishing for the waters within a specified area:

- 1) beneficial uses to be protected;
- 2) water quality objectives; and
- 3) A program of implementation needed for achieving and maintaining water quality objectives.

**“Water Quality Criteria”** means specific levels of water quality which, if reached, are expected to render a body of water suitable for its beneficial use.

**“Wellhead Protection Area”** means the surface and subsurface area surrounding a water well or well field, supplying a domestic water system, through which contaminants are reasonably likely to move toward and reach such water well or well field.

**TITLE 3*****TRIBAL ENVIRONMENTAL PROTECTION AGENCY***

SECTION 7.03.01: Designation as Lead Tribal Agency

SECTION 7.03.02: Creation of Position of Tribal Water Quality Control Officer;  
Establishment of Riparian Review Committee

SECTION 7.03.03: Powers and Duties of Tribal Water Quality Control Officer

SECTION 7.03.04: Riparian Review Committee

SECTION 7.03.05: Enforcement

**SECTION 7.03.01*****Designation as Lead Tribal Agency***

The Tribal Environmental Department shall be the lead agency for implementing this Tribal Water Quality Ordinance.

**SECTION 7.03.02*****Creation of Position of Tribal Water Quality Control Officer; Establishment of Riparian Review Committee***

There is hereby created the position of Tribal Water Quality Control Officer. The Tribal Water Quality Control Officer shall serve under the direction of the Gwichyaa Zhee Gwich'in Tribal Government and shall be appointed by the Gwichyaa Zhee Gwich'in Tribal Council. The Tribal Water Quality Control Officer shall cooperate with the Riparian Review Committee, the U.S. EPA and other agencies of the federal government or the State of Alaska, as necessary to carry out the intent of this Ordinance and implement the Tribal Water Quality Control Plan.

**SECTION 7.03.03*****Powers and Duties of Tribal Water Quality Control Officer***

The Tribal Water Quality Control Officer shall be responsible for:

**A.** Designating beneficial uses for the waters of the Gwichyaa Zhee Gwich'in Tribal Territory

**B.** Developing a Water Quality Control Plan for the waters of the GZG Tribal Territory. The Water Quality Control Plan shall set out water quality standards and contain sections pertaining to beneficial uses, water quality criteria and anti-degradation policy;

**C.** Identifying water bodies or sections of water bodies which do not support beneficial uses;

**D.** Establishing and overseeing the Tribe's point and non-point source permit review system;

**E.** Conducting biannual assessments of the Tribe's Water Quality Control Plan for review by the Gwichyaa Zhee Gwich'in Tribal Government;

**F.** Conducting biannual assessments of the Tribe's Water Quality Control Plan for review by the Gwichyaa Zhee Gwich'in Tribal Government; and

**G.** Developing regulations to further the purpose of this Ordinance.

**SECTION 7.03.04**  
***Riparian Review Committee***

The Riparian Review Committee shall consist of three persons: the Water Quality Control Officer or his/her representative; tribal member or community member, as an advisory committee of the Tribal Council.

The Riparian Review Committee shall be responsible for:

**A.** Reviewing the Water Quality Control Plan, Biannual Water Quality Assessment, National Pollution Discharge Elimination System Permits, other permits and review procedures, as set forth in this Ordinance;

**B.** Specifying document submission and record keeping requirements to be adhered to by all potential dischargers or applicants for permits;

**C.** Establishing criteria for the assessment of application and processing fees;

**D.** Issuing permits, as required by this Ordinance, after approval by the Gwichyaa Zhee Gwich'in Tribal Government. The Riparian Review Committee shall provide a recommendation with proposed findings on each permit for Gwichyaa Zhee Gwich'in Tribal Government;

**E.** Entering and inspecting any property, premises or facility involved in any activity which may affect water quality on any lands within the exterior boundaries of the Reservation. Such inspections may include, but are not limited to:

**1.** Obtaining samples of soil, rock, vegetable, air, water or other substances deemed necessary; and

**2.** Setting up and maintaining monitoring equipment for the purpose of assessing compliance with beneficial uses, water quality criteria, anti-degradation policy, applicable regulations, best management practices or health or safety hazards;

**F.** Obtaining from the Tribal Court a warrant or other order which may be necessary to carry out its responsibilities under this ordinance; and

**G.** Reviewing and recommending regulations for the Gwichyaa Zhee Gwich'in Tribal Government approval to further the purposes of this Ordinance, following notice and hearings or written opportunity for public comment.

**SECTION 7.03.05**  
***Enforcement***

The provisions of this Ordinance shall be enforced by the Gwichyaa Zhee Gwich'in Tribal Government. Any Tribal Law Enforcement Officer, or any person officially appointed by the Gwichyaa Zhee Gwich'in Tribal Government in consultation with the Gwichyaa Zhee Gwich'in Tribal Council may issue the following for violations:

**A. Cease and Desist Orders or Notices of Violation:**

Upon a determination pursuant to an investigation as outlined in Chapter 7, Title 9, Section 4 of this Ordinance that any person is discharging or causing to be discharged or is about to discharge into any Reservation waters, directly or indirectly, any pollutant which constitutes a violation of this Ordinance, a Cease and Desist Order or Notice of Violation will be served upon the responsible parties and the landowner.

**B.** It shall be a civil offense, for which a fine of not less than those of the City of Fort Yukon Code listed fines shall be assessed, to obstruct or otherwise interfere with investigative or other activities of any agent or officer of the Tribe carrying out this Ordinance.

**TITLE 4**  
***ANTI-DEGRADATION POLICY AND IMPLEMENTATION PLAN***

SECTION 7.04.01: Anti-degradation Policy

SECTION 7.04.02: Implementation Plan

**SECTION 7.04.01**  
***Anti-Degradation Policy***

**A.** Existing uses shall be protected. The level of water quality necessary to protect existing uses shall be maintained.

**B.** Where existing water quality exceeds levels necessary to support propagation of fish and wildlife and recreation in and on the water, that level of water quality shall nonetheless be maintained and protected unless it is found, after full satisfaction of governmental and public participation requirements, that a lower level of water quality is acceptable in order to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation of water quality, the Tribe shall impose the highest statutory and regulatory requirements for point sources and shall impose best management practices for non-point sources.

**C.** Where high quality waters constitute an outstanding national or Tribal resource, or waters of exceptional recreational or ecological significance, the water quality and uses of those water bodies shall be maintained and protected.

**D.** In those cases where potential water quality impairments associated with thermal discharge are involved, the anti-degradation policy and implementation method shall be consistent with Section 316 of the Clean Water Act, as amended (33 U.S.C. §1326).

**SECTION 7.04.02**  
***Implementation Plan***

Acting under authority delegated by the Gwichyaa Zhee Gwich'in Tribal Government, the Tribal Water Quality Control Officer shall implement the Tribe's Water Quality Control Plan, including the anti-degradation policy, by establishing and maintaining controls on the introduction of pollutants into surface waters. More particularly, the Tribal Environmental Officer shall do the following:

**A.** Establish and maintain controls on the introduction of pollutants in surface waters of the Reservation;

**B.** Monitor water quality to assess the effectiveness of pollution controls and to determine whether water quality standards are being attained;

**C.** Obtain information as to the impact of effluents on receiving waters;

- D.** Review the adequacy of the existing data base and obtain additional data when required;
- E.** Assess the probable impact of effluents on receiving waters in light of designated uses and numeric and narrative standards;
- F.** Require the highest and best degree of wastewater treatment practicable and commensurate with protecting and maintaining designated uses and existing water quality;
- G.** Develop water quality based effluent limitations and comments on technology-based effluent limitations, as appropriate, for inclusion in any federal permit issued to a discharger pursuant to Section 402 of the Clean Water Act (33 U.S.C. §1342);
- H.** Require that these effluent limitations be included in any such permit as a condition for Tribal certification pursuant to Section 401 of the Clean Water Act (33 U.S.C. §1341);
- I.** Coordinate water pollution control activities with other constituent agencies and other local, state and federal agencies, as appropriate;
- J.** Develop and pursue inspection and enforcement programs in order to ensure that dischargers comply with requirements of the Water Quality Control Plan and any requirements promulgated thereunder, and in order to support the enforcement of federal permits by the U.S. EPA;
- K.** Provide continuing technical training for wastewater treatment facility operators through training and certification programs;
- L.** Provide funds to assist in the construction of publicly owned wastewater treatment facilities through the construction grants and revolving funds program authorized by the Clean Water Act (33 U.S.C. §1281), and other federal funds available for such purpose; and
- M.** Encourage, in conjunction with other agencies, voluntary implementation of best management practices to control non-point sources of pollutants to achieve compliance with the standards set out in the Water Quality Control Plan.



**TITLE 5**  
***SURFACE WATER QUALITY STANDARDS***

- SECTION 7.05.01: Designated Uses
- SECTION 7.05.02: General Water Quality Criteria
- SECTION 7.05.03: Managing Discharges Attributable to Point and Non-Point Sources
- SECTION 7.05.04: Water Quality Criteria for Toxic Pollutants
- SECTION 7.05.05: Aquatic Life Criteria
- SECTION 7.05.06: Biological Criteria
- SECTION 7.05.07: Wildlife Criteria
- SECTION 7.05.08: Wetlands Criteria
- SECTION 7.05.09: Modification of Standards to Reflect Attainability
- SECTION 73.05.10: Revision of Standards and Errors

The water quality standards described in this section apply to all waters of the Gwichyaa Zhee Gwich'in Tribal Territory. Water quality standards described in this section designate beneficial uses and water quality for waters of the Gwichyaa Zhee Gwich'in Tribal Territory. Any subsequent standards that may be described in the Water Quality Control Plan must be at least as stringent as the standards provided below.

**SECTION 7.05.01**  
***Designated Uses***

For the purposes of this Ordinance, there are hereby established the following designated uses for the waters of the Gwichyaa Zhee Gwich'in Tribal Territory. A water body that is not listed in Title 5 Section 2 but that is a tributary to a listed water body shall be protected by the water quality standards that have been established for the nearest downstream water body listed in Chapter 7, Title 5, Section 2. Water bodies within the Gwichyaa Zhee Gwich'in Tribal Territory which do not have beneficial uses designated for them are assigned wildlife habitat designations. These wildlife habitat designations in no way affect the presence or absence of other beneficial use designations in these water bodies. Further classification will be based on the size of the water body and its historic and environmental significance. Further, if a water body has more than one designated use listed in Chapter 7, Title 5 Section 2, the applicable water quality criterion for a pollutant is the most stringent of those prescribed to protect the designated uses of the water body.

The codes used in Chapter 7, Title 5, Section 2 are as follows:

**A.** Municipal and Domestic Supply (MUN) includes usual uses in community water systems and domestic uses from individual water supply systems.

**B.** Agricultural Supply (AGR) includes crop, orchard and pasture irrigation, stock watering, support of vegetation for range grazing and all uses in support of farming and ranching operations.

**C.** Industrial Service Supply (IND) includes uses that do not depend primarily on water quality such as mining, cooling water supply, hydraulic conveyance, gravel washing and fire protection.

**D.** Industrial Process Supply (PROC) includes process water supply and all uses related to the manufacturing of products.

**E.** Groundwater Recharge (GWR) includes natural or artificial recharge for future extraction for beneficial uses.

**F.** Hydropower Generation (POW) means used for hydropower generation.

**G.** Cold Freshwater Habitat (COLD) includes uses of water that support cold water ecosystems including but not limited to preservation or enhancement of aquatic habitats, vegetation, fish or wildlife, including invertebrates.

**H.** Water Contact Recreation (REC-1) includes all recreational uses involving actual body contact with water, such as swimming, wading, water-skiing, skin-diving, surfing, sport fishing, uses in therapeutic spas and other uses where ingestion of water is reasonably possible.

**I.** Non-Contact Water Recreation (REC-2) includes recreational uses which involve the presence of water but do not require contact with water, such as picnicking, sunbathing, hiking, beach combing, camping, pleasure boating, hunting and aesthetic enjoyment.

**J.** Preservation of Areas of Special Biological Significance (BIOL) includes aquatic and wildlife refuges, ecological reserves and designated areas of special biological significance.

**K.** Wildlife Habitat (WILD) includes water bodies that provide a water supply and vegetation habitat for the maintenance of wildlife.

**L.** Preservation of Threatened and Endangered Species (T&E) provides an aquatic habitat necessary, at least in part, for the survival of certain species established as being threatened and endangered species.

**M.** Fish Migration (MGR) provides a migration route and temporary aquatic environment for anadromous or other fish species.

**N.** Fish Spawning (SPWN) provides a high quality aquatic habitat especially suitable for fish spawning.

**O.** Cultural (CUL) has religious, ceremonial or subsistence significance or provides a role in the Gwichyaa Zhee Gwich'in Tribal culture.

**SECTION 7.05.02*****General Water Quality Criteria***

The following criteria set forth limits or levels of water quality characteristics for surface waters to ensure the reasonable protection of beneficial uses from degradation or unreasonable effect of point and non-point pollution which may be a result of any cause including agricultural, mining, construction, urban runoff, silviculture, salt water intrusion, hydrological modification and residential activities. The water quality standards included in this Ordinance are developed on a GZG Tribal Territory-wide basis.

**A. Color:** Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.

**B. Tastes and Odors:** Waters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin that cause nuisance or adversely affect beneficial uses.

**C. Floating Material:** Waters shall not contain floating material, including solids, liquids, foams and scum in concentrations that cause nuisance, adversely affect beneficial uses or degrade water quality.

**D. Suspended Material:** Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.

**E. Settleable Material:** Waters shall not contain substances in concentrations that result in deposition of materials that cause nuisance or adversely affect beneficial uses.

**F. Oil and Grease:** Waters shall not contain oils, greases, waxes or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance or that otherwise adversely affect beneficial uses.

**G. Biostimulatory Substances:** Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.

**H. Sediment:** The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

**I. Turbidity:** Turbidity shall not be increased more than a percentage above naturally occurring background levels as used in Public Health standards within the State.

**J. pH:** The pH shall not be depressed below nor raised above the standard PHS standards.

**K. Dissolved Oxygen:** Dissolved concentrations shall not be reduced below the following minimum levels at any time.

Waters designated COLD

Waters designated SPWN

Waters designated SPWN during critical spawning and egg incubation periods

**L. Bacteria:** The bacteriological quality of waters of the Reservation shall not be degraded beyond natural background levels. In waters designated for contact recreation (REC-1), the median fecal coliform concentration based on a minimum of not less than five samples for any 30-day period shall not exceed 50/100 ml., nor shall more than the percent of total samples during any 30-day period exceed [\_\_\_\_\_/]100 ml per the PHS standard testing.

**M. Temperature:** The natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Gwichyaa Zhee Gwich'in Tribal Government that such alteration in temperature does not adversely affect beneficial uses. At no time or place shall the temperature of any water be increased by more than 5 degrees F above natural receiving water temperature.

**N. Toxicity:** All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal or aquatic life. Compliance with this objective will be determined by use of indicator organisms, analyses of species diversity, population density, growth anomalies, bioassays of appropriate duration or other appropriate methods as specified by the Riparian Review Committee.

1. The survival of aquatic life in surface waters subjected to waste discharge or other controllable water quality factors shall not be less than that for the same water body in areas unaffected by the waste discharge, or when necessary for other control water that is consistent with the requirements for "experimental water" as described in Standard Methods for the Examination of Water and Waste Water, latest edition. At a minimum, compliance with this objective as stated in the previous sentence shall be evaluated with a 96-hour bioassay.

2. Effluent limits based upon acute bioassays of effluents will be prescribed where appropriate, additional numerical receiving water standards for specific toxicants will be established as sufficient data become available, and source control toxic substances will be encouraged.

**O. Pesticides:** No individual pesticide or combination of pesticides shall be present in concentrations that adversely affect beneficial uses. There shall be no bioaccumulation in pesticide concentrations found in bottom sediments or aquatic life.

**P. Radioactivity:** Radionuclides shall not be present in concentrations which are deleterious to human, plant, animal or aquatic life nor which result in the accumulation of radionuclides in the food web to an extent which present a hazard to human, plant, animal or indigenous aquatic life. Maximum Contaminant Constituent Level, pCi/1 Combined Radium-226 and Radium-228 Gross Alpha particle activity (Including Radium-226 but excluding Radon and Uranium) Tritium Strontium-90 Gross Beta particle activity

### **SECTION 7.05.03**

#### ***Managing Discharges Attributable to Point and Non-point Sources***

Water quality standards shall be the basis for managing discharges attributable to point and non-point sources of pollution. Water quality standards are not used to control, and are not invalidated by, natural background phenomena or acts of God.

### **SECTION 7.05.04**

#### ***Water Quality Criteria for Toxic Pollutants***

The potential benefits to human health of establishing toxic criteria include:

- A.** Reducing the potential health risks to persons eating fish contaminated with toxic pollutants;
- B.** Reducing the potential health risks to persons drinking contaminated drinking water; and
- C.** Reducing the potential health risks to swimmers from dermal exposure to contaminated surface waters. The criteria consist of two measures. The “Water and Organisms” measure represents the maximum ambient water concentration for consumption of both contaminated water and fish or aquatic organisms and to all water designated MUN. The “Organisms Only” measure represents the maximum ambient water concentration for consumption of fish or other aquatic organisms and applies to all waters without an MUN designation. The exposure to concentrations above the following specified criteria shall not exceed a thirty (30) day duration. All concentrations are micrograms per liter (mg/L), except asbestos, which is million fibers per liter (MFL).

**SECTION 7.05.05**  
***Aquatic Life Criteria***

The concentration for each compound listed below is a criteria not to be exceeded in waters for aquatic life. The Acute criteria or Critical Maximum Concentration (CMC) is the threshold value at or below which there should be no unacceptable effects to freshwater aquatic organisms and their uses if the one-hour average concentration does not exceed that CMC value more than once every three years on average. The Chronic Criteria or Criteria Continuous Concentration (CCC) is the threshold value at or below which there should be no unacceptable effects to freshwater aquatic life and their uses if the four-day average concentration does not exceed that CCC value more than once every three years on average. Where no criteria have been established, the Lowest Observable Adverse Effect Level (LOAEL) shall apply.

[Insert Table here]

**SECTION 7.05.06**  
***Biological Criteria***

The following biological criteria shall apply to the waters of the GZG Tribal Territory.

- A.** All surface waters shall be of sufficient quality to support aquatic biota without detrimental changes in the resident aquatic communities.
- B.** Waters of the GZG Tribal Territory shall be free from substances, whether attributable to point source discharges, non-point sources or instream activities, in concentrations or combinations which would impair the structure or limit the function of the resident aquatic community as it naturally occurs.
- C.** The structure and function of the resident aquatic community shall be measured by biological assessment methods approved by the Riparian Review Committee.
- D.** Determination of impairment or limitation of the resident aquatic community may be based on comparison with the aquatic community found at an appropriate reference site or region.

**SECTION 7.05.07**  
***Wildlife Criteria***

All surface waters shall be of sufficient quality to protect and support all life stages of resident or migratory wildlife species which lie in, on or near the waters of the Gwichyaa Zhee Gwich'in Tribal Territory.

**SECTION 7.05.08**  
***Wetlands Criteria***

The following wetlands criteria shall apply to all waters of the Gwichyaa Zhee Gwich'in Tribal Territory:

- A.** Water quality in wetlands shall be maintained at naturally occurring levels, within the natural range of variation for individual wetlands.
- B.** Physical and biological characteristics shall be maintained and protected by:
- 1.** Maintaining hydrological conditions, including hydroperiod, hydrodynamics and natural water temperature variations;
  - 2.** Maintaining the natural hydrophitic vegetation; and
  - 3.** Maintaining substrate characteristics necessary to support existing and characteristic uses.

**SECTION 7.05.09**  
***Modification of Standards to Reflect Attainability***

In the event that monitoring of water quality identifies areas where attainable water quality is less than what is required by the standards set out in the Tribal Water Quality Control Plan, then the Gwichyaa Zhee Gwich'in Tribal Government may modify the Tribal Water Quality Control Plan to reflect attainability. Modification thereof shall be within the sole discretion of the Gwichyaa Zhee Gwich'in Tribal Government, but shall be subject to the provisions of the Clean Water Act, and shall be carried out in accordance with the use attainability analysis procedures set forth in the Clean Water Act.

**SECTION 7.05.10**  
***Revision of Standards and Errors***

**A. Revisions**

The Tribal Water Quality Control Plan and standards promulgated thereunder may be revised, from time to time, or as the need arises, or as the result of updated scientific information.

**B. Errors**

Errors resulting from inadequate and erroneous data or human or clerical oversight will be subject to correction by the Gwichyaa Zhee Gwich'in Tribal Government. The discovery of such errors does not render the remaining and unaffected provisions of the Tribal Water Quality Control Plan and standards set forth in the Plan invalid. If any provision of the Tribal Water Quality Control Plan, or the application of any provision of the Plan including any standards set out in the Plan, to any person or circumstance, should be held to be invalid, the application of such provision to other persons and circumstances and the remainder of the Tribal Water Quality Control Plan shall not be affected thereby.

**TITLE 6**  
***SAMPLING AND ANALYSIS***

SECTION 7.06.01: Sample Collection, Preservation and Analysis to Determine Water Quality and Maintain Standards

SECTION 7.06.02: Bacteriological Surveys

SECTION 7.06.03: Sampling Procedures

**SECTION 7.06.01**  
***Sample Collection, Preservation and Analysis to Determine Water Quality and Maintain Standards***

Sample collection, preservation and analysis used to determine water quality and to maintain the standards set forth in the Water Quality Control Plan shall be performed in accordance with procedures prescribed by the latest EPA authoritative analytical reference, including but not limited to the latest editions of any of the following authorities: (1) American Public Health Association, *Standard Methods for the Examination of Water and Wastewater*; (2) "Methods for Chemical Analysis of Water and Wastes"; or (3) "EPA Guidelines Establishing Test Procedures for the Analysis of Pollutants."

**SECTION 7.06.02**  
***Bacteriological Surveys***

The monthly geometric mean used in assessing attainment of standards when a minimum of five samples is collected in a 30-day period. When less than five samples are collected in a 30-day period, no single sample shall exceed the applicable upper limit for bacterial density set for in Section 503(L).

**SECTION 7.06.03**  
***Sampling Procedures***

**A. Streams:** Stream monitoring stations below waste discharges shall be located a sufficient distance downstream to ensure adequate vertical and lateral mixing.

**B. Reservoirs:** Sampling stations in reservoirs shall be located at least 250 feet from a waste discharge, and, otherwise, where the attainment of a water quality standard is to be assessed. Water quality measurements shall be taken at intervals in the water column at a sampling station. For toxic substances and nutrients, the entire water column shall be made in the epilimnion. In non-stratified lakes, measurements will be made at intervals throughout the entire water column.



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**TITLE 7**  
***NOTICE OF DISCHARGES***

SECTION 7.07.01: Notice of Discharge

**SECTION 7.07.01**  
***Notice of Discharge***

Except as permitted pursuant to this Ordinance, any person that discharges any pollutant into the waters of the Gwichyaa Zhee Gwich'in Tribal Territory shall immediately notify the Tribal Environmental Department of such discharge and shall fully disclose the information regarding the discharge including the type of pollutant, the amount, the location and other information required by the Riparian Review Committee.

**TITLE 8**  
***PERMIT AND INSPECTION PROGRAM***

SECTION 7.08.01: Permits Required  
SECTION 7.08.02: Categorical Exclusions  
SECTION 7.08.03: Issuance of Permit; Final Environmental Determination  
SECTION 7.08.04: Monitoring and Records

**SECTION 7.08.01**  
***Permits Required***

No person shall discharge any pollutant into any Tribal bodies of water from a point source or conduct dredge and fill activities in any designated wetland area of the Gwichyaa Zhee Gwich'in Territory without first having applied for and obtained a permit from the Riparian Review Committee after approval by the Gwichyaa Zhee Gwich'in Tribal Government. Any person who intends to alter or enlarge an existing activity described in this Chapter of this Ordinance, or who intends to cause or direct such alteration or enlargement of such activities, shall, prior to alteration or enlargement of such activities, apply for and obtain a valid permit from the Riparian Review Committee after approval by the Gwichyaa Zhee Gwich'in Tribal Government.

**A. Contents of Application:** Permit applications will include the following information:

1. Identification and address of the owner and operator of the activity, facility or process from which the discharge is to be permitted;
2. Location and quantity and quality characteristics of the permitted discharge;
3. Effluent limitations and requirements for treatment prior to discharge;
4. Equipment and procedures required for mandatory monitoring as well as record-keeping and reporting requirements;
5. Schedules of compliance;
6. Procedures to be followed by tribal personnel for entering and inspecting the premises;
7. Submission of pertinent plans and specifications for the facility, process or activity which is the source of the discharge;
8. Restrictions on transfer of the permit;
9. Procedures to be followed in the event of expansion or modification of the facility, process or activity from which the discharge occurs or the quantity, quality or frequency of the discharge; and
10. Duration of the permit and renewal procedures.

**B. Application under Oath**

Each applicant shall sign the permit application under oath, certifying the truth and accuracy of the information contained in the permit application, in a form approved by the Riparian Review Committee.

**C. Fees**

A processing and monitoring fee, as established by the Riparian Review Committee, shall be paid to the Tribe at the time of filing. These fees shall be used for costs associated with administering the Water Quality Control Plan.

**D. Review of Application by Tribal Departments**

The original and two copies of the application and any proposed mitigation plan shall be furnished by the applicant. Upon receipt of a permit application, the Riparian Review Committee shall transmit one copy to the Gwichyaa Zhee Gwich'in Tribal Government with their written recommendations. Failure of the departments to respond in writing to the Riparian Review Committee within thirty (30) days of receipt shall indicate approval or no desire to comment by the department.

**E.** Except as otherwise provided in this Ordinance, permit applicants shall demonstrate that the proposed alteration, enlargement or new regulated activity will not adversely affect water quality and is designed to avoid substantial disturbance of the soils, topography, drainage, vegetation and other water related natural characteristics of the site.

**F. Public Notice and Hearing on Permit Application**

Public notice of every complete application for a discharge permit shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue or deny a permit. Procedures for the circulation of public notice shall be established by the Tribe and shall include at least the following:

1. Notice shall be circulated within the geographical areas of the proposed discharge.
2. Notice shall be mailed to any person or group upon request.
3. Upon request, the Tribe shall add the name of any person or group to a mailing list to receive copies of notices for all discharge applications within the Reservation or within a certain geographic area.
4. The Tribe shall promulgate such regulations as are necessary and appropriate to provide an opportunity for public hearing, when appropriate, prior to granting or denying a discharge permit.

**G.** Permit applications, any required environmental documents and mitigation plan proposals must demonstrate compliance with applicable Tribal regulations including but not limited to those pertaining to water quality, hazardous substances, environmental impact evaluations and riparian protection.

**H.** Nothing in any permit shall ever be construed to prevent or limit the application of any emergency power of the Tribe.

### **SECTION 7.08.02**

#### ***Categorical Exclusions and Variances***

**A.** The Gwichyaa Zhee Gwich'in Tribal Government may by regulation exclude categories of uses, activities or projects from requirements of this Ordinance for one or more of the following reasons:

1. Naturally occurring pollution;
2. Natural low-flow conditions;
3. Irretrievable human-caused conditions; and/or
4. Substantial and widespread economic and social impacts.

**B.** A variance to establish water quality objectives may be granted by the Riparian Review Committee after approval by the Gwichyaa Zhee Gwich'in Tribal Government, only when the applicant satisfactorily demonstrates that:

1. Water quality will not be permanently impaired;
2. Public health will not be threatened;
3. No significant adverse environmental effects will occur due to the limited size or scale of a proposed activity;
4. A mitigation plan approved by the Riparian Review Committee demonstrates that all discharges will be below established water quality standards as set forth in the Water Quality Control Plan before the expiration of the variance;
5. The variance does not exceed one year from the date of issuance; and
6. A 30-day public review period has passed with at least one public meeting.

### **SECTION 7.08.03**

#### ***Issuance of Permit; Final Environmental Determination***

**A.** Upon compliance with this Ordinance, the Riparian Review Committee may make findings and issue the permit as provided in this Ordinance. The permit shall specify the person authorized to operate the facility and the boundaries of the facility. The permit shall contain such conditions as are necessary to protect the public health and safety and the environment.

**B.** Copies of the permit (including conditions specified therein), findings and any documents setting forth the Riparian Review Committee's final environmental determination shall be made available for inspection and copying to any person so requesting.

**C.** Denial of Permit. The Riparian Review Committee shall deny the permit when any of the following occur:

1. The Riparian Review Committee determines that the proposed discharge is not consistent with this Ordinance or other applicable tribal or federal laws.
2. The Riparian Review Committee determines that it will be impossible to propose a permit that will be mutually satisfactory to the Committee and the discharger.
3. Any other circumstances provided by law.

**D.** Upon denial of a permit, the Riparian Review Committee shall give written notice of the denial to the discharger and any other person who has requested in writing that such notice be given. Notice to the operator shall be accompanied by a form request for re-hearing.

**E.** An operator who desires an appeal of the denial of a permit shall file with the Riparian Review Committee a written request for a re-hearing before the Committee within fifteen (15) days after receiving notice of the denial of the permit. The hearing procedures will be the same as the administrative process set out herein.

#### **SECTION 7.08.04**

##### ***Monitoring and Records; Inspections***

###### **A. Monitoring and Records**

The permittee shall monitor the discharge pursuant to the conditions of the permit. Sampling and measurements taken for the purpose of monitoring shall be representative of the monitored activity. The permittee shall retain records of all monitoring information, including calibration and maintenance records and copies of all reports required by the permit. Records for monitoring shall include:

1. The date, exact place and time of sampling or measurement;
2. The individual(s) who performed the sampling or monitoring;
3. The date analysis was performed;
4. The analytical techniques or methods used; and
5. The results of such analysis.

**B. Inspections and Entry**

The permittee shall allow an authorized agent of the Tribal Environmental Protection Agency or the designated enforcement officer, upon presentation of credential to:

1. Enter upon the permittee's premises where a regulated facility, activity or process is located, or where records must be kept under the conditions of the permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment) practices or operations regulated or required under the permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the appropriate Tribal Ordinance, any substances or parameters at any location.

**TITLE 9*****ENFORCEMENT PROGRAM/ADMINISTRATIVE PROCEDURES***

- SECTION 7.09.01: Enforcement Policy
- SECTION 7.09.02: Enforcement Agency
- SECTION 7.09.03: Enforcement Activities
- SECTION 7.09.04: Notice of Violation; Cease and Desist Order
- SECTION 7.09.05: Informal Conferences
- SECTION 7.09.06: Reports Required
- SECTION 7.09.07: Enforcement Hearings
- SECTION 7.09.08: Civil Penalties and Corrective Action
- SECTION 7.09.09: Judicial Enforcement
- SECTION 7.09.10: Special Provisions for Tribal Departments and Agencies

**SECTION 7.09.01*****Enforcement Policy***

It is the policy of the Riparian Review Committee to encourage informal, practical, result-oriented resolution of alleged violations and actions needed to prevent damage to Reservation resources or harm to the health, safety or welfare of the Gwichyaa Zhee Gwich'in Tribal Territory population. It is also the policy of the Riparian Review Committee, consistent with the principles of due process, to provide effective procedures for enforcement.

**SECTION 7.09.02*****Enforcement Agency***

The Tribal Environmental Department shall be responsible for enforcing the provisions of this Code. Specifically, the Tribal Environmental Department shall conduct investigations when a complaint is received by the Tribal Water Quality Control Officer or where the Tribal Water Quality Control Officer, Riparian Review Committee or other Tribal agency believes that a violation of this Ordinance has occurred.

**SECTION 7.09.03*****Enforcement Activities***

Where a written and verified complaint shall be filed with the Tribal Water Quality Control Officer and reviewed by the Riparian Review Committee alleging that, or where the Tribal Water Quality Control Officer or Riparian Review Committee itself shall have cause to believe that, any person is violating any discharge regulation or permit condition, the Riparian Review Committee shall cause a prompt investigation to be made.

**SECTION 7.09.04*****Notice of Violation; Cease and Desist Order***

If the Riparian Review Committee finds after an investigation of this Ordinance that a violation of any regulation or permit condition exists, the Committee shall promptly notify both the alleged violator and the Gwichyaa Zhee Gwich'in Tribal Government in writing. In the case of an apparent violation of this Ordinance, the Riparian Review Committee is authorized to issue a Notice of Violation to the person(s) apparently responsible for the violation, and, if the apparent violation occurred on property owned by a person other than the alleged violator, a Notice of Violation shall also be issued to the landowner. In the case of a continuing violation or a threatened violation, the Riparian Review Committee is authorized to issue a Cease and Desist Order to prevent the violation from continuing or occurring. Failure to comply with a Cease and Desist Order shall constitute a violation of this Ordinance. Both a Notice of Violation and a Cease and Desist Order may be issued for a single incident. A Notice of Violation will include a Summons to appear before the Riparian Review Committee at an enforcement hearing at a specified time and date, and shall advise the alleged violator that failure to appear may result in the imposition of civil penalties. If a Cease and Desist Order is issued without an accompanying Notice of Violation, the Order will inform the recipient that failure to comply with the Order will constitute a violation of this Ordinance which will result in the issuance of a Notice of Violation and may result in the imposition of civil penalties.

**SECTION 7.09.05*****Informal Conferences***

The Riparian Review Committee shall afford the landowner or his or her representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the Riparian Review Committee determines that there may be either imminent environmental damage to a Reservation resource or adverse impact upon the health, safety and welfare of the Reservation population. Informal conferences may be used at any stage in the enforcement proceedings, except that the Riparian Review Committee may refuse to conduct informal conferences with respect to any matter then pending before the Riparian Review Committee or Gwichyaa Zhee Gwich'in Tribal Court.

**SECTION 7.09.06*****Reports Required***

The Riparian Review Committee shall keep written notes of the date and place of the conference, the persons in attendance, the subject matter discussed and any decisions reached with respect to further enforcement action.



### **SECTION 7.09.07**

#### ***Enforcement Hearings***

If the landowner and the Riparian Review Committee are unable to resolve the matter via an informal conference, the Riparian Review Committee is authorized to conduct adjudicatory hearings to determine if a violation of this Ordinance has occurred. In such a hearing the Gwichyaa Zhee Gwich'in Tribal Government, in cooperation with the Tribal Quality Control Officer, shall present the case to the Riparian Review Committee to establish that the person(s) charged has (have) committed a violation of this Ordinance. Any person so charged shall be entitled, at his or her own expense, to be represented by an attorney or other representative.

#### **A. Burden of Proof**

The Gwichyaa Zhee Gwich'in Tribal Government shall have the burden of proving that a violation of this Ordinance has occurred and that a person charged was responsible for the violation. The Riparian Review Committee shall rule that a violation of this Ordinance has occurred if it finds that the charges are supported by substantial evidence and that a preponderance of the credible evidence supports a finding that a violation has occurred.

#### **B. Enforcement Orders**

Within thirty (30) days after the date of any enforcement hearing, the Riparian Review Committee shall issue a written decision. If the Committee determines that a violation has occurred and that the person(s) charged was (were) responsible for the violation, the Committee's decision shall include an Enforcement Order.

### **SECTION 7.09.08**

#### ***Civil Penalties and Corrective Action***

An Enforcement Order shall direct any person(s) found to have committed a violation of this Ordinance to take whatever corrective action the Riparian Review Committee deems appropriate under the circumstances. An Enforcement Order may impose civil penalties in accordance with a schedule of civil penalties prescribed in the Committee's rules. Alternatively, an Enforcement Order may impose civil penalties in the event that a person found to have committed a violation of this Ordinance does not take corrective action in accordance with the Order within a prescribed time frame. If a person who has been found to have committed a violation does not take corrective action within the prescribed time frame, an appropriate department or agency of the Gwichyaa Zhee Gwich'in Tribal Government may take the necessary corrective action, in which case, the amount of any civil penalty shall be increased by twice the amount of the cost incurred by the Tribal department or agency in taking the corrective action.

**A. Emergency Orders**

Notwithstanding any other provision of this Ordinance, if the Riparian Review Committee determines that noncompliance with this Ordinance is presenting an imminent and substantial threat to the public health, welfare or environment and determines, in consultation with the Tribe's attorneys, that it is not practicable to assure prompt protection of the public health, welfare or environment of an administrative or judicial enforcement action under this Part, the Committee may issue such orders as may be necessary to protect the public health welfare or environment. Any such order shall be effective immediately upon issuance and shall remain in effect for a period not to exceed sixty (60) days.

**B. Revocation of Permit**

Failure of any person to comply with any Enforcement Orders will result in an immediate revocation of his or her permit. In order to obtain a reinstatement of such permit, the person(s) against whom the Enforcement Order was issued must first demonstrate compliance with the Order and pay all outstanding penalties and then petition for reinstatement of the permit with the Riparian Review Committee.

**SECTION 7.09.09**  
***Judicial Enforcement***

The Gwichyaa Zhee Gwich'in Tribal Court shall have jurisdiction of all cases and controversies arising under this Ordinance.

**A.** The Riparian Review Commission may request the Gwichyaa Zhee Gwich'in Tribal Government to authorize the Tribal Environmental Department to file an action in Tribal Court pursuant to this Ordinance for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties and clean up and administrative costs associated with the enforcement of this Ordinance (except that any suit against the Tribe or a tribal department or agency shall be for injunctive relief only and not for penalties or other money damages), in any of the following instances:

1. Whenever a person has violated, or is in violation of, any provision of this Ordinance, including but not limited to a regulation, permit or order issued pursuant to this Ordinance;
2. Whenever a person submits false information under this Ordinance or regulations promulgated under this Ordinance; or
3. whenever a person is creating an imminent and substantial endangerment to the public health, welfare, environment or cultural resources of the Tribe, in which case the Committee shall request the Tribal Environmental Protection Agency to pursue injunctive relief but not the assessment of penalties, unless the

endangerment is caused by a violation, as specified in paragraphs (1) and (2) above.

**B.** Any person who in violation of this Ordinance discharges any pollutant into the waters of the Reservation shall be liable for all costs associated with or necessary to clean up, abate or remove said pollutants from the waters of the Reservation and restore the quality of the waters of the Reservation to their condition as they existed immediately prior to the discharge.

#### **SECTION 7.09.10**

##### ***Special Provisions for Tribal Departments and Agencies***

In any case in which the Gwichyaa Zhee Gwich'in Tribal Government or any Tribal agency or department is alleged to have violated the terms and conditions of a discharge permit, or to have conducted discharge activities without a permit, the Chairperson of the Riparian Review Committee shall bring the matter to the attention of Gwichyaa Zhee Gwich'in Tribal Government who shall consider taking action to ensure compliance with this Ordinance. If the matter cannot be resolved informally, the Committee shall conduct an enforcement hearing for the purpose of making factual determinations and issuing a decision recommending a course of corrective action if necessary.

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**TITLE 10  
APPEALS**

SECTION 7.10.01: Judicial Review

**SECTION 7.10.01**  
*Judicial Review*

Any person who is aggrieved by the issuance or denial of a discharge permit without respect to whether that person, corporation or other entity is a party to such permit application, or who is the subject of an Enforcement Order, may file an appeal with the Gwichyaa Zhee Gwich'in Tribal Court. The Court is authorized to hear such appeal.

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**TITLE 11**  
***OTHER PROVISIONS***

SECTION 7.11.01: Severability

SECTION 7.11.02: Sovereign Immunity Preserved

**SECTION 7.11.01**  
***Severability***

If any provision of this Ordinance, or the application thereof, is held invalid, the remainder of this Ordinance, or applications of such provisions, shall not be affected.

**SECTION 7.11.02**  
***Sovereign Immunity Preserved***

Nothing in this Ordinance is intended to, nor should be interpreted as a waiver of the Tribe's sovereign immunity from any lawsuit, or as authorization for a claim for monetary damages from the Tribe.

**CHAPTER 8  
TRIBAL AIR QUALITY**

**TITLE 1  
*SHORT TITLE, FINDINGS AND PURPOSE***

- SECTION 8.01.01: Short Title
- SECTION 8.01.02: Findings
- SECTION 8.01.03: Purpose
- SECTION 8.01.04: Authority and Scope
- SECTION 8.01.05: Applicability
- SECTION 8.01.06: Consensual Relations among Non-members, the Tribe and Tribal Members

**SECTION 8.01.01  
*Short Title***

This Ordinance shall be known as the Tribal Air Quality Ordinance of the Gwichyaa Zhee Gwich'in Tribal Government

**SECTION 8.01.02  
*Findings***

The Gwichyaa Zhee Gwich'in Tribal Government hereby finds as follows:

- A.** The increasing volume and variety of air contaminants being emitted in Fort Yukon and the often-inadequate existing methods of managing air contaminants are creating conditions that threaten the public health, safety and welfare of tribal members and residents of Fort Yukon by contributing to air pollution and to the general deterioration of the environment.
- B.** The Tribal Members of Gwichyaa Zhee Gwich'in Tribal Government have a primary interest in the protection and control of the air and other natural resources affected by the improper emission of air contaminants within Fort Yukon, and the quality of such air and other natural resources must be protected to insure the health, economic, aesthetic and cultural well-being of the Tribal Members of the Gwichyaa Zhee Gwich'in Tribal Government.
- C.** Emission of air contaminants is particularly harmful to health and air quality of the Gwichyaa Zhee Gwich'in Tribal Government Tribal Members.
- D.** Inadequate and environmentally unsound practices for the emission of air contaminants have created greater amounts of air pollution and other problems for public health and the environment of the Gwichyaa Zhee Gwich'in Tribal Government. The traditional methods of air pollution regulation may not meet future requirements for eliminating environmental pollution and conserving natural resources.

**E.** Pursuant to federal law as determined by the U.S. Supreme Court in such cases as *Montana v. United States*, 450 U.S. 544 (1981) and reaffirmed in *Strate v. A-1 Contractors* 117 S.Ct. 1404 (1997), the Gwichyaa Zhee Gwich'in Tribal Government possesses inherent sovereign authority to regulate the air quality that affects fundamental Tribal interests and public health and safety, including when such activities are conducted by non-members of the Tribal Government on privately owned land within the Fort Yukon Area.

**F.** Under the Clean Air Act (42 U.S.C. §§7401-7671), Indian tribes can be treated as states for purposes of the Act (42 U.S.C. §7601(d)), and the Administrator may establish elements of tribal implementation plans.

**G.** It is in the best interest of the Gwichyaa Zhee Gwich'in Tribal Government and the residents of Fort Yukon to establish and maintain a comprehensive tribal air quality policy, the objectives of which will be to manage and control emissions of air contaminants into the air in Fort Yukon in order to protect the health, safety and welfare of tribal members; and to preserve the environment.

**H.** Such protection of tribal land resources is not adequately provided for under existing legislation, and such protection will be furthered by the passage, adoption and implementation of this Tribal Ordinance.

### ***SECTION 8.01.03***

#### ***Purpose***

The general purposes of the Tribal Ordinance are to:

**A.** Implement, regulate and enforce environmental standards and criteria, orders and permit conditions, and exercise comprehensive Tribal regulatory authority over all air quality within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Government Lands;

**B.** Protect fundamental Tribal cultural, ceremonial, religious, fishery, and economic stability of residential, agricultural, commercial, industrial, forest, wetlands, riparian and environmentally sensitive lands within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Government's Territory;

**C.** Prevent the deterioration of the environment, standard of living, quality of life, health, safety and welfare of all persons within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Government's Territory;

**D.** Provide and promote Tribal environmental protection and services within the Gwichyaa Zhee Gwich'in Tribal Government's Territory and to regulate environmental activities under principles of Tribal sovereignty; and

**E.** Prevent air pollution on the Gwichyaa Zhee Gwich'in Tribal Government's Territory by setting ambient air quality standards that are at least as stringent as federal standards under the federal Clean Air Act.

**SECTION 8.01.04**  
*Authority and Scope*

**A. Authority**

This Tribal Air Quality Ordinance is hereby adopted by the Gwichyaa Zhee Gwich'in Tribal Government pursuant to Article 4 of the Native Village of Fort Yukon, IRA Tribal Government Constitution authorizing the Gwichyaa Zhee Gwich'in Tribal Government to undertake such actions.

**B. Scope**

The provisions of this Ordinance shall apply to all existing and proposed activities that have the potential to adversely affect air quality on the Gwichyaa Zhee Gwich'in Tribal Government's Territory and to all activities which have the potential to affect cultural, ceremonial, religious, fishery, seasonal residential, public health, safety, welfare, land, air or water quality and other fundamental interests of the Tribal Government, including such activities conducted by non-members of the Tribal Government or on privately owned lands. Activities to be regulated hereunder include but are not limited to:

1. Emissions of air contaminants into the air;
2. Industrial, commercial or other activities that may result in the emission of air contaminants;
3. Automobile emissions;
4. All other activities that involve the emission of air contaminants into the air within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Government's Territory.

**SECTION 8.01.05**  
*Applicability*

Because any violation of this Ordinance or any regulation adopted hereunder will demonstrably and seriously impact the environment, including land, water and air, natural resources, public health, safety, welfare, political integrity and economic security of the Tribal Government, this Tribal Ordinance, and any regulations adopted there under, shall apply to:

- 1) all persons within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Government's Territory, without exception, including but not limited to, all Tribal members, and all other persons on the Gwichyaa Zhee Gwich'in Tribal Government's Territory, including any Indians who are members of other Indian tribes, all non-Indians, and any other person as defined under the Ordinance; and
- 2) all places and lands located anywhere within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Government's Territory, including all trust and non-trust lands, and notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, or any real property interest of any kind, held by any person as defined under this Tribal Ordinance.



**Section 8.01.06**

***Consensual Relations among Non-Members, the Tribe and Tribal Members***

Any person who is not a member of the Gwichyaa Zhee Gwich'in Tribal Government who uses land anywhere within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Government, whether trust or non-trust land, enters into consensual relationships with the Tribal Government or its members, through commercial dealings, contracts, leases or other arrangements. Such person's use of land that may result in the emission of air contaminants into the air of the Gwichyaa Zhee Gwich'in Tribal Government's Territory will have a demonstrably serious impact upon the environment, natural resources, public health, safety, welfare, political integrity and economic security of the Tribal Government and its members, unless such use is in compliance with the provisions of this Tribal Ordinance, and any regulations promulgated hereunder.

**TITLE 2**  
**8.02.01 Definitions**

For the purposes of this Ordinance, the following words and phrases shall have the following meanings:

**“Air Contaminant”** means fumes, smoke, particulate matter, vapor, gas or any combination thereof, but it does not include water vapor or steam condensate.

**“Air Contamination Source”** means any source whatsoever, at, from or by reason of which there is emitted or discharged into the atmosphere any air contaminant.

**“Ambient Air”** means the surrounding or outside air.

**“Ambient Air Quality Standards”** means specified concentrations and durations of air pollutants established either by the Tribe, State of California or the federal government.

**“Applicant”** means any person who has filed an application with the Gwichyaa Zhee Gwich’in Tribal Government for approval for a variance under this Ordinance.

**“Combustible or Flammable Solid Waste”** means any garbage, rubbish, trash, rags, paper, boxes, crates, ashes, carcass of a dead animal or any other combustible or flammable refuse matter which is in a solid form.

**“Commission”** means the Air Pollution Control Commission.

**“Council or Tribal Council”** means the Gwichyaa Zhee Gwich’in Tribal Government Tribal Council.

**“Emission”** means the discharge or release into the atmosphere of one or more air contaminants.

**“Emission Control Regulation”** means and includes any standard promulgated by regulation which is applicable to all air contamination sources within a specified area and which prohibits or establishes limits for specific types of emissions in such areas, and also any regulation which by its terms is applicable to a specified type of facility, process or activity for the purpose of controlling the extent, degree or nature of contamination emitted from such type of facility, process or activity, and also any regulation adopted for the purpose of preventing or minimizing emission or any air contamination in potentially dangerous quantities.

**“Enforcement program”** means the rules, regulations and procedures adopted by the Gwichyaa Zhee Gwich’in Tribal Government to enforce this Ordinance.

**“Flue”** means any duct or passage for air, gases or the like such as a stack or chimney.

**“Historical Uses”** means all uses that have had historical significance for the Gwichyaa Zhee Gwich’in Tribal Government.

**“Mitigation”** means a measure taken to reduce adverse impacts on the environment.

**“Non-vehicular Sources”** means all sources of air contaminants, including the loading of fuels into vehicles, except vehicular sources.

**“Open Outdoor Fire”** means any combustion of combustible material of any type outdoors in the open, not in any enclosure, where the products of the combustion are not directed through a flue.

**“Person”** means any individual, corporation, partnership, association, agency, municipality, commission or department, including the Gwichyaa Zhee Gwich’in Tribal Government or other federally-recognized Tribal governments.

**“Promulgate”** means to formally make public.

**“Reservation”** means all land, air and water located within the exterior boundaries of the Gwichyaa Zhee Gwich’in Tribal Government’s Territory.

**“Solid Waste Dump”** means any accumulation for the purpose of disposal of any solid waste.

**“Title V”** means Title V of the federal Clean Air Act (42 U.S.C. §7661, et seq.).

**“Title V Source”** means only a stationary source required by federal law to be included in an operating permit program established pursuant to Title Vi of the Federal Clean Air Act (42 U.S.C. §§7661-7661(f)) and the federal regulations adopted pursuant to Title V.

**“Tribal Court”** means the Gwichyaa Zhee Gwich’in Tribal Court.

**“Variance”** means an authorized written permission for a delay or exception in the application of a given law, ordinance or regulation.

**“Variance Board”** means the Variance Board created by this Ordinance.

**“Vehicular Sources”** means those sources of air contaminants emitted from motor vehicles.

**TITLE 3**  
**TRIBAL ENVIRONMENTAL DEPARTMENT**

- SECTION 8.03.01: Designation as Lead Tribal Agency
- SECTION 8.03.02: Creation of Position of Tribal Air Quality Control Officer
- SECTION 8.03.03: Air Pollution Control Commission Created
- SECTION 8.03.04: Powers and Duties of Air Pollution Control Commission
- SECTION 8.03.05: Additional Authority of Commission
- SECTION 8.03.06: Commission to Promulgate Ambient Air Quality Standards
- SECTION 8.03.07: Commission to Promulgate Air Emission Control Regulations
- SECTION 8.03.08: Inspection and Entry

**SECTION 8.03.01**  
***Designation as Lead Tribal Agency***

The Tribal Environmental Department shall be the lead agency for implementing this Tribal Air Quality Ordinance. The Tribal Environmental Department shall communicate with the EPA regarding the Tribe's air quality program; prepare the application for EPA approval of the Tribe's air quality program; and make reports to the EPA in a manner and containing such information as the Committee approves, excluding any confidential or privileged information.

**SECTION 8.03.02**  
***Creation of Position of Tribal Air Quality Control Officer***

There is hereby created in the Gwichyaa Zhee Gwich'in Environmental Department the position of Tribal Environmental Control Officer. The Tribal Environmental Control Officer shall serve under the direction of the Gwichyaa Zhee Gwich'in Environmental Department and shall be appointed by the Gwichyaa Zhee Gwich'in Tribal Government. The Tribal Environmental Officer shall cooperate with the Regional Tribal Environmental Department, the U.S. EPA and other federal agencies or the State of Alaska, as necessary to carry out the intent of this Ordinance and implement the Tribal Air Quality Plan.

**SECTION 8.03.03**  
***Environmental Committee***

**A.** There is hereby created in the division of Gwichyaa Zhee Gwich'in Tribal Government the Environmental Committee, to act as an advisory committee for the Tribal Council, which shall consist of community members as follows:

- 1.** Residents of Fort Yukon shall be appointed by the Gwichyaa Zhee Gwich'in Tribal Government.
- B.** Appointments to the Committee shall be made so as to include appropriate scientific, cultural, technical, agricultural and legal training within its own membership; although no

specific number of its members shall be required to be so trained, although a majority of members must be officially enrolled members of the Tribe.

**C.** Terms for appointment shall be for two years.

**D.** All members of the committee shall have a vote. A majority of the Committee shall constitute a quorum, and the concurrence of a majority of the Committee in any matter within its powers and duties shall be required for any determination made by the committee.

**SECTION 8.03.04**  
***Powers and Duties of the Environmental Committee***

**A.** The Committee shall develop and maintain a comprehensive program for prevention, control and abatement of air pollution throughout the entire Gwichyaa Zhee Gwich'in Tribal Government's Territory, including a program for control of emissions from all significant sources of air pollution, and shall promulgate ambient air quality goals for every portion of the Gwichyaa Zhee Gwich'in Tribal Government's Territory.

**B.** The Committee shall adopt and modify such plans as may be necessary for the implementation of such programs. Ambient air quality standards and emission control regulations shall be adopted and promulgated in accordance with Title 3, Sections 6 and 7 of this Ordinance.

**C.** The Committee and the Gwichyaa Zhee Gwich'in Tribal Government shall hold a joint public hearing each year in order to hear public comment on air pollution problems within the Gwichyaa Zhee Gwich'in Tribal Government's Territory, alleged sources of air pollution within the Gwichyaa Zhee Gwich'in Tribal Government's Territory and the availability of practical remedies for such pollution.

**D.** Each year, the committee shall report to the Gwichyaa Zhee Gwich'in Tribal Government on the effectiveness of the provisions of this ordinance in carrying out the legislative intent, as declared above, and shall include in such report any recommendations it may have with respect to legislative changes that may be needed or desirable.

**E.** The committee shall receive all applications for hearings concerning violations and all applications for the granting of variances made pursuant to this Ordinance and may, in its discretion, either set such applications for hearing and determination by the committee in accordance with the provisions of this Ordinance or transmit such applications to the Gwichyaa Zhee Gwich'in Tribal Government for hearing and determination.

**SECTION 8.03.05**  
***Additional Authority of Committee***

**A.** The committee shall have maximum flexibility in developing an effective air pollution control program and may promulgate such combination of regulations as may be necessary or desirable to carry out the legislative purpose set forth in this Ordinance. Such regulations may include, but shall not be limited to:

- 1.** Division of the Gwichyaa Zhee Gwich'in Tribal Government's Territory into such control zones or areas as may be necessary or desirable for effective administration of the Air Pollution Control Plan;
- 2.** Classification and definition of different degrees or types of air pollution; or
- 3.** Emission control regulations that are applicable to the entire Gwichyaa Zhee Gwich'in Tribal Government's Territory, that are applicable only within specified areas or zones of the Gwichyaa Zhee Gwich'in Tribal Government's Territory, or that are applicable only when a specified class of pollution is present.

**B.** The committee may hold public hearings, issue notice of hearings, issue subpoenas requiring the attendance of witnesses and the production of evidence, administer oaths, and take such testimony as it deems necessary.

**C.** The committee may adopt such rules and regulations governing procedures before the Gwichyaa Zhee Gwich'in Tribal Government as may be necessary to assure that hearings before such Agency will be fair and impartial.

**D.** The committee may exercise all incidental powers necessary to carry out the purposes of this Ordinance.

**E.** The committee may require the owner or operator of any air contamination source to:

- 1.** Establish and maintain reports as prescribed by the committee;
- 2.** Install, use and maintain monitoring equipment or methods as prescribed by the committee;
- 3.** Record sample emissions in accordance with such methods, at such locations, at such intervals and in such manner as the committee shall prescribe; and
- 4.** Provide such other information as the committee may require.

**SECTION 8.03.06**

***Committee to Promulgate Ambient Air Quality Standards***

**A.** In addition to the other powers and duties enumerated in this Ordinance, the Committee shall have the power to adopt, promulgate, amend and modify such standards for the quality of ambient air as may be appropriate or necessary to carry out the purposes of this Ordinance, including, but not limited to:

1. Standards which describe the maximum concentrations of specifically described contaminants that can be tolerated, consistent with the protection of the good health of the public at large; such standards may differ for different parts of the Gwichyaa Zhee Gwich'in Tribal Government's Territory as may be necessitated by variations in altitude, topography, climate or meteorology.
2. Standards which describe the air quality goals that are to be achieved by control programs within specified periods of time; such standards may be either Gwichyaa Zhee Gwich'in Tribal Government's Territory-wide or restricted to specified control areas; and
3. Standards which describe varying degrees of contamination of ambient air.

**SECTION 8.03.07**

***Committee to Promulgate Air Emission Control Regulations***

**A.** As quickly as possible, the committee shall adopt and promulgate emission control regulations which require the use of effective practical air pollution controls for each significant source, potential source and type of source of air contamination throughout the entire Gwichyaa Zhee Gwich'in Tribal Government's Territory and thereafter may modify such regulations from time to time, with Tribal Council approval. In the formation of each emission control regulation, the committee shall take into consideration the following:

1. The Tribal policy regarding air pollution as set for above;
2. Federal recommendations;
3. The degree to which the concentrations of certain types of contaminants in certain portions of the Gwichyaa Zhee Gwich'in Tribal Government's Territory require that emission control regulations be more stringent than in other portions of the Gwichyaa Zhee Gwich'in Tribal Government's Territory;
4. The degree to which any particular type of emission is subject to treatment, the availability and feasibility of control, techniques and the extent to which the emission to be controlled is significant;
5. The continuous, intermittent or seasonal nature of the emission to be controlled;

6. Whether the emission control regulation should be applied throughout the entire Gwichyaa Zhee Gwich'in Tribal Government's Territory or only in a specified portion of;

7. The need for specification of safety precautions that should be taken with respect to any source or potential source or type of source of air contamination.

**B.** Such emission control regulations may include, but shall not be limited to, regulations pertaining to:

1. Visible pollutants;

2. Particulates;

3. Sulfur oxides, sulfuric acids, hydrogen sulfide, nitrogen oxides, carbon oxides, hydrocarbons, fluorides and any other chemical substance;

4. Odors;

5. Open burning of incidental refuse, open burning at dumps, open burning for agricultural purposes, open burning of junk automobiles and any other open burning activity;

6. Organic solvents;

7. Photochemical substances; and

8. Toxic gases.

**C.** The Committee has the duty to identify each type of facility, process and activity which produces or which potentially or accidentally might produce significant emission of air contaminants and shall promulgate an emission control regulation for each such facility, process and activity, except for motor vehicles and airplanes to the extent prohibited by federal law. The requirements and prohibitions contained in such regulations shall be set forth with as much particularity and clarity as is practicable. Upon adoption of an emission control regulation under this Ordinance, such regulation shall apply to the exclusion of other emission control regulations adopted pursuant to this Section; prior to such adoption, the general regulations adopted pursuant to this Section shall be applicable to such facility, process or activity.



Emission control regulations adopted pursuant to this Section may include, but shall not be limited to, regulations pertaining to the following facilities, processes and activities:

1. Incinerator and incinerator design;
2. Storage and transfer of petroleum products and any other volatile substance;
3. Activities which frequently result in particulate matter becoming airborne, such as construction and demolition operations and operation of parking lots;
4. Specifications, prohibitions and requirements pertaining to fuels and fuel additives, such as tetraethyl lead;
5. Pulp mills, alfalfa dehydrators, asphalt plants and any other industrial or commercial activity which tends to emit air contaminants as a by-product;
6. Industrial process equipment;
7. Industrial spraying operations; or
8. Storage and transfer of toxic gases.

**E.** Among its emission control regulations, the Committee shall include appropriate regulations pertaining to accidents, shutdowns and other conditions which justify temporary relief from controls.

**F.** Each emission control regulation shall be operative with regard to any ambient air quality standard unless such regulation expressly provides otherwise.

***SECTION 8.03.08***  
***Inspection and Entry***

In addition to the authority specified elsewhere in this Ordinance, the Tribe, through its Environmental Department, has the power to enter and inspect any property, premises or place for the purposes of investigating any actual, suspected or potential source of air pollution or air contamination or of ascertaining compliance or non-compliance with any emission standard or any order promulgated under this Ordinance; except that, if such entry or inspection is denied or not consented to, the Environmental Department or its agent is empowered to and shall obtain from the Gwichyaa Zhee Gwich'in Tribal Court a warrant to enter and inspect any such property, premise or place prior to entry and inspection. The Gwichyaa Zhee Gwich'in Tribal Court is empowered to issue such warrants upon a proper showing of the need for such entry and inspection. Any information relating to secret commercial process, method, manufacture or production obtained in the course of the inspection or investigation shall be kept confidential.

**TITLE 4**  
**TRIBAL IMPLEMENTATION PLAN**

SECTION 8.04.01: Designation of Air Quality Control Regions  
SECTION 8.04.02: Tribal Implementation Plans for National Primary and  
Secondary Ambient Air Quality Standards

**SECTION 8.04.01**  
**Designation of Air Quality Control Regions**

**A. Designations**

The Environmental Department may request the Gwichyaa Zhee Gwich'in Tribal Government to submit to the Administrator of the USEPA a list of all areas on the Gwichyaa Zhee Gwich'in Tribal Government's Territory designating, with regard to each pollutant for which a national ambient air quality standard exists, each such area as:

1. Non-attainment, if it does not meet (or contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant;
2. Attainment, if it meets the national primary or secondary ambient air quality standard for the pollutant; or
3. Unclassifiable, if it cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant.

**B. Re-designations**

If the Gwichyaa Zhee Gwich'in Tribal Government has submitted designations to the Administrator of the USEPA pursuant to subsection (A) of this section, and the Administrator of the USEPA promulgates a new or revised National Air Quality Standards (NAAQS) pursuant to section 109 of the Clean Air Act, the Gwichyaa Zhee Gwich'in Tribal Government may, and in the case of a revised NAAQS for which the Gwichyaa Zhee Gwich'in Tribal Government has submitted designations pursuant to subsection (A), shall submit to the Administrator of the USEPA a new list of designations not later than one year after promulgation of the new or revised NAAQS. The Gwichyaa Zhee Gwich'in Tribal Government also shall submit to the Administrator of the USEPA a re-designation of a particular area no later than 120 days after receiving notification from the Administrator of the USEPA, pursuant to section 107(d)(3) of the Clean Air Act, of the need to re-designate. The Gwichyaa Zhee Gwich'in Tribal Government may request the Environmental Department, on his/her own motion, to submit to the Administrator of the USEPA for approval, pursuant to section 107 of the Clean Air Act, a re-designation of any area within the Gwichyaa Zhee Gwich'in Tribal Government's Territory if air quality changes within such area. In the case of an area on the Gwichyaa Zhee Gwich'in Tribal Government's Territory which the Administrator of the USEPA finds may significantly affect air pollution concentrations in a state or another tribe, the Gwichyaa

Zhee Gwich'in Tribal Government may re-designate that area only with the consent of the states or tribes which the Administrator of the USEPA determines may be significantly affected. The submission of a re-designation shall not affect the effectiveness or enforceability of the applicable tribal implementation plan.

### **C. Regulations**

If the Gwichyaa Zhee Gwich'in Tribal Government decides to submit designations to the Administrator of the USEPA under this section, the Gwichyaa Zhee Gwich'in Tribal Government shall adopt regulations to implement this section that both:

1. Describe the geographic extent of attainment, non-attainment or unclassified areas of the Gwichyaa Zhee Gwich'in Tribal Government's Territory for all pollutants for which a national ambient air quality standard exists; and
2. Establish procedures and criteria for re-designating such areas that include:
  - a. The technical bases for proposed changes, including ambient air quality data, types and distributions of sources of air pollution, population density and projected population growth, transportation system characteristics, traffic congestion, projected industrial and commercial development, meteorology, pollution transport and political boundaries, and
  - b. Provisions for review of and public comment on proposed changes to area designations.

### **SECTION 8.04.02**

#### ***Tribal Implementation Plans for National Primary and Secondary Ambient Air Quality Standards***

#### **A. Ambient Air Quality Standards:**

The Tribe shall establish ambient air quality standards that are at least as stringent as the National Ambient Air Quality Standards set forth below:

Sulfur dioxide	365 ug/m <sup>3</sup> - daily mean; 80 ug/m <sup>3</sup> - annual mean
Particulate matter	
PM 2.5	65 ug/m <sup>3</sup> - daily mean; 15 ug/m <sup>3</sup> - annual mean
PM 10	150 ug/m <sup>3</sup> - daily mean; 50 ug/m <sup>3</sup> - annual mean
Nitrogen dioxide	0.053 ppm - annual mean
Carbon monoxide	35 ppm - 1 hour; 9 ppm - 8 hour
Ozone	0.08 8 hour
Lead	1.5 ug/m <sup>3</sup> - quarterly mean

**B. Submission of and Contents of Plans:**

The Gwichyaa Zhee Gwich'in Tribal Government may submit to the Administrator of the USEPA a tribal implementation plan for any pollutant for which a national ambient air quality standard exists. The plan shall provide for implementation, maintenance and enforcement of such standard and protection of visibility in each air quality control region within the Gwichyaa Zhee Gwich'in Tribal Government's Territory. The plan shall be adopted by the Gwichyaa Zhee Gwich'in Tribal Government and shall contain the following provisions:

**1. Each tribal implementation plan shall**

**a.** Include enforceable emission limitations and other control measures, means, or techniques as may be necessary or appropriate to meet the applicable requirements of this Ordinance and the Clean Air Act;

**b.** Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality;

**c.** Include a program to enforce the measures described herein and regulate the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required under this Ordinance;

**d.** Contain adequate provisions

(1) prohibiting any source within the Gwichyaa Zhee Gwich'in Tribal Government's Territory from emitting any air pollutant in amounts that will contribute significantly to non-attainment of national primary or secondary ambient air quality standard in a neighboring tribe or state, and

(2) Insuring compliance with the applicable requirements of this section (relating to interstate pollution abatement);

**e.** Provide

(1) Necessary assurances that the Tribe will have adequate personnel, funding, and authority under Tribal law to carry out such implementation plan (and that the plan is not prohibited by any provision of federal or tribal law from carrying out such implementation plan or portion thereof), and

(2) Necessary assurances that, where the Tribe has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the Tribe has responsibility for ensuring adequate implementation of such plan provision;

**f.** Require, as may be prescribed by the Administrator of the USEPA,

(1) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(2) Periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(3) Correlation of such reports by the Gwichyaa Zhee Gwich'in Tribal Environmental Department with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection;

**g.** Provide for revision of such plan--

(1) from time to time as may be necessary to incorporate revisions of national primary or secondary ambient air quality standards or the availability of improved or more expeditious methods of attaining such standards, and

(2) Whenever the Administrator of the USEPA finds that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under the Clean Air Act or this Ordinance.

**h.** Meet the applicable requirements of this Ordinance relating to public notification and the prevention of significant deterioration of air quality and visibility protection;

**i.** Provide for

(1) the performance of such air quality modeling as the Administrator of the USEPA may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator of the USEPA has established a national ambient air quality standard, and

(2) The submission, upon request, of data related to such air quality modeling to the Administrator of the USEPA;

**C. Revisions to Plans**

The Gwichyaa Zhee Gwich'in Environmental Department shall adopt regulations that describe procedures for revising tribal implementation plans as needed from time to time

and as required by the Administrator of the USEPA, pursuant to the Clean Air Act and the regulations hereunder, after promulgation of new or revised national ambient air quality standards.

**D. Interstate Pollution Abatement**

Each applicable implementation plan shall require each proposed new or modified major source that is subject to this Ordinance or that may significantly contribute to levels of air pollution in excess of the NAAQS in any air quality control region outside the Gwichyaa Zhee Gwich'in Tribal Territory to provide written notice to all nearby states or tribes in which air pollution levels may be affected by such source at least sixty (60) days prior to the date on which commencement of construction is to be permitted. Each applicable plan shall also identify all major existing stationary sources that may significantly contribute to levels of air pollution in excess of the NAAQS in any area outside the Gwichyaa Zhee Gwich'in Tribal Government's Territory and shall provide for notice to all nearby states or tribes in which air pollution levels may be affected of the identity of such sources.

**E. Public Notification**

Each plan shall contain measures that will be effective to notify the public on a regular basis of instances or areas in which any national primary ambient air quality standard is or was exceeded, to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures that can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality.

**TITLE 5**  
**PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY**

SECTION 8.05.01: Plan Requirements  
SECTION 8.05.02: Initial Classifications  
SECTION 8.05.03: Increments and Ceilings  
SECTION 8.05.04: Area Reclassification  
SECTION 8.05.05: Preconstruction Requirements  
SECTION 8.05.06: Air Pollution Emergencies Endangering Public Health

**SECTION 8.05.01**  
**Plan Requirements**

Each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each area designated pursuant to this section and section 107 of the Clean Air Act as attainment or unclassifiable. The provisions of this part do not apply to hazardous air pollutants under this section.

**SECTION 8.05.02**  
**Initial Classification**

All areas on the Gwichyaa Zhee Gwich'in Tribal Government's Territory that are designated as attainment or unclassifiable pursuant to this section and section 107 of the Clean Air Act shall be class II areas, as defined under Part C of Title I of the Clean Air Act, unless reclassified under this section.

**SECTION 8.05.03**  
**Increments and Ceilings**

**A. Sulfur Oxide and Particulate Matter**

Each applicable implementation plan shall contain measures ensuring that maximum allowable increases over baseline concentrations of, and maximum allowable concentrations of, sulfur dioxide and particulate matter shall not be exceeded. The maximum allowable increases and concentrations and provisions affecting those increases and concentrations are specified in sections 163 and 165(d) of the Clean Air Act and the regulations hereunder.

**B. Other Pollutants**

In the case of nitrogen oxides, each applicable implementation plan shall contain measures ensuring compliance with the maximum allowable increases set forth at 40 C.F.R. § 51.166. With respect to any air pollutant for which a NAAQS is established, other than sulfur oxides or particulate matter, an area classification plan shall not be required if the implementation plan adopted by the Tribe and submitted for the USEPA Administrator's approval or promulgated by the Administrator of the USEPA under section 110(c) of the Clean Air Act contains other provisions that, when considered as a

whole, the Administrator of the USEPA finds will carry out the purposes in section 110 of the Clean Air Act at least as effectively as an area classification plan for such pollutant.

***SECTION 8.05.04***  
***Area Reclassification***

**A. Authority to Reclassify Areas**

The Gwichyaa Zhee Gwich'in Environmental Department, upon approval of Gwichyaa Zhee Gwich'in Tribal Government, may reclassify such areas as it deems appropriate as class I areas. An area may be reclassified as class III if:

1. such reclassification will not cause or contribute to concentrations of any air pollutant which exceed any maximum allowable increase or maximum allowable concentration permitted under the classification of any other area; and
2. Such reclassification otherwise meets the requirements of this part.

**B. Notice and Hearing; Disapproval of Administrator of the USEPA**

1. Prior to reclassification of any area under this part, notice shall be afforded and public hearings shall be conducted in areas proposed to be reclassified and in areas which may be affected by the proposed reclassification. Prior to any such public hearing, a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed reclassification shall be prepared and made available for public inspection, and prior to any such reclassification the description and analysis of such effects shall be reviewed and examined by the Gwichyaa Zhee Gwich'in Tribal Government.
2. Prior to the issuance of notice under this section respecting the reclassification of any area under this subsection if such area includes any federal lands, the Gwichyaa Zhee Gwich'in Tribal Government Executive Director shall provide for written notice to be given to the appropriate federal land manager and afford adequate opportunity (but not in excess of sixty (60) days) to confer with the Gwichyaa Zhee Gwich'in Tribal Government Executive Director and to submit written comments and recommendations with respect to the intended notice of reclassification. In reclassifying any area under this section with respect to which any federal land manager has submitted written comments and recommendations, the Gwichyaa Zhee Gwich'in Tribal Government Executive Director shall publish a list of any inconsistency between such reclassification and such recommendations and an explanation of such inconsistency (together with the reasons for making such reclassification against the recommendation of the federal land manager).
3. Any reclassification is subject to disapproval by the Administrator of the USEPA pursuant to section 164(b) (2) of the Clean Air Act.



**C. Resolution of Disputes between the Tribe and Other Indian Tribes or States**

If any state or tribe is affected by the reclassification of an area or issuance of a construction permit by the Tribe disagrees with such reclassification or permit, the Gwichyaa Zhee Gwich'in Tribal Government shall enter into negotiations with the representative of such governor or other Indian governing body to attempt to resolve such dispute. If the parties are unable to reach an agreement, the Gwichyaa Zhee Gwich'in Tribal Government shall request the USEPA Administrator's involvement pursuant to section 164(e) of the Clean Air Act.

***SECTION 8.05.05***  
***Preconstruction Requirements***

**A. Major Emitting Facilities on Which Construction is Commenced**

No major emitting facility on which construction is commenced after enactment of this Ordinance may be constructed in any area to which this Ordinance applies unless:

1. A permit has been issued for such proposed facility in accordance with this Ordinance setting forth emission limitations for such facility which conform to the requirements of this Ordinance;
2. The proposed permit has been subject to a review in accordance with this Ordinance, the required analysis has been conducted in accordance with regulations promulgated by the Administrator of the USEPA, and a public hearing has been held with opportunity for interested persons including representatives of the Administrator of the USEPA to appear and submit written or oral presentations on the air quality impact of such source, alternatives to the proposed construction, control technology requirements, and other appropriate considerations;
3. The owner or operator of such facility demonstrates, as required pursuant to section 110(j) of the Clean Air Act, that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (a) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this Ordinance applies more than one time per year, (b) national ambient air quality standard in any air quality control region, or (c) any other applicable emission standard or standard of performance under this Ordinance;
4. The proposed facility is subject to the best available control technology for each pollutant subject to regulation under this Ordinance that is emitted from or results from such facility;
5. The proposed facility has complied with the provisions of Ordinance with respect to protection of class I areas, where applicable;
6. There has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility;

7. the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this part agrees to conduct monitoring necessary to determine the effect that emissions from the facility may have, or are having, on air quality in any area that may be affected by such emissions; and

8. in the case of proposed construction in a class III area of a facility with emissions that would cause or contribute to exceeding the maximum allowable increments applicable in a class II area and where no standard under section 111 of the Clean Air Act been promulgated for such source category, the Administrator of the USEPA has approved the determination of best available technology as set forth in the permit.

### **B. Permit Applications**

Any completed permit application for a major emitting facility shall be granted or denied not later than one (1) year after the date of filing of such completed application.

### **C. Action Taken on Permit Applications; Notice; Adverse Impact on Air Quality-Related Values; Variance; Emission Limitations**

1. The Gwichyaa Zhee Gwich'in Tribal Government shall transmit to the Administrator of the USEPA a copy of each permit application relating to a major emitting facility that it receives and provide notice to the Administrator of the USEPA of every action related to the consideration of such permit. The Administrator of the USEPA will provide notice of the permit application to the federal land manager and the federal official directly responsible for management of any lands within a class I area that may be affected by emissions from the proposed facility pursuant to the requirements of section 165(d)(2) of the Clean Air Act.

a. In any case where the federal official charged with direct responsibility for management of any lands within a class I area, or the federal land manager of such lands, or the Administrator of the USEPA, or the governor of an adjacent state or governing body of a nearby tribe containing such a class I area files a notice alleging that emissions from a proposed major emitting facility may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change, a permit shall not be issued unless the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur dioxide will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area.

b. In any case where the federal land manager demonstrates to the satisfaction of the Gwichyaa Zhee Gwich'in Tribal Government that the emissions from such facility will have an adverse impact on the air quality-related values (including visibility) of such lands, notwithstanding the fact that the change in air quality resulting from emissions from such

facility will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area, a permit shall not be issued.

**c.** In any case where the owner or operator of such facility demonstrates to the satisfaction of the federal land manager, and the federal land manager so certifies, that the emissions from such facility will have no adverse impact on the air quality-related values of such lands (including visibility), notwithstanding the fact that the change in air quality resulting from emissions from such facility will cause or contribute to concentrations which exceed the maximum allowable increases for class I areas, the Gwichyaa Zhee Gwich'in Tribal Government may issue a permit.

**d.** In the case of a permit issued pursuant to paragraph (c), the facility shall comply with such emission limitations under the permit as may be necessary to assure that emissions of sulfur oxides and particulates from the facility will not cause or contribute to concentrations of such pollutant which exceed the maximum allowable increases over the baseline concentration for such pollutants as prescribed in section 165(d) (2) (C) (iv) of the Clean Air Act and the regulations hereunder.

**e.** In any case where the owner or operator of a proposed major emitting facility who has been denied a certification under paragraph (c) demonstrates to the satisfaction of the Gwichyaa Zhee Gwich'in Tribal Government, after notice and public hearing, and the Gwichyaa Zhee Gwich'in Tribal Government finds, that the facility cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty- four (24) hours or less applicable to any class I area, the Tribal Environmental Department, after consideration of the federal land manager's recommendation (if any) and subject to his/her concurrence, may grant a variance from such maximum allowable increase. If such variance is granted, a permit may be issued to such source pursuant to the requirements of this subparagraph.

**f.** In any case in which the Gwichyaa Zhee Gwich'in Tribal Government recommends a variance under this subsection in which the federal land manager does not concur, the recommendations of the Tribal Environmental Department and the federal land manager shall be transmitted to the President of the United States, according to the provisions of section 165(d) (2) (D) (ii) of the Clean Air Act.

**g.** In the case of a permit issued pursuant to paragraphs (e) and (f), the facility shall comply with such emission limitations under the permit as may be necessary to assure that emissions of sulfur oxides from such facility will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which exceed the maximum allowable increases for such

areas over the baseline concentration of such pollutant, as prescribed in section 165(d)(2)(D)(iii) of the Clean Air Act and the regulations hereunder, and to assure that such emissions will not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less on more than eighteen (18) days during any annual period.

**D. Analysis; Continuous Air Quality Monitoring Data; Regulations; Model Adjustments**

1. The review provided for in subsection (A) of this section shall be preceded by an analysis in accordance with regulations of the Administrator of the USEPA, promulgated under section 165 of the Clean Air Act, which shall be conducted by the major emitting facility applying for such permit of the ambient air quality at the proposed site and in areas which may be affected by emissions from the proposed facility for each pollutant subject to regulations under this Ordinance which will be emitted from such facility.

2. The analysis required by this subsection shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from the proposed facility will exceed the maximum allowable increases or the maximum allowable concentration permitted under this part. Such data shall be gathered over a period of one (1) calendar year preceding the date of application for a permit under this part unless the Gwichyaa Zhee Gwich'in Tribal Government in accordance with regulations promulgated by the Administrator of the USEPA, determines that a complete and adequate analysis for such purposes may be accomplished in a shorter period. The results of such analysis shall be available at the time of the public hearing on the application for such permit.

**SECTION 8.05.06**

***Air Pollution Emergencies Endangering Public Health***

A. Whenever the Gwichyaa Zhee Gwich'in Tribal Government shall determine, after investigation, that any person is either engaging in any activity involving significant risk of air contamination or is discharging or causing to be discharged into the atmosphere, directly or indirectly, any air contaminant and such activity or discharge constitutes a clear, present and immediate danger to the health of the public, or that any such activity or discharge of air contaminants, if permitted to continue unabated, will result in a condition of clear, present and immediate danger to the health of the public, the Gwichyaa Zhee Gwich'in Tribal Government shall:

1. Issue a written cease and desist order to said person requiring immediate discontinuance of such activity or discharge of such contaminant into the atmosphere, and upon receipt of such order, such person shall immediately discontinue such activity or discharge; or

- 2.** Apply to the Gwichyaa Zhee Gwich'in Tribal Court of the Tribe for a temporary restraining order, preliminary injunction or permanent injunction as provided for in this Ordinance or the Tribe's laws of civil procedure; or
- 3.** Both issue such a cease and desist order and apply for such restraining order or injunction.

**TITLE 6**  
**PROTECTION OF VISIBILITY**

SECTION 8.06.01: Visibility Protection for Federal Class I Areas

SECTION 8.06.02: Visibility Transport Regions and Commissions

**SECTION 8.06.01**  
**Visibility Protection for Federal Class I Areas**

**A. Plan Requirements**

In the case of an area listed by the Administrator of the USEPA under section 169A(a)(2) of the Clean Air Act that is located within the Gwichyaa Zhee Gwich'in Tribal Government's Territory or that could reasonably be anticipated to have impaired visibility due in part or in whole to emissions coming from within the Gwichyaa Zhee Gwich'in Tribal Government's Territory, each applicable tribal implementation plan under this section shall contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal of preventing any future and remedying any existing impairment of visibility due to man-made air pollution in mandatory class I federal areas. Such provisions shall include:

1. Except as otherwise provided pursuant to section 169A(c) of the Clean Air Act, regarding exemptions, a requirement that each major stationary source that was in existence on August 7, 1977, but was not in operation for more than fifteen years prior to such date, and that, as determined by the Gwichyaa Zhee Gwich'in Environmental Department (or the Administrator of the USEPA in the case of a federal implementation plan under section 110(c) of the Clean Air Act), emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area, shall procure, install, and operate, as expeditiously as practicable (and maintain thereafter) the best available retrofit technology, as determined by the Gwichyaa Zhee Gwich'in Tribal Government or the Administrator of the USEPA, as the case may be, for controlling emissions from such source for the purpose of eliminating or reducing any such impairment; and
2. A long-term (ten-to-fifteen year) strategy for making reasonable progress toward meeting the national goal specified herein and in section 169A (a) (1) of the Clean Air Act. The Gwichyaa Zhee Gwich'in Environmental Department shall make such determinations in accordance with regulations and guidelines promulgated by the Administrator of the USEPA pursuant to section 169A of the Clean Air Act.

**B. Consultations with Appropriate Federal Managers**

Before holding the public hearing required on a proposed promulgation of or revision to an applicable implementation plan to meet the requirements of this section, the Gwichyaa Zhee Gwich'in Tribal Government shall consult in person with the appropriate federal land manager or managers and shall include a summary of the conclusions and recommendations of the federal land managers in the notice to the public.

**SECTION 8.06.02**

***Visibility Transport Regions and Commissions***

**A. Visibility Transport Regions**

The Gwichyaa Zhee Gwich'in Tribal Government, in conjunction with at least one other tribe or state, may petition the Administrator of the USEPA for a determination that current or projected transport of air pollutants from the Tribe or from one or more other tribes or states contributes significantly to visibility impairment in class I areas located on the Gwichyaa Zhee Gwich'in Tribal Government's Territory or in the other affected tribes or states and that a transport region for such pollutants that includes the Tribe and such other tribes or states should be established. The Gwichyaa Zhee Gwich'in Tribal Government may also petition the Administrator of the USEPA to add or remove any state or tribe or portion thereof to a visibility transport region.

**B. Visibility Transport Commissions**

The Gwichyaa Zhee Gwich'in Tribal Government or his/her designee may be a member of a visibility transport commission established by the Administrator of the USEPA pursuant to section 169B of the Clean Air Act, and as such shall participate in all activities required under that section.

**TITLE 7**  
**NEW SOURCE PERFORMANCE STANDARDS**

SECTION 8.07.01: Implementation and Enforcement of Standards of Performance

**SECTION 8.07.01**  
***Implementation and Enforcement of Standards of Performance***

**A. Implementation and Enforcement by Gwichyaa Zhee Gwich'in Tribal Government**

The Gwichyaa Zhee Gwich'in Tribal Government may develop and submit to the Administrator of the USEPA a procedure for implementing and enforcing standards of performance for new sources located on the Gwichyaa Zhee Gwich'in Tribal Government's Territory. The Gwichyaa Zhee Gwich'in Tribal Government is authorized under the Clean Air Act to implement and enforce such standards upon delegation of such authority from the Administrator of the USEPA.

**B. Standards of Performance for Existing Sources**

The Gwichyaa Zhee Gwich'in Tribal Government may submit to the Administrator of the USEPA a plan that:

1. Establishes standards of performance for any existing source for any air pollutant:
  - a. For which air quality criteria have not been issued or that is not included on a list published under section 108 of the Clean Air Act or emitted from a source category that is regulated under section 112 of the Clean Air Act but
  - b. To which a standard of performance under section 111 of the Clean Air Act would apply if such existing source were a new source, and
2. Provides for the implementation and enforcement of such standards of performance. In applying a standard of performance for any particular source under a plan submitted under this paragraph, the Gwichyaa Zhee Gwich'in Tribal Government may take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

**C. Solid Waste Incineration Units**

1. If existing solid waste incineration units of a category for which the Administrator of the USEPA has promulgated guidelines are operating within the Gwichyaa Zhee Gwich'in Tribal Government's Territory, the Gwichyaa Zhee Gwich'in Tribal Government may submit to the Administrator of the USEPA for approval, pursuant to section 129(b)(2) of the Clean Air Act, a plan to implement and enforce the guidelines. The plan shall be at least as protective as the guidelines and shall provide that each unit subject to the guidelines shall be in



compliance with all requirements of section 129 of the Clean Air Act within three (3) years of the date that the plan is approved by the Administrator of the USEPA. The Gwichyaa Zhee Gwich'in Tribal Government may modify and resubmit a plan that has been disapproved.

2. The Gwichyaa Zhee Gwich'in Tribal Government may implement a model program for the training of solid waste incineration unit operators if the Gwichyaa Zhee Gwich'in Tribal Government has adopted a program that is at least as effective as the model program developed by the Administrator of the USEPA under section 129(d) of the Clean Air Act and has been authorized to do so by the Administrator of the USEPA.

3. Each solid waste incinerator unit within the Gwichyaa Zhee Gwich'in Tribal Government's Territory in a category for which the Administrator of the USEPA has promulgated performance standards under sections 111 or 129 of the Clean Air Act shall operate pursuant to a permit issued under this section if the Tribe as an approved permit program for such source. Such permits may be renewed according to the provisions of this section. Notwithstanding any other provision of this section, each permit for a solid waste incineration unit that combusts municipal waste shall be issued for a period of up to twelve (12) years and shall be review every five (5) years from the date of issuance or re-issuance.

#### **D. Prohibited Acts**

It shall be unlawful for any owner or operator of any new source (or any existing source for which standards of performance are established pursuant to subsection (B) of this section) or any new or existing solid waste incineration unit to operate such source in violation of any standard of performance applicable to such source, as prescribed by the Administrator of the USEPA pursuant to sections 111 or 129 of the Clean Air Act and the regulations hereunder and by the Gwichyaa Zhee Gwich'in Tribal Government pursuant to this section and the regulations hereunder.

#### **E. Revision of Regulations**

The Gwichyaa Zhee Gwich'in Tribal Government, with the approval of the Gwichyaa Zhee Gwich'in Tribal Council, may submit an application to the Administrator of the USEPA for revision of the regulations promulgated under section III (f) (1) of the Clean Air Act. The application shall demonstrate that:

1. the Administrator of the USEPA has failed to specify in regulations under section 111(f)(1) of the Clean Air Act any category of major stationary sources required to be specified under such regulations;

2. The Administrator of the USEPA has failed to include in the list under section 111(b)(1)(A) of the Clean Air Act any category of stationary sources that contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (notwithstanding that such category is not a category of major stationary sources);

- 
3. The Administrator of the USEPA has failed to apply properly the criteria required to be considered under section 111(f) (2) of the Clean Air Act; or
  
  4. a new, innovative or improved technology or process that achieves greater continuous emission reduction has been adequately demonstrated for any category of stationary sources and, as a result, the new source standard of performance in effect for such category no longer reflects the greatest degree of emission limitation achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) has been adequately demonstrated.

**TITLE 8**  
**PROVISIONS FOR NON-ATTAINMENT AREAS AND NEW SOURCE REVIEW**

SECTION 8.08.01: Non-attainment Plan Provisions

SECTION 8.08.02: Additional Provisions for Non-attainment Areas for Specific Pollutants

SECTION 8.08.03: Permit Requirements

**SECTION 8.08.01**  
**Non-attainment Plan Provisions**

**A. Plan Submissions**

With respect to any area within the Gwichyaa Zhee Gwich'in Tribal Government's Territory that the Administrator of the USEPA designates as non-attainment for any NAAQS, pursuant to section 107 of the Clean Air Act, the Gwichyaa Zhee Gwich'in Environmental Department may submit a plan or plan revision meeting the applicable requirements prescribed in sections 110(a) (2) and 172(c) of the Clean Air Act and in this section and in the regulations promulgated hereunder.

**B. Plan Provisions**

The plan shall provide for attainment of the national primary ambient air quality standards and shall also contain the following provisions:

1. A requirement for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology);
2. A requirement for reasonable further progress;
3. A comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator of the USEPA may determine necessary to assure that the requirements of this part are met;
4. An identification and quantification of the emissions, if any, of any such pollutant or pollutants which will be allowed, in accordance with section 214(A) (1) (b) of this Ordinance, from the construction and operation of major new or modified stationary sources in each such area. The plan shall demonstrate to the satisfaction of the Administrator of the USEPA that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable national ambient air quality standard by the applicable attainment date;
5. A requirement for permits for the construction and operation of new or modified major stationary sources anywhere in the non-attainment area, in accordance with this Ordinance;

6. Enforceable emission limitations and such other control measures, means or techniques (including economic incentives such as fees, marketable permits and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date specified by the Administrator of the USEPA pursuant to regulations issued under section 172(a)(2) and (b) of the Clean Air Act, as modified for Indian tribes by regulations issued under section 301(d) of the Clean Air Act. The Gwichyaa Zhee Gwich'in Tribal Government may apply to the Administrator of the USEPA for the use of equivalent modeling, emission inventory and planning procedures, if the proposed techniques are, in the aggregate, at least as effective as the methods specified by the Administrator of the USEPA; and

7. A requirement for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress or to attain the national primary ambient air quality standard by the applicable attainment date. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the Gwichyaa Zhee Gwich'in Environmental Department or the Administrator of the USEPA.

#### **C. Plan Revisions in Response to Finding of Plan Inadequacy**

Any plan revision for a non-attainment area which is submitted in response to a finding by the Administrator of the USEPA pursuant to section 110(k) (5) of the Clean Air Act must correct the plan deficiencies specified by the Administrator of the USEPA and meet all other applicable plan requirements of section 202 of this Ordinance and this part.

#### **D. Planning Procedures**

For any ozone, carbon monoxide, or PM-10 non-attainment area for which the Gwichyaa Zhee Gwich'in Environmental Department intends to submit a plan, the Gwichyaa Zhee Gwich'in Tribal Government shall develop planning procedures pursuant to this subsection. The organization preparing the plan shall be certified by the Gwichyaa Zhee Gwich'in Environmental Department. In the case of a non-attainment area that is also included within another tribe or state, the Tribe may jointly with the other tribes or states, through intergovernmental agreement or otherwise, undertake and implement all or part of the planning procedures described in this subsection.

#### **E. Maintenance Plans**

If the Gwichyaa Zhee Gwich'in Environmental Department submits a request for re-designation of a non-attainment area as an area that has attained the national primary ambient air quality standard for any air pollutant, the Gwichyaa Zhee Gwich'in Environmental Department shall also submit a revision of the applicable implementation plan to provide for the maintenance of the standard for such air pollutant in the area concerned for at least ten (10) years after the re-designation. The plan shall contain such additional measures, if any, as may be necessary to ensure such maintenance. Until a plan revision is approved and an area is re-designated as attainment, the requirements of this part shall continue in force and effect with respect to such area. Moreover, eight (8) years after re-designation of any area as an attainment area under section 107(d) of the Clean

Air Act, the Gwichyaa Zhee Gwich'in Environmental Department shall submit to the Administrator of the USEPA an additional revision of the applicable implementation plan for maintaining the standard for an additional ten (10) years after the expiration of the 100 year period referred to above.

#### **F. Contingency Provisions**

Each plan revision submitted under this section shall contain such contingency provisions as the Administrator of the USEPA deems necessary to assure that the Gwichyaa Zhee Gwich'in Environmental Department will promptly correct any violation of the standard that occurs after the re-designation of the areas as an attainment area. Such provisions shall include a requirement that the Gwichyaa Zhee Gwich'in Environmental Department implement all measures with respect to the controls of the air pollutant concerned that were contained in the implementation plan for the area before re-designation as an attainment area. The failure of an area to maintain the NAAQS concerned shall not result in a requirement that the Gwichyaa Zhee Gwich'in Environmental Department revise the implementation plan unless the Administrator of the USEPA requires the Gwichyaa Zhee Gwich'in Environmental Department to do so.

#### **G. Interstate Transport Commissions**

The Gwichyaa Zhee Gwich'in Tribal Government may petition the Administrator of the USEPA to establish an interstate transport commission under section 176A of the Clean Air Act and to add or remove the Tribe or any other tribe or state or portion thereof to or from any such commission established under that section.

### ***SECTION 8.08.02***

#### ***Additional Provisions for Non-attainment Areas for Specific Pollutants***

In the event any area of the Gwichyaa Zhee Gwich'in Tribal Government's Territory is designated non-attainment for any pollutant for which a NAAQS has been promulgated by the Administrator of the USEPA, the relevant provisions of sections 181 through 192 of the Clean Air Act pertaining to that pollutant and of the regulations hereunder shall apply, to the extent such provisions are applicable to the Tribe and as modified by regulations promulgated by the Administrator of the USEPA under section 301(d) of the Clean Air Act.

### ***SECTION 8.08.03***

#### ***Permit Requirements***

#### **A. General Requirements**

The Gwichyaa Zhee Gwich'in Tribal Government may issue permits to construct and operate a proposed new or modified major stationary source if:

1. The Gwichyaa Zhee Gwich'in Environmental Department determines, in accordance with regulations issued under section 173 of the Clean Air Act and under this section, that:

**a.** By the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained such that total allowable emissions from existing sources in the region, from new or modified sources that are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources prior to the application for such permit to construct or modify so as to represent, when considered together with the plan provisions required under this Ordinance, reasonable further progress; or

**b.** In the case of a new or modified major stationary source that is located in a zone (within the non-attainment area) identified by the Administrator of the USEPA as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emission levels that exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under this Ordinance and section 172(c) of the Clean Air Act;

**2.** The proposed source is required to comply with the lowest achievable emission rate;

**3.** the owner or operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) on the Gwichyaa Zhee Gwich'in Tribal Government's Territory are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this Ordinance;

**4.** The Administrator of the USEPA has not determined that the applicable implementation plan is not being adequately implemented for the non-attainment area in which the proposed source is to be constructed or modified; and

**5.** An analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification. Any emission reductions required as a precondition to the issuance of a permit shall be federally enforceable before such permit may be issued.

## **B. Offsets**

**1.** The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this Ordinance and Part D of Title I of the Clean Air Act for increased emissions of any air pollutant only by obtaining emission reductions of such air pollutant from the same source or other

sources in the same non-attainment area, except that the Gwichyaa Zhee Gwich'in Environmental Department may allow the owner or operator to obtain such emission reductions in another non-attainment area if (a) the other area has an equal or higher non-attainment classification than the area in which the source is located, and (b ) emissions from such other area contribute to a violation of the NAAQS in the non-attainment area in which the source is located. Such emission reductions shall be in effect and enforceable by the time a new or modified source commences operation, and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

2. Emission reductions otherwise required by this Ordinance or by the Clean Air Act shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by this Ordinance shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of paragraph (1).

### **C. Control Technology Information**

The Gwichyaa Zhee Gwich'in Tribal Government shall provide that control technology information from permits issued under this section will be promptly submitted to the Administrator of the USEPA for purposes of making such information available through the Reasonably Available Control Technology (RACT)/ Best Available Control Technology (BACT)/Lowest Achievable Emission Rate (LAER) clearinghouse to other tribes and states and to the general public.

**TITLE 9**  
**CONTROL OF HAZARDOUS AIR POLLUTANTS**

SECTION 8.09.01: Control of Hazardous Air Pollutants  
SECTION 8.09.02: List of Hazardous Air Pollutants  
SECTION 8.09.03: List of Source Categories  
SECTION 8.09.04: Emission Standards  
SECTION 8.09.05: Hazardous Air Pollutant Permit Program

**SECTION 8.09.01**  
**Control of Hazardous Air Pollutants**

**A. In General**

The Gwichyaa Zhee Gwich'in Tribal Government may develop and submit to the Administrator of the USEPA for approval a program for the implementation and enforcement of emission standards and other requirements for hazardous air pollutants pursuant to section 112 of the Clean Air Act or requirements for the prevention and mitigation of accidental releases pursuant to section 112(r) of the Clean Air Act, or both. The program may provide for partial or complete delegation of the USEPA Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements.

**B. Tribal Standards**

As part of the program developed under subsection (A) of this section, the Gwichyaa Zhee Gwich'in Environmental Department may adopt and enforce regulations, requirements, limitations or standards that are more stringent than those in effect under section 112 of the Clean Air Act or that apply to a substance that is not subject to section 112 of the Clean Air Act, pursuant to this Ordinance. Any standards set by the Gwichyaa Zhee Gwich'in Tribal Government shall be at least as stringent as those promulgated by the Administrator of the USEPA.

**SECTION 8.09.02**  
**List of Hazardous Air Pollutants**

**A. Contents of List**

The hazardous air pollutants that are subject to regulation under this part shall consist of:

1. The federally listed hazardous air pollutants, as listed in section 112 of the Clean Air Act;
2. Hazardous air pollutants that are designated by the Gwichyaa Zhee Gwich'in Tribal Government, pursuant to subsection (b) of this section.



### **B. Designation of Hazardous Air Pollutants**

The Gwichyaa Zhee Gwich'in Tribal Government may, by regulation, designate hazardous air pollutants in addition to the federally listed hazardous air pollutants if the Gwichyaa Zhee Gwich'in Tribal Government finds that the pollutants present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects or adverse environmental effects, whether through ambient concentration, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under section 112(r) of the Clean Air Act. The Gwichyaa Zhee Gwich'in Tribal Government shall rely on technical protocols appropriate for the development of a list of hazardous air pollutants and shall base any designation on credible medical and toxicological evidence that has been subjected to peer review. The Gwichyaa Zhee Gwich'in Tribal Government shall not include any air pollutant that is listed under section 108 of the Clean Air Act, except that it may include a pollutant that independently meets the listing criteria of this subsection and is a precursor to a pollutant listed under section 108(a) or to any pollutant in a class of pollutants listed under that section. An adequate and reliable methodology must exist for quantifying emissions and ambient concentrations of a pollutant before that pollutant may be listed under this subsection. The Gwichyaa Zhee Gwich'in Environmental Department shall not list elemental lead as a hazardous air pollutant under this subsection.

### **C. Review of List**

The Gwichyaa Zhee Gwich'in Tribal Government shall periodically review the list of hazardous air pollutants that are designated pursuant to subsection (B) of this section and, where appropriate, shall revise such list by rule, adding or deleting substances as warranted. A current list of all hazardous air pollutants designated pursuant to subsection (B) of this section shall be kept on file at the Gwichyaa Zhee Gwich'in Tribal Government office and shall be available for examination by the public during regular business hours.

### **D. Petitions to Modify List**

Any person may petition the Gwichyaa Zhee Gwich'in Tribal Government to modify the list of hazardous air pollutants under this Ordinance by adding or deleting substances. The petition must include a showing that there is adequate data on the health or environmental effects of the pollutant or other evidence adequate to support the petition. The Gwichyaa Zhee Gwich'in Tribal Government shall commence a rulemaking pursuant to this Ordinance within six (6) months of receipt of the petition.

**SECTION 8.09.03**  
***List of Source Categories***

**A. Contents of List**

The categories and subcategories of major sources and area sources of hazardous air pollutants listed under this Ordinance shall consist of:

1. Source categories listed by the Administrator of the USEPA pursuant to section 112(c) of the Clean Air Act; and
2. Categories and subcategories of sources that emit the hazardous air pollutants designated by the Gwichyaa Zhee Gwich'in Environmental Department pursuant to this Ordinance.
3. The Gwichyaa Zhee Gwich'in Tribal Government may list a major source or area source category under this Ordinance if the Gwichyaa Zhee Gwich'in Tribal Government finds, through rulemaking pursuant to this Ordinance, that emissions of hazardous air pollutants from that category present a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section. The Gwichyaa Zhee Gwich'in Tribal Government shall periodically review the list of hazardous air pollutants that are designated pursuant to this Ordinance and, where appropriate, shall revise such list by rule, adding or deleting substances as warranted.

**B. Petitions to Modify List**

Any person may petition the Gwichyaa Zhee Gwich'in Tribal Government to modify the list of source categories under this Ordinance by adding or deleting categories. The petition must include a showing as to the lifetime risk of cancer to the most exposed individual in the affected population caused by the hazardous air pollutants emitted from such source category, the extent to which hazardous air pollutants emitted from such source category exceed or do not exceed a level which is adequate to protect public health with an ample margin of safety, the degree to which adverse environmental effects will or will not result from hazardous air pollutants emitted from such source category, or other evidence adequate to support the petition. The Gwichyaa Zhee Gwich'in Tribal Government shall commence a rulemaking pursuant to this Ordinance within six (6) months of receipt of the petition to add or delete the source category from the list.

***SECTION 8.09.04***  
***Emission Standards***

**A. In General**

The Gwichyaa Zhee Gwich'in Tribal Government shall adopt the standards promulgated by the Administrator of the USEPA pursuant to section 112(d), (e)(5), (f) and (n) of the Clean Air Act and, in addition, shall promulgate regulations establishing emissions standards for each category or subcategory listed by the Gwichyaa Zhee Gwich'in Tribal Government. The Gwichyaa Zhee Gwich'in Tribal Government may distinguish among classes, types and sizes of sources within a category or subcategory in establishing such standards. Notwithstanding the first sentence of this subsection, the Gwichyaa Zhee Gwich'in Tribal Government may adopt more stringent standards than those promulgated by the Administrator of the USEPA, except in the case of emissions of radionuclides from facilities licensed by the U.S. Nuclear Regulatory Commission. The Gwichyaa Zhee Gwich'in Environmental Department shall comply with section 112(n) (4) of the Clean Air Act with respect to the non-aggregation of emissions from oil and natural gas facilities and pipelines. Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, except as provided by regulation promulgated by the Gwichyaa Zhee Gwich'in Tribal Government, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this part, except as provided by regulation promulgated by the Gwichyaa Zhee Gwich'in Tribal Government.

**B. Criteria**

Emissions standards promulgated by the Gwichyaa Zhee Gwich'in Tribal Government under this section shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this part (including a prohibition on such emissions, where achievable) that the Gwichyaa Zhee Gwich'in Tribal Government, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures that:

1. Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;
2. Enclose systems or processes to eliminate emissions,
3. Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,

4. Are design, equipment, work practice or operational standards (including requirements for operator training or certification), as provided in section 112(h) of the Clean Air Act, or
5. Are a combination of the above.

### **C. New and Existing Sources**

The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Gwichyaa Zhee Gwich'in Tribal Government.

### **D. Compliance**

For those standards promulgated by the Administrator of the USEPA that the Gwichyaa Zhee Gwich'in Tribal Government adopts pursuant to this Ordinance, the Gwichyaa Zhee Gwich'in Tribal Government shall also adopt the same compliance dates. The Gwichyaa Zhee Gwich'in Tribal Government shall establish compliance dates for each category or subcategory of existing sources for which the Gwichyaa Zhee Gwich'in Tribal Government promulgates emissions standards under this section. These dates shall provide for compliance as expeditiously as practicable, but not until ninety (90) days after the effective date of the standard, and no later than two (2) years after the effective date of such standard.

## ***SECTION 8.09.05***

### ***Hazardous Air Pollutant Permit Program***

#### **A. In General**

Permits issued to sources of hazardous air pollutants covered under this Ordinance shall be issued pursuant to the relevant provisions of this Ordinance and subject to the requirements and conditions contained within this section.

#### **B. Construction, Reconstruction and Modifications**

After the effective date of the permit program, no person may obtain a permit or permit revision to modify, construct or reconstruct a major source of hazardous air pollutants or area source in a category listed under this Ordinance unless the Gwichyaa Zhee Gwich'in Tribal Government determines that the appropriate maximum achievable control technology emission limitation under this part will be met. In the case of modifications, the appropriate emission limitation shall be that for existing sources; in the case of construction or reconstruction, for new sources, determined pursuant to this Ordinance. In both cases, where the Administrator of the USEPA or the Gwichyaa Zhee Gwich'in Tribal Government, as the case may be, has not established applicable emission limitations, the Gwichyaa Zhee Gwich'in Tribal Government shall make such determination on a case-by-case basis.

### **C. Exemption from Definition of Modification**

A physical change in a source or change in the method of operation of a source that results in a greater than the minimis increase in actual emissions of a hazardous air pollutant shall not be considered a modification if such increase in the quantity of actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant or pollutants from such source that is deemed more hazardous, pursuant to guidance issued by the Administrator of the USEPA under section 112(g)(1)(B) of the Clean Air Act. The owner or operator of such source shall submit a showing to the Gwichyaa Zhee Gwich'in Tribal Government that such increase has been offset under this subsection.

### **D. Schedule for Compliance**

Once the Tribe has an approved permit program:

- 1.** After the effective date of any emission standard, limitation, or regulation under section 112(d), (f) or (h) of the Clean Air Act or under this Ordinance, no person may construct any new major source or area source or reconstruct any existing major source or area source subject to such emission standard, regulation or limitation unless the Gwichyaa Zhee Gwich'in Tribal Government determines that such source, if properly constructed or reconstructed and operated, will comply with the standard, regulation or limitation.
- 2.** Notwithstanding paragraph (1), a new source that commences construction or reconstruction after an applicable standard, limitation or regulation is proposed and before such standard, limitation or regulation is promulgated shall not be required to comply with such promulgated standard until the date three (3) years after the date of promulgation if:
  - a.** The promulgated standard, limitation or regulation is more stringent than the standard, limitation or regulation proposed; and
  - b.** The source complies with the standard, limitation or regulation as proposed during the three (3) year period immediately after promulgation.
- 3.** After the effective date of any emissions standard, limitation or regulation promulgated under section 112(d), (f) or (h) of the Clean Air Act or under this Ordinance and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the source shall comply with the emissions standard, limitation or regulation by the date set by the Administrator of the USEPA, pursuant to section 112(i) of the Clean Air Act, or by the Gwichyaa Zhee Gwich'in Tribal Government, pursuant to this section or other sections of this Ordinance, as the case may be.

4. The Gwichyaa Zhee Gwich'in Tribal Government may issue a permit that grants an extension permitting an existing source up to one (1) additional year to comply with standards under section 112(d) of the Clean Air Act or this section if such additional period is necessary for the installation of controls.

5. If the owner or operator of an existing source demonstrates that the source has achieved a reduction of at least 90% in emissions of hazardous air pollutants (at least 95% in the case of hazardous air pollutants that are particulates) before the otherwise applicable standard under section 112(d) of the Clean Air Act or this Ordinance is first proposed, the Gwichyaa Zhee Gwich'in Tribal Government shall issue a permit allowing the source to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under section 112(d) of the Clean Air Act or of this Ordinance.

The permit shall provide for an extension of six (6) years from the compliance date for the otherwise applicable standard. The Gwichyaa Zhee Gwich'in Tribal Government may, through regulations, require greater reductions than those specified in this paragraph as a condition of granting this extension. The reduction shall be determined according to the provisions of section 112(i) (5) (C) of the Clean Air Act and the regulations hereunder.

6. The reduction in paragraph (5) shall be determined with respect to verifiable and actual emissions in a base year not earlier than calendar year, provided that there is no evidence that emissions in the base year are artificially or substantially greater than emissions in other years prior to implementation of emission reduction measures.

7. For each source granted an alternative emission limitation under paragraph (5) above, the permit shall establish an enforceable emission limitation for hazardous air pollutants reflecting the reduction which qualifies the source for an alternative emission limitation under paragraph (5). An alternative emission limitation shall not be available with respect to standards or requirements promulgated pursuant to section 112(f) of the Clean Air Act.

#### **E. Equivalent Emission Limitation Permit**

Once the Tribe has an approved permit program under this Ordinance:

1. If the Administrator of the USEPA fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to section 112(e)(1) and (3) of the Clean Air Act, then beginning eighteen (18) months after that date (but not prior to the effective date of the Tribal permit program), the owner or operator of any major source in such category or subcategory shall submit a permit application to the Gwichyaa Zhee Gwich'in Environmental Department, pursuant to requirements established by the Administrator of the USEPA under section 112(j) of the Clean Air Act. If the owner or operator has submitted a timely and complete application for a permit, any failure to have a permit shall not be a violation of this requirement, unless the delay in final action

is due to the failure of the applicant to timely submit information required or requested to process the application.

**2.** Permit applications submitted under this subsection shall be reviewed and approved or disapproved according to the provisions of this Ordinance. If the Gwichyaa Zhee Gwich'in Tribal Government disapproves a permit application or determines that the application is incomplete, the applicant shall have up to six (6) months to revise the application to meet the objections of the Gwichyaa Zhee Gwich'in Tribal Government.

**3.** The permit shall contain emission limitations for the hazardous air pollutants subject to regulation under this section and emitted by the source that the Gwichyaa Zhee Gwich'in Tribal Government determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under section 112(d) of the Clean Air Act. In the alternative, if the applicable criteria are met, the permit may contain emissions limitation established according to the provisions of this section. For these purposes, the reduction required by this section shall be achieved by the date on which the relevant standard should have been promulgated under section 112(d) of the Clean Air Act. No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and as expeditiously as practicable, but no later than three (3) years after the permit is issued for existing sources or such other compliance date as would apply under this section.

**4.** If the Administrator of the USEPA promulgates an emission standard that is applicable to the major source prior to the date on which a permit application is approved, the emission limitation in the permit shall reflect the promulgated standard rather than the emission limitation determined pursuant to paragraph (3), provided that the source shall have the compliance period provided under this section. If the Administrator of the USEPA promulgates a standard under section 112(d) of the Clean Air Act that would be applicable to the source in lieu of the emission limitation established by permit under this subsection after the date on which the permit has been issued, the Gwichyaa Zhee Gwich'in Tribal Government shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator of the USEPA, providing such source a reasonable time to comply but no longer than eight (8) years after such standard is promulgated or eight (8) years after the date on which the source is first required to comply with the emissions limitation established by paragraph (3), whichever is earlier.

**TITLE 10**  
***ACID DEPOSITION CONTROL***

SECTION 8.10.01: Acid Deposition Permits and Compliance Plans  
SECTION 8.10.02: Special Provisions Related to Nitrogen Oxides

***SECTION 8.10.01***  
***Acid Deposition Permits and Compliance Plans***

**A. Permit Program**

1. The Gwichyaa Zhee Gwich'in Tribal Government may submit a permit program for approval in accordance with Title IV of the Clean Air Act and this Ordinance to provide for permits for: new utility units required under section 403(e) of the Clean Air Act to have allowances; affected units or sources under section 405 of the Clean Air Act; and units subject to nitrogen oxide emission reductions under section 407 of the Clean Air Act.
2. Any permit issued by the Gwichyaa Zhee Gwich'in Tribal Government shall prohibit:
  - a. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that the owner or operator of the unit or designated representative of the owners or operators hold for the unit;
  - b. Violations of applicable emissions rates;
  - c. The use of any allowance prior to the year for which it has allocated; and
  - d. Contravention of any other provision of the permit. Permits shall be issued for a period of (five) 5 years. No permit shall be issued that is inconsistent with the requirements of this section and Title IV of the Clean Air Act and the regulations hereunder, and with the applicable provisions of this Ordinance and Title V of the Clean Air Act and the regulations hereunder.

**B. Compliance Plans**

Each affected source when submitting an initial permit application to the Gwichyaa Zhee Gwich'in Environmental Department shall include a compliance plan for the source to comply with its requirements under Title IV of the Clean Air Act. Where an affected source consists of more than one affected unit, the compliance plan shall cover all such units, and for purposes of section 502(c) of the Clean Air Act the source shall be considered a "facility." Nothing in this section regarding compliance plans or in this Ordinance shall be construed as affecting allowances. Except as provided under section 408(c)(1)(B) of the Clean Air Act, submission of a statement by the owner or operator of a unit subject to the emissions limitation requirements of sections 405 and 407 of the



Clean Air Act that the unit will meet the applicable emissions limitation requirements of such sections in a timely manner or that; in the case of the emissions limitation requirements of section 405 of the Clean Air Act, the owners and operators will hold allowances to emit not less than the total annual emissions of the unit, shall be deemed to meet the compliance planning requirements of this section and Title V of the Clean Air Act, except that, for any unit that will meet the requirements of Title IV of the Clean Air Act by means of an alternative method of compliance authorized under sections 407(d) or (e), 409 or 410 of the Clean Air Act or this Ordinance, the proposed and approved compliance plan, permit application and permit shall include, pursuant to regulations promulgated by the Administrator of the USEPA, for each alternative method of compliance a comprehensive description of the schedule and means by which the unit will rely on one or more alternative methods of compliance in the manner and time authorized under Title IV of the Clean Air Act. Recordation by the Administrator of the USEPA of transfers of allowances shall amend automatically all applicable proposed or approved permit applications, compliance plans and permits. The Gwichyaa Zhee Gwich'in Environmental Department may also require:

1. For a source, a demonstration of attainment of national ambient air quality standards, and
2. from the owner or operator of two or more affected sources, an integrated compliance plan providing an overall plan for achieving compliance at the affected sources.

### **C. Phase II Permits**

1. The owner or operator or the designated representative thereof of each affected source under section 405 of the Clean Air Act that is located within the Gwichyaa Zhee Gwich'in Tribal Government's Territory shall submit a permit application and compliance plan for that source to the Gwichyaa Zhee Gwich'in Tribal Government.
2. Not later than the date scheduled provided that the Tribe has an approved acid deposition control permit program, the Gwichyaa Zhee Gwich'in Tribal Government shall issue permits to the owner, operator or designated representative thereof of affected sources under section 405 of the Clean Air Act that satisfy the requirements of this Ordinance and Title V of the Clean Air Act provided that the owner, operator or a designated representative has submitted to the Gwichyaa Zhee Gwich'in Tribal Government a permit application and compliance plan pursuant to paragraph (1). The permit application and the compliance plan, including amendments thereto, shall be binding on the owner, operator or designated representative and shall be enforceable as a permit for purposes of this Ordinance until a permit is issued by the Gwichyaa Zhee Gwich'in Tribal Government for the affected source.
3. The permit issued in accordance with this subsection for an affected source shall provide that the affected units at the affected source may not emit an annual

tonnage of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that the owner or operator holds for the unit.

#### **D. New Units**

The owner or operator of each source that includes a new utility unit that is located within the Gwichyaa Zhee Gwich'in Tribal Government's Territory shall submit a permit application and compliance plan to the Gwichyaa Zhee Gwich'in Tribal Government not later than two (2) years of the permit, or the date on which the unit commences operation, whichever is later. The Gwichyaa Zhee Gwich'in Tribal Government shall issue a permit to the owner, operator or designated representative of the unit that satisfies the requirements of this Ordinance and of Titles IV and V of the Clean Air Act.

#### **E. Units Subject to NO<sub>x</sub> Emission Limitations**

The owner or operator of any unit subject to an emission rate requirement under section 407 of the Clean Air Act and located within the Gwichyaa Zhee Gwich'in Tribal Government's Territory shall submit a permit application and compliance plan for such unit to the Gwichyaa Zhee Gwich'in Tribal Government. The Gwichyaa Zhee Gwich'in Tribal Government shall issue a permit to the owner or operator that satisfies the requirements of Titles IV and V of the Clean Air Act and this Ordinance, including any appropriate monitoring and reporting requirements.

#### **F. Amendment of Application and Compliance Plan**

At any time after the submission of an application and compliance plan under this section, the applicant may submit a revised application and compliance plan in accordance with the requirements of this section and the regulations hereunder. In considering any permit application and compliance plan under this section, the Gwichyaa Zhee Gwich'in Tribal Government shall ensure coordination with the applicable electric ratemaking authority, in the case of regulated utilities, and with unregulated public utilities.

#### **G. Prohibition:**

1. It shall be unlawful for an owner or operator, or designated representative thereof, required to submit a permit application or compliance plan under this part to fail to submit such application or plan in accordance with the requirements specified in this section or to otherwise fail to comply with regulations implementing this section.
2. It shall be unlawful for any person to operate any source subject to this section except in compliance with the terms and requirements of a permit application and compliance plan (including amendments thereto) or permit issued by the Gwichyaa Zhee Gwich'in Tribal Government, provided that there is an approved Tribal acid deposition permit program.
3. In order to ensure reliability of electric power, nothing in this Ordinance shall be construed as requiring termination of operations of an electric utility steam generating unit for failure to have an approved permit or compliance plan, except

that any such unit may be subject to the applicable enforcement provisions of this Ordinance.

#### **H. Certificate of Representation**

No permit shall be issued under this section to an affected unit until the owner or operator has filed, with the Administrator of the USEPA and the Gwichyaa Zhee Gwich'in Tribal Government, a certificate of representation with regard to matters under Title IV of the Clean Air Act and this part, including the holding and distribution of allowances and the proceeds of transactions involving allowances. Such certificate shall comply with the requirements of section 408(i) of the Clean Air Act and the regulations hereunder, including where there are multiple holders of a legal or equitable title to, or a leasehold interest in, such a unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, as those terms are defined under Title IV of the Clean Air Act and the regulations hereunder.

#### ***SECTION 8.10.02***

#### ***Special Provisions Related to Nitrogen Oxides***

#### **A. Alternative Emission Limitations**

Upon request by an owner or operator of a unit subject to section 407 of the Clean Air Act, the Gwichyaa Zhee Gwich'in Tribal Government shall authorize an emission limitation less stringent than the applicable limitation established under section 407(b) of the Clean Air Act upon a determination that:

1. A unit subject to section 407(b)(1) of the Clean Air Act cannot meet the applicable limitation using low NO<sub>x</sub> burner technology, as defined in Title IV of the Clean Air Act and the regulations hereunder; or
2. A unit subject to section 407(b)(2) of the Clean Air Act cannot meet the applicable rate using the technology on which the Administrator of the USEPA based the applicable emission limitation.

#### **B. Demonstration Required**

The Gwichyaa Zhee Gwich'in Tribal Government shall base such determination upon a showing satisfactory to the Gwichyaa Zhee Gwich'in Tribal Government, in accordance with regulations promulgated by the Administrator of the USEPA, that the owner or operator:

1. Has properly installed appropriate control equipment designed to meet the applicable emission rate;
2. Has properly operated such equipment for the period required by the Administrator of the USEPA in regulations and provides operating and monitoring data for such period demonstrating that the unit cannot meet the applicable emission rate; and

3. Has specified an emission rate that such unit can meet on an annual average basis.

### **C. Permit**

The Gwichyaa Zhee Gwich'in Tribal Government shall issue an operating permit for the unit in question in accordance with this Ordinance that permits the unit during the demonstration period referred to in subsection (B)(2) above to emit at a rate in excess of the applicable emission rate. At the conclusion of the demonstration period, the Gwichyaa Zhee Gwich'in Tribal Government shall revise the operating permit to reflect the alternative emission rate demonstrated in subsection (B) (2) and (3) above.

### **D. Emissions Averaging**

1. In lieu of complying with the applicable emission limitations under section 407(b)(1), (2) or (d) of the Clean Air Act, the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to those sections may petition the Gwichyaa Zhee Gwich'in Tribal Government for alternative contemporaneous annual emission limitations for such units that ensure that the actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than or equal to the Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limitations set in accordance with the applicable emission rates set pursuant to section 407(b)(1) and (2) of the Clean Air Act.
2. If the Gwichyaa Zhee Gwich'in Environmental Department determines, in accordance with regulations promulgated by the Administrator of the USEPA, that the conditions in paragraph (1) can be met, the Gwichyaa Zhee Gwich'in Environmental Department shall issue operating permits for such units, in accordance with section 221 of this Ordinance, that allow alternative contemporaneous annual emission limitations. Such emission limitations shall only remain in effect while all such units continue operation under the conditions specified in their respective operating permits.

***TITLE 11  
PERMITS***

SECTION 8.11.01: Permit Programs

SECTION 8.11.02: Permit Applications

SECTION 8.11.03: Permit Requirements and Conditions

SECTION 8.11.04: Notification to Administrator of the USEPA and Contiguous Tribes  
and States, and Notification to Public

SECTION 8.11.05: Permit Transfers

***SECTION 8.11.01  
Permit Programs***

**A. Submission and Approval**

1. The Gwichyaa Zhee Gwich'in Tribal Government may develop and submit to the Administrator of the USEPA a permit program or portion thereof meeting the requirements of Title V of the Clean Air Act and the regulations hereunder. The Gwichyaa Zhee Gwich'in Tribal Government may establish additional permitting requirements in regulations under this section, provided that the additional requirements are not inconsistent with the requirements of Title V of the Clean Air Act. In addition, the Gwichyaa Zhee Gwich'in Tribal Government shall submit to the Administrator of the USEPA a legal opinion from the Attorney General that the laws of the Tribe provide adequate authority to carry out the program.

2. If the Administrator of the USEPA disapproves the permit program, in whole or in part, and notifies the Gwichyaa Zhee Gwich'in Tribal Government of any revisions or modifications necessary to obtain approval, the Gwichyaa Zhee Gwich'in Tribal Government may revise and resubmit the program for review under section 502 of the Clean Air Act.

**B. Requirements**

The permit program shall contain the elements required by the Administrator of the USEPA by regulation pursuant to Title V of the Clean Air Act, as well as such other elements as the Gwichyaa Zhee Gwich'in Tribal Government may require by regulation, including, but not limited to:

1. In the case of permits for major sources with a remaining term of three (3) or more years, a requirement that revisions be made to the permit to incorporate applicable standards and regulations promulgated under this Ordinance or under the Clean Air Act after the issuance of such permit, as expeditiously as practicable and consistent with the procedures established hereunder but not later than 18 months after the promulgation of such standards and regulations, except that no revision shall be required if the effective date of the standards or regulations is after the expiration of the permit term. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this part regarding renewals;

2. In the case of affected sources under the acid rain program, a requirement that revisions be made to the permit to incorporate applicable requirements under this Ordinance and Title IV of the Clean Air Act and the regulations hereunder; or

3. Provisions to allow changes within a permitted facility or one operating pursuant to this Ordinance or section 503(d) of the Clean Air Act without requiring a permit revision, if the changes are not modifications under any provision of Title I of the Clean Air Act and the changes do not exceed the emissions allowable under the permit (whether expressed as a rate of emissions or as total emissions), and if the facility provides the Gwichyaa Zhee Gwich'in Environmental Department and the Administrator of the USEPA with written notification a minimum of seven (7) days in advance of the proposed changes according to the requirements of the regulations promulgated under section 502(b)(10) of the Clean Air Act and under this section.

### **C. Effective Date**

The effective date of a permit program or partial or interim program approved under section 502 of the Clean Air Act shall be the effective date of approval by the Administrator of the USEPA.

### **D. Minor Source Permits**

Notwithstanding any other provisions under this part, the Gwichyaa Zhee Gwich'in Tribal Government shall establish by regulation a minor source permitting program, under which sources not classified as major sources or not otherwise subject to the provisions of this part shall nevertheless be required to obtain operating permits, in order to control emissions, including fugitive emissions, from such sources. The Gwichyaa Zhee Gwich'in Tribal Government shall promulgate regulations pursuant to this subsection which shall identify the minor sources subject to this subsection, provide for the filing of permit applications and compliance plans and for the payment of fees pursuant to this Ordinance, and require monitoring and reporting.

## ***SECTION 8.11.02*** ***Permit Applications***

### **A. Applicable Date**

Any source specified in this Ordinance shall become subject to a permit program under this part on the later of the following dates:

1. The effective date of a permit program or partial or interim permit program applicable to the source; or
2. The date such source becomes subject to this Ordinance.

## **B. Deadline**

Any person required to have a permit shall, not later than 1 year after the date on which the source becomes subject to a permit program under this part (including permit programs that have received interim approvals and partial permit programs), or such earlier date as the Gwichyaa Zhee Gwich'in Tribal Government may establish, submit to the Gwichyaa Zhee Gwich'in Tribal Government a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. Permit applications shall be filed in the manner and according to the requirements prescribed by this Ordinance and by the Gwichyaa Zhee Gwich'in Tribal Government through regulation. The Gwichyaa Zhee Gwich'in Tribal Government shall approve or disapprove a completed application and shall issue or deny the permit within 18 months after the date of receipt thereof, except that the Gwichyaa Zhee Gwich'in Tribal Government shall establish, in conjunction with EPA Region 10, a phased schedule for acting on permit applications submitted within the first full year after the effective date of the permit program or the partial or interim program. This schedule shall ensure that all such applications will be acted on by the Gwichyaa Zhee Gwich'in Tribal Government within five years after such effective date. The Gwichyaa Zhee Gwich'in Tribal Government shall establish reasonable procedures to review permit applications and to prioritize approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of this Ordinance.

## **C. Permit Applications**

1. Each issued permit shall contain the following statement to which the permittee must agree and subscribe for the permit to be complete and as a condition precedent to the final issuance of any permit: "Permittee consents to the jurisdiction of the Tribe with respect to those activities conducted pursuant to this permit issued by the Gwichyaa Zhee Gwich'in Environmental Department pursuant to the provisions of the GZG Tribal Air Quality Ordinance. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents, including contractors and subcontractors of permittee whose activities fall within the scope of the issued permit."

2. Permittee shall include the foregoing statement as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the Gwichyaa Zhee Gwich'in Tribal Government's Territory in connection with any permit issued by the Gwichyaa Zhee Gwich'in Tribal Government, and each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for "permittee" as appropriate.

#### **D. Application under Oath**

Each applicant shall sign the permit application under oath, certifying the truth and accuracy of the information contained in the permit application, in a form approved by the Gwichyaa Zhee Gwich'in Tribal Government.

#### **E. Compliance Plan**

The applicant shall submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this Ordinance. The compliance plan shall include a schedule of compliance and a schedule under which the permittee will submit progress reports to the Gwichyaa Zhee Gwich'in Tribal Government no less frequently than every six (6) months. In addition, the permittee shall periodically certify that the facility is in compliance with any applicable requirements of the permit, and promptly report any deviations from permit requirements to the Gwichyaa Zhee Gwich'in Tribal Government, as provided in the regulations promulgated under this part.

#### **F. Availability to Public**

A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this part, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure, the applicant or permittee may submit such information separately.

#### **G. Fees**

A processing and monitoring fee, as established by Gwichyaa Zhee Gwich'in Tribal Government, shall be paid to the Tribe at the time of filing. These fees shall be used for costs associated with administering the Air Quality Control Plan.

#### **H. Emergency Power of Tribe**

Nothing in any permit shall ever be construed to prevent or limit the application of any emergency power of the Tribe.

### ***SECTION 8.11.03*** ***Permit Requirements and Conditions***

#### **A. In General**

Permits shall be issued under this part for fixed terms, not to exceed five (5) years, except that affected sources under this Ordinance must have five (5)-year fixed terms and solid waste incineration units under this Ordinance may have up to twelve (12)-year fixed terms. Each permit shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the Gwichyaa Zhee Gwich'in Tribal Government, no less often than every six (6) months, the results of any required monitoring, provisions under which the permit can be revised, terminated, modified or reissued for cause, an identification of all alternative operating scenarios, and such other conditions as are necessary to assure compliance with applicable requirements



of this Ordinance and the regulations hereunder, including the requirements of the applicable implementation plan.

**B. Inspection, entry, monitoring, certification and reporting**

Each permit issued under this part shall set forth inspection, entry, monitoring, compliance certification and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation promulgated under section 504(b) of the Clean Air Act Any report required to be submitted by a permit issued to a corporation under this part shall be signed by a responsible corporate official, who shall certify its accuracy.

**C. Temporary Sources**

The Gwichyaa Zhee Gwich'in Tribal Government may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of this Ordinance at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under this Ordinance. Any such permit shall in addition require the owner or operator to notify the Gwichyaa Zhee Gwich'in Tribal Government in advance of each change in location. The Gwichyaa Zhee Gwich'in Tribal Government may require a separate permit fee for operations at each location.

***SECTION 8.11.04***

***Notification to Administrator of the USEPA and Contiguous Tribes and States;  
Notification to Public***

**A. Notice**

Unless the following notification requirements are waived by the Administrator of the USEPA for a particular category of sources (other than major sources), pursuant to section 505(d) of the Clean Air Act,

**1. The Gwichyaa Zhee Gwich'in Tribal Government shall**

- a.** Transmit to the Administrator of the USEPA a copy of each permit application (including any application for a permit modification or renewal) or such portion thereof, including any compliance plan, as the Administrator of the USEPA may require to effectively review the application and otherwise carry out the USEPA Administrator's responsibilities under the Clean Air Act, and
- b.** Provide to the Administrator of the USEPA a copy of each permit proposed to be issued and issued as a final permit.

2. The Gwichyaa Zhee Gwich'in Tribal Government shall notify all states and tribes

a. Whose air quality may be affected and that are contiguous to the Tribe, or

b. That are within 50 miles of the source, of each permit application or proposed permit forwarded to the Administrator of the USEPA under this section, and shall provide an opportunity for such states and tribes to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any parts of those recommendations are not accepted by the Gwichyaa Zhee Gwich'in Tribal Government, the Gwichyaa Zhee Gwich'in Tribal Government shall notify the state or tribe submitting the recommendations and the Administrator of the USEPA in writing of its refusal to accept those recommendations and the reasons therefore.

### **B. Objection by USEPA**

Unless the following requirements are waived by the Administrator of the USEPA for any particular category of sources (other than major sources), pursuant to section 505(d) of the Clean Air Act:

1. The Gwichyaa Zhee Gwich'in Tribal Government shall respond in writing to any objection by the Administrator of the USEPA to the issuance of a permit, pursuant to the provisions of section 505(b) of the Clean Air Act and the regulations hereunder.

2. Upon receipt of an objection by the Administrator of the USEPA under section 505 of the Clean Air Act, the Gwichyaa Zhee Gwich'in Tribal Government may not issue the permit unless it is revised and issued in accordance with subsection (C) of this section. If the Gwichyaa Zhee Gwich'in Environmental Department has issued a permit prior to receipt of an objection by the Administrator of the USEPA under section 505(b)(2) of the Clean Air Act, the Gwichyaa Zhee Gwich'in Tribal Government may issue a revised permit in accordance with subsection (C) of this section after the permit has been modified, terminated or revoked by the Administrator of the USEPA.

### **C. Issuance or Denial**

1. The Gwichyaa Zhee Gwich'in Tribal Government shall, within 90 days after the date of an objection under section 505(b) of the Clean Air Act, submit a permit revised to meet the objection.

2. If the Administrator of the USEPA notifies the Gwichyaa Zhee Gwich'in Tribal Government that cause exists to terminate, modify or revoke and reissue a permit, the Gwichyaa Zhee Gwich'in Tribal Government shall, within 90 days after receipt of such notification, forward to the Administrator of the USEPA a

proposed determination of termination, modification or revocation and re-issuance, as appropriate. The Gwichyaa Zhee Gwich'in Tribal Government may request a ninety-day extension for this submittal, in accordance with Section 505(e) of the Clean Air Act.

***SECTION 8.11.05***  
***Permit Transfers***

A permit shall not be transferable, by operation of law or otherwise. From one location to another or from one source to another, except that a permit may be transferred from one location to another in the case of a mobile or portable source that has notified the Gwichyaa Zhee Gwich'in Environmental Department in advance of the transfer, pursuant to regulations promulgated under this section. A permit for a source may be transferred from one person to another if the person who holds the permit notifies the Gwichyaa Zhee Gwich'in Tribal Government in advance in writing of the transfer, according to regulations promulgated by the Gwichyaa Zhee Gwich'in Tribal Government, and if the Gwichyaa Zhee Gwich'in Tribal Government finds that the transferee is capable of operating the source in compliance with the permit requirements of this part and the regulations hereunder.

**TITLE 12**  
**ENFORCEMENT PROGRAM/ADMINISTRATIVE PROCEDURES**

- SECTION 8.12.01: Enforcement Policy
- SECTION 8.12.02: Enforcement Agency
- SECTION 8.12.03: Enforcement Activities
- SECTION 8.12.04: Notice of Violation; Cease and Desist Order
- SECTION 8.12.05: Informal Conferences
- SECTION 8.12.06: Reports Required
- SECTION 8.12.07: Enforcement Hearings
- SECTION 8.12.08: Civil Penalties and Corrective Action
- SECTION 8.12.09: Judicial Enforcement
- SECTION 8.12.10: Special Provisions for Tribal Departments and Agencies

***SECTION 8.12.01***  
***Enforcement Policy***

It is the policy of the Gwichyaa Zhee Gwich'in Tribal Government to encourage informal, practical, result oriented resolution of alleged violations and actions needed to prevent damage to Gwichyaa Zhee Gwich'in Tribal Government's Territory resources or harm to the health, safety or welfare of the Gwichyaa Zhee Gwich'in Tribal Government's Territory population. It is also the policy of the Gwichyaa Zhee Gwich'in Tribal Government, consistent with the principles of due process, to provide effective procedures for enforcement.

***SECTION 8.12.02***  
***Enforcement Agency***

The Gwichyaa Zhee Gwich'in Tribal Government shall be responsible for enforcing the provisions of this Ordinance. Specifically, the Gwichyaa Zhee Gwich'in Tribal Government shall conduct investigations when a complaint is received by the Tribal Environmental Department or other Tribal agency believes that a violation of this Ordinance has occurred.

***SECTION 8.12.03***  
***Enforcement Activities***

Where a written and verified complaint shall be filed with the Gwichyaa Zhee Gwich'in Tribal Government and reviewed by the Gwichyaa Zhee Gwich'in Tribal Government alleging that, or where the Gwichyaa Zhee Gwich'in Tribal Government itself shall have cause to believe that, any person is violating any air quality regulation or permit condition, the Gwichyaa Zhee Gwich'in Tribal Government shall cause a prompt investigation to be made.

**SECTION 8.12.04**

***Notice of Violation; Cease and Desist Order***

If the Gwichyaa Zhee Gwich'in Tribal Government finds after an investigation pursuant to this Ordinance that a violation of any regulation or permit condition exists, the Gwichyaa Zhee Gwich'in Environmental Department shall promptly notify both the alleged violator and the Gwichyaa Zhee Gwich'in Tribal Government in writing. In the case of an apparent violation of this Ordinance, the Gwichyaa Zhee Gwich'in Tribal Government is authorized to issue a Notice of Violation to the person(s) apparently responsible for the violation, and, if the apparent violation occurred on property owned by a person other than the alleged violator, a Notice of Violation shall also be issued to the landowner. In the case of a continuing violation or a threatened violation, the Gwichyaa Zhee Gwich'in Tribal Government is authorized to issue a Cease and Desist Order to prevent the violation from continuing or occurring. Failure to comply with a Cease and Desist Order shall constitute a violation of this Ordinance. Both a Notice of Violation and a Cease and Desist Order may be issued for a single incident. A Notice of Violation will include a Summons to appear before the Gwichyaa Zhee Gwich'in Environmental Department at an enforcement hearing at a specified time and date, and shall advise the alleged violator that failure to appear may result in the imposition of civil penalties. If a Cease and Desist Order is issued without an accompanying Notice of Violation, the Order will inform the recipient that failure to comply with the Order will constitute a violation of this Ordinance which will result in the issuance of a Notice of Violation and may result in the imposition of civil penalties.

**SECTION 8-12-05**

***Informal Conferences***

The Gwichyaa Zhee Gwich'in Environmental Department shall afford the landowner or his or her representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the Gwichyaa Zhee Gwich'in Tribal Government determines that there may be either imminent environmental damage to a Gwichyaa Zhee Gwich'in Tribal Government resource or adverse impact upon the health, safety and welfare of the Gwichyaa Zhee Gwich'in Tribal Government population. Informal conferences may be used at any stage in the enforcement proceedings, except that the Gwichyaa Zhee Gwich'in Tribal Government may refuse to conduct informal conferences with respect to any matter then pending before the Gwichyaa Zhee Gwich'in Tribal Government or Gwichyaa Zhee Gwich'in Tribal Court.

**SECTION 8.12.06**

***Reports Required***

The Gwichyaa Zhee Gwich'in Tribal Government shall keep written notes of the date and place of the conference, the persons in attendance, the subject matter discussed and any decisions reached with respect to further enforcement action.

***SECTION 8.12.07***  
***Enforcement Hearings***

If the landowner and the Gwichyaa Zhee Gwich'in Tribal Government are unable to resolve the matter via an informal conference, the Gwichyaa Zhee Gwich'in Tribal Government is authorized to conduct adjudicatory hearings to determine if a violation of this Ordinance has occurred. In such a hearing the Gwichyaa Zhee Gwich'in Tribal Government, in cooperation with the Gwichyaa Zhee Gwich'in Tribal Court shall hear the case to establish that the person(s) charged has (have) committed a violation of this Ordinance. Any person so charged shall be entitled, at his or her own expense, to be represented by an attorney or other representative.

**A. Burden of Proof**

The Gwichyaa Zhee Gwich'in Tribal Government shall have the burden of proving that a violation of this Ordinance has occurred and that a person charged was responsible for the violation. The Gwichyaa Zhee Gwich'in Tribal Government shall rule that a violation of this Ordinance has occurred if it finds that the charges are supported by substantial evidence and that a preponderance of the credible evidence supports a finding that a violation has occurred.

**B. Enforcement Orders**

Within thirty (30) days after the date of any enforcement hearing, the Gwichyaa Zhee Gwich'in Environmental Department shall issue a written decision. If the Tribal Environmental Department determines that a violation has occurred and that the person(s) charged was (were) responsible for the violation, the Tribal Environmental Department's decision shall include an Enforcement Order.

***SECTION 8.12.08***  
***Civil Penalties and Corrective Action***

An Enforcement Order shall direct any person(s) found to have committed a violation of this Ordinance to take whatever corrective action the Gwichyaa Zhee Gwich'in Tribal Government deems appropriate under the circumstances. An Enforcement Order may impose civil penalties in accordance with a schedule of civil penalties prescribed in the Gwichyaa Zhee Gwich'in Tribal Government's rules. Alternatively, an Enforcement Order may impose civil penalties in the event that a person found to have committed a violation of this Ordinance does not take corrective action in accordance with the Order within a prescribed time frame. If a person who has been found to have committed a violation does not take corrective action within the prescribed time frame, an appropriate department or agency of the Tribal government may take the necessary corrective action, in which case the amount of any civil penalty shall be increased by twice the amount of the cost incurred by the Tribal department or agency in taking the corrective action.

### **A. Emergency Orders**

Notwithstanding any other provision of this Ordinance, if the Gwichyaa Zhee Gwich'in Tribal Government determines that noncompliance with this Ordinance is presenting an imminent and substantial threat to the public health, welfare or environment and determines, in consultation with the Tribe's attorneys, that it is not practicable to assure prompt protection of the public health, welfare or environment of an administrative or judicial enforcement action under this Part, the Gwichyaa Zhee Gwich'in Tribal Government may issue such orders as may be necessary to protect the public health, welfare or environment. Any such order shall be effective immediately upon issuance and shall remain in effect for a period not to exceed sixty (60) days.

### **B. Revocation of Permit**

Failure of any person to comply with any Enforcement Orders will result in an immediate revocation of his or her permit. In order to obtain a reinstatement of such permit, the person(s) against whom the Enforcement Order was issued must first demonstrate compliance with the Order and pay all outstanding penalties and then petition for reinstatement of the permit with the Gwichyaa Zhee Gwich'in Tribal Government.

## ***SECTION 8.12.09*** ***Judicial Enforcement***

The Gwichyaa Zhee Gwich'in Tribal Court shall have jurisdiction of all cases and controversies arising under this Ordinance.

**A.** The Gwichyaa Zhee Gwich'in Environmental Department may request the Gwichyaa Zhee Gwich'in Tribal Government to file an action in Tribal Court pursuant to this Ordinance for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties and clean up and administrative costs associated with the enforcement of this Ordinance (except that any suit against the Tribe or a tribal department or agency shall be for injunctive relief only and not for penalties or other money damages), in any of the following instances:

- 1.** Whenever a person has violated, or is in violation of, any provision of this Ordinance, including but not limited to a regulation, permit or order issued pursuant to this Ordinance;
- 2.** Whenever a person submits false information under this Ordinance or regulations promulgated under this Ordinance; or
- 3.** Whenever a person is creating an imminent and substantial endangerment to the public health, welfare, environment or cultural resources of the Tribe, in which case the Gwichyaa Zhee Gwich'in Tribal Government shall pursue injunctive relief but not the assessment of penalties, unless the endangerment is caused by a violation, as specified in paragraphs (1) and (2) above.

**B.** Any person who in violation of this Ordinance emits air pollutants or hazardous air pollutants into the air within the boundaries of the Gwichyaa Zhee Gwich'in Tribal Government's Territory shall be liable for all costs associated with or necessary to clean up, abate or close the source and restore the quality of the air of the Gwichyaa Zhee Gwich'in Tribal Government's Territory to its condition as it existed immediately prior to the emissions.

***SECTION 8.12.10***  
***Special Provisions for Tribal Departments and Agencies***

In any case in which the Gwichyaa Zhee Gwich'in Tribal Government or any Tribal agency or department is alleged to have violated the terms and conditions of a permit, or to have conducted activities without a permit, the Gwichyaa Zhee Gwich'in Tribal Government shall consider taking action to ensure compliance with this Ordinance. If the matter cannot be resolved informally, the Gwichyaa Zhee Gwich'in Tribal Government shall conduct an enforcement hearing for the purpose of making factual determinations and issuing a decision recommending a course of corrective action if necessary.

***TITLE 13***  
***APPEALS***

SECTION 8.13.01: Judicial Review

***SECTION 8.13.01***  
***Judicial Review***

Any person who is aggrieved by the issuance or denial of a permit without respect to whether that person, corporation or other entity is a party to such permit application, or who is the subject of an Enforcement Order, may file an appeal with the Gwichyaa Zhee Gwich'in Tribal Court. The Court is authorized to hear such appeal.



**TITLE 14**  
**OTHER PROVISIONS**

SECTION 8.14.01: Severability  
SECTION 8.14.02: Amendments  
SECTION 8.14.03: Effective Date

**SECTION 8.14.01**  
**Severability**

If any provision of this Ordinance, or the application thereof, is held invalid, the remainder of this Ordinance, or applications of such provisions, shall not be affected.

**SECTION 8.14.02**  
**Amendments**

The Gwichyaa Zhee Gwich'in Tribal Government reserves the sole right to amend this Ordinance and to issue rules affecting all aspects of the Ordinance. Provisions in the Ordinance allow the Gwichyaa Zhee Gwich'in Tribal Government full flexibility to enact measures which will benefit the Tribe. The inclusion of these provisions does not necessitate their implementation, but allows the Gwichyaa Zhee Gwich'in Tribal Government flexibility to alter the Ordinance according to the evolving needs of the Gwichyaa Zhee Gwich'in Tribal Government's Territory.

**SECTION 8.14.03**  
**Effective Date**

This Ordinance shall become effective upon Gwichyaa Zhee Gwich'in Tribal Council approval.

**CHAPTER 9**  
**TRIBAL SOLID WASTE DISPOSAL**

**TITLE 1**  
***TITLE, FINDINGS & PURPOSE***

SECTION 9.01.01: Short Title

SECTION 9.01.02: Findings

SECTION 9.01.03: Purpose

SECTION 9.01.04: Authority and Scope

SECTION 9.01.05: Consensual Relations Among Non-Members, the Tribe and Tribal Members

**SECTION 9.01.01**

***Short Title***

This Ordinance shall be known as the **Tribal Solid Waste Disposal Ordinance** of the Gwichyaa Zhee Gwich'in Tribal Government.

**SECTION 9.01.02**

***Findings***

The Gwichyaa Zhee Gwich'in Tribal Government hereby finds as follows:

**A.** The increasing volume and variety of solid waste and hazardous waste being generated on the Gwichyaa Zhee Gwich'in Tribal Territory and the often-inadequate existing methods of managing solid waste and hazardous waste are creating conditions that threaten the public health, safety and welfare of tribal members and residents of the Gwichyaa Zhee Gwich'in Tribal Territory by contributing to land, air and water pollution, to the production of flies, rodents and litter, to the waste of dwindling natural resources, and to the general deterioration of the Gwichyaa Zhee Gwich'in Tribal Government environment.

**B.** The people of the Gwichyaa Zhee Gwich'in Tribal Government have a primary interest in the protection and control of the land and other natural resources affected by the improper disposal of solid waste within the Gwichyaa Zhee Gwich'in Tribal Government, and the quality of such land and other natural resources must be protected to insure the health, economic, aesthetic and cultural well-being of the Gwichyaa Zhee Gwich'in Tribal Government Members.

**C.** Open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies and pollutes the land, air and water of the Gwichyaa Zhee Gwich'in Tribal Territory.

**D.** Inadequate and environmentally unsound practices for the disposal or use of solid waste and hazardous waste have created greater amounts of soil, air and water pollution and other problems for public health and the environment on the Gwichyaa Zhee Gwich'in Tribal Territory. The traditional methods of solid waste and hazardous waste management may not meet future requirements for eliminating environmental pollution and conserving natural resources.

**E.** Pursuant to federal law as determined by the U.S. Supreme Court in such cases as *Montana v. United States*, 450 U.S. 544 (1981) and reaffirmed in *Strate v. A-1 Contractors* 117 S. Ct. 1404 (1997), the Gwichyaa Zhee Gwich'in Tribal Government possesses inherent sovereign authority to regulate on-Reservation solid waste disposal that affect fundamental Tribal interests and public health and safety, including when such activities are conducted by non-members of the Tribe on privately owned land within the Tribal Lands.

**F.** Under the Solid Waste Disposal Act, 42 U.S.C. §6903(13) (as part of the Resource Conservation and Recovery Act), "Indian Tribe" is included within the definition of "municipality" for purposes of the Act.

**G.** Methods of solid waste management emphasizing 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 Gwichyaa Zhee Gwich'in Tribal Territory to the environmental quality of the Gwichyaa Zhee Gwich'in Tribal Territory and to the conservation of natural resources.

**H.** Disposal of solid waste and hazardous waste in or on the land without careful planning and management will present a danger to public health and the environment.

**I.** Methods are available to separate recoverable materials from solid waste. The recovery and conservation of such materials can produce numerous benefits to the Gwichyaa Zhee Gwich'in Tribal Government, the State of Alaska and the United States, including economic benefits in the way of savings realized by conserving material in order to reduce the value or quantity of materials that ultimately become solid waste.

**J.** It is in the best interest of the Gwichyaa Zhee Gwich'in Tribal Government and the residents of the Gwichyaa Zhee Gwich'in Tribal Government 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 Gwichyaa Zhee Gwich'in Tribal Territory in order to protect the health, safety and welfare of tribal members; to preserve the environment; and to provide for the maximum reuse of the resources contained in solid waste.

**K.** Such protection of Reservation resources is not adequately provided for under existing legislation, and such protection will be furthered by the passage, adoption and implementation of this Ordinance.

### **SECTION 9.01.03**

#### ***Purpose***

The general purposes of this Ordinance are to:

- A.** Implement, regulate and enforce environmental standards and criteria, orders and permit conditions, and exercise comprehensive Tribal regulatory authority over all solid waste and hazardous waste disposal matters within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Territory;
- B.** Protect fundamental Tribal cultural, ceremonial, religious, fishery, and economic stability of residential, agricultural, commercial, industrial, forest, wetlands, riparian and environmentally sensitive lands within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Territory;
- C.** Prevent the deterioration of the environment, standard of living, quality of life, health, safety and welfare of all persons within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Territory;
- D.** Provide and promote Tribal environmental protection and services within the Gwichyaa Zhee Gwich'in Tribal Territory and to regulate environmental activities under principles of Tribal sovereignty; and
- E.** Prevent air, water and land from solid and hazardous waste pollution, including contamination of the Tribe's aquifers, ground waters, surface waters, drinking water supplies and other natural resources.

### **SECTION 9.01.04**

#### ***Authority and Scope***

##### **A. Authority**

This Tribal Solid Waste Disposal Ordinance is hereby adopted Gwichyaa Zhee Gwich'in Tribal Government pursuant to Article 4 the Tribal Constitution authorizing the Gwichyaa Zhee Gwich'in Tribal Territory to undertake such actions.

##### **B. Scope**

The provisions of this Ordinance shall apply to all existing and proposed solid waste disposal activities and to all activities which have the potential to affect cultural, ceremonial, religious, fishery, seasonal residential, public health, safety, welfare, land, air or water quality and other fundamental interests of the Tribe, including such activities conducted by nonmembers of the Tribe or on privately owned lands. Activities to be regulated hereunder include but are not limited to:

- a.** Landfills and open dumps;
- b.** Storage of animal waste;
- c.** Automobile graveyards and junkyards;

- d. Land-filling of sludge or septic system waste;
- e. Individual, residential, industrial, commercial or agricultural sewage treatment facilities; and
- f. All other activities that involve the storage, collection, transportation or disposal of Solid and/or hazardous waste within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Territory.

**SECTION 9.01.05**  
***Applicability***

Because any violation of this Ordinance or any regulation adopted thereunder will demonstrably and seriously impact the environment, including land, water and air, natural resources, public health, safety, welfare, political integrity and economic security of the Tribe, this Ordinance, and any regulations adopted there under, shall apply to:

- a. all persons within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Territory, without exception, including but not limited to, all Tribal members, and all other persons on the Gwichyaa Zhee Gwich'in Tribal Territory, including any Indians who are members of other Indian tribes, all non-Indians, and any other person as defined under the Ordinance; and
- b. all places and lands located anywhere within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Territory including all trust and non-trust lands, and notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, or any real property interest of any kind, held by any person as defined under this Ordinance.

**SECTION 9.01.06**  
***Consensual Relations Among Non-Members, The Tribe and Tribal Members***

Any person who is not a member of the Tribe who uses land anywhere within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Territory whether trust or non-trust land, enters into consensual relationships with the Tribe or its members, through commercial dealings, contracts, leases or other arrangements. Such person's use of land involving the storage, collection, transportation and disposal of solid or hazardous waste on the Gwichyaa Zhee Gwich'in Tribal Territory will have a demonstrably serious impact upon the environment, natural resources, public health, safety, welfare, political integrity and economic security of the Tribe and its members, unless such use is in compliance with the provisions of this Ordinance, and any regulations promulgated hereunder.

## TITLE 2

### SECTION 9.02.01: Definitions

For the purposes of this Ordinance, the following words and phrases shall have the following meanings:

**“Primary”** The term primary in this context means that the Tribe has a fundamental interest in protecting the land and other natural resources on the Gwichyaa Zhee Gwich’in Tribal Government, which is higher than the interest of state, county or federal governments.

**“Aesthetic”** The term aesthetic refers to the overall beauty of the Tribe’s lands.

**“Applicant”** means any person who has filed an application with the Gwichyaa Zhee Gwich’in Tribal Government for approval to store, collect, transport or dispose of solid waste on the Gwichyaa Zhee Gwichin Tribal Territory.

**“Aquifer”** means any geologic formation capable of yielding a significant amount of potentially recoverable water.

**“Beneficial Uses”** means all lawful uses of waters identified in the Gwichyaa Zhee Land Use Plan. Uses may include but are not limited to domestic, commercial, industrial, agricultural, traditional, cultural and recreational, and uses by fish and wildlife for habitat or propagation.

**“Closure”** means the termination of the receiving, handling, recycling, treatment, composting or disposal of solid waste at a solid waste facility, and includes all operations necessary to prepare the facility for post-closure maintenance.

**“Collection”** means the act of collecting solid waste or hazardous waste at the place of generation by an approved collection agent and does not mean removal.

**“Composting”** means the controlled microbial degradation of organic solid waste yielding a safe and nuisance-free product.

**“Construction”** means the erection or building of new structures or the acquisition, replacement, expansion, remodeling, alteration, modernization or extension of existing structures.

**“Council or Tribal Council”** means the Gwichyaa Zhee Gwich’in Tribal Council.

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

**“Disposal”** means the discharge, abandonment, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any soil, air or water.

**“Disposal Facility”** means a facility permitted to receive and dispose of solid waste and includes all contiguous land and structures, other appurtenances and improvements on the land. It does not include a facility the principal function of which is handling, treatment or composting of manure or other solid waste not intended for disposal.

[NOTE: the term “disposal facility” is used interchangeably with “Municipal Solid Waste Landfill Unit” or “MSWLF.”]

**“Energy Recovery”** means the production of energy or energy resources from the handling or disposal of solid waste.

**“Enforcement Program”** means the rules, regulations and procedures adopted by the Gwichyaa Zhee Gwich’in Tribal Government to enforce this Ordinance.

**“Handling”** means collection, transportation, storage, transfer or processing of solid waste or hazardous waste.

**“Hazardous Materials”** means:

1. Any substance that poses a threat to human health or the environment. Typical hazardous substances are toxic, corrosive, ignitable, explosive or chemically reactive.
2. Any substance that is hazardous, toxic, ignitable, reactive or corrosive and that is defined and regulated as such by the Gwichyaa Zhee Gwich’in Tribal Government, the State of Alaska or the United States of America; or
3. Any substance that 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 substance, material, smoke, gas, particulate matter or combination thereof containing asbestos, petroleum or its byproducts or polychlorobiphenyls (“PCBS”).

**“Historical Uses”** means all uses that have historical significance for the Gwichyaa Zhee Gwich’in Tribal Government.

**“Impervious Barrier”** means any material or structure on, above or below the ground that does not allow precipitation or surface water to penetrate directly into the underlying surface.

**“Implementation Schedule”** means a schedule that indicates approximate dates for the orderly, timely implementation of Solid Waste Management 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.

**“Mitigation”** means a measure taken to reduce adverse impacts on the environment.

**“Municipal Solid Waste Landfill Unit” or “MSWLF”** shall mean a discrete area of land or an excavation that receives household waste and that is not a land application

unit, surface impoundment, injection well or waste pile, as those terms are defined under 40 CFR 257. An MSWLF unit also may receive as authorized under the Solid Waste Disposal Act, other types of Resource Conservation and Recovery Act, Subtitle D, wastes, such as commercial solid waste, non-hazardous sludge and industrial solid waste. An MSWLF may be publicly or privately owned. An MSWLF unit may be a new unit, an existing unit or a lateral expansion. A lateral expansion is the horizontal expansion of the waste boundary of an existing unit. An MSWLF must comply with all of the criteria under this Ordinance.

**“Open Burning”** means the combustion of solid waste without

1. control of combustion air to maintain adequate temperature for efficient combustion;
2. containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
3. control of the emission of the combustion products.

**“Open Dump”** means 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 CRF Part 258.

**“Operator”** means the person to whom the approval to construct and/or operate a solid waste facility or collection system is granted and any person who has filed an application with Gwichyaa Zhee Gwich’in Tribal Government for such approval.

**“Permit”** means any authorization, license or equivalent control document issued by Gwichyaa Zhee Gwich’in Tribal Government under the authority of Gwichyaa Zhee Gwich’in Tribal Government regulating the siting, design, construction, operation, monitoring, corrective actions, closure, post-closure maintenance and financial assurance of solid waste facilities.

**“Permittee”** means a person, including but not limited to an operator, authorized and permitted to construct and/or operate a solid waste facility under this Ordinance.

**“Person”** means any individual, corporation, partnership, association, agency, municipality, commission or department, including the Gwichyaa Zhee Gwich’in Tribal Government or other federally-recognized Tribal government.

**“Plan”** means the Tribe’s Solid Waste Management Plan.

**“Pollutant”** means any substance that will alter the quality of the waters of the Tribal Lands.

**“Pollution”** means the condition caused by the presence in or on soil, air or water of any solid waste, hazardous waste or substance derived there from 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.

**“Post-closure Maintenance”** means all activities undertaken at a closed solid waste facility to maintain the integrity of containment features and to monitor compliance with applicable performance standards.

**“Potential Uses”** means all uses attainable in the water body, whether or not they are explicitly stated as designated uses in the water quality standards or presently potential uses.

**“Processing”** means the reduction, separation, recovery, treatment or recycling of solid waste or hazardous waste.

**“Quality of the Water or Waters”** means any chemical, physical, biological, bacteriological, radiological and other properties and characteristics of water which affect its use.

**“Recoverable”** means the capability and likelihood of waste or byproduct being recovered from solid waste for a commercial or industrial use.

**“Recovered Material”** means 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.

**“Recycling”** means the process of sorting, cleansing, treating and reconstituting solid waste or other discarded materials in order to prepare the altered form for use.

**“Removal”** means the act of taking solid waste or hazardous waste from the place of generation.

**“Gwichyaa Zhee Gwich’in Tribal Territory”** means all land, air and water located within the exterior boundaries Gwichyaa Zhee Gwich’in Tribal Government.

**“Resource Recovery System”** means a solid waste management system that provides for collection, separation, recycling and recovery of solid waste, including disposal of non-recoverable waste residue.

**“Riparian”** refers to land on the banks of a body of water, such as a lake, river or stream.

**“Sanitary”** means the maintenance of a location or parcel of Gwichyaa Zhee Gwich’in Tribal Government land in which the following circumstances are avoided, including but not limited to:

1. failure to contain solid waste resulting in windswept garbage;
2. overbearing odors which represent a general public nuisance;
3. on-site materials which present a fire hazard to the community; and

4. on-site materials or a collection of solid or hazardous waste which presents a human health hazard.

**“Sanitary Landfill”** means a disposal facility employing a method of disposing of solid waste on land, without creating nuisances or hazards to public health or safety, by using methods to confine the solid waste to the smallest practical area, to reduce it to the smallest practical volume and to cover it with a layer of suitable cover material at specific designated intervals.

**“Segregated from Other Waste Material”** means any of the following:

1. the placement of recyclable materials in separate containers;
2. the binding of recyclable material separately from the other solid waste; or
3. the physical separation of recyclable material from other solid waste.

**“Solid Waste”** means all putrescible and non-putrescible 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.A. §1342; or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42, U.S.C.A. §§2011, et seq.

**“Solid Waste Facility”** means 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.

**“Solid Waste Management”** means a planned program for effectively controlling the generation, handling, treatment, composting and disposal of solid waste in a safe, sanitary, aesthetically acceptable and environmentally sound manner.

**“Solid Waste Management Plan or Plan”** means the formation of the Tribal policies for all solid waste collection, handling, transportation, disposal, treatment, storage, recycling and resource conservation on or off the Gwichyaa Zhee Gwichin Tribal Government.

**“SWDA”** means the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (“RCRA”) and the 1984 Hazardous and Solid Waste Amendments (“HSWA”) to RCRA, and more particularly, subchapter IV - State or Regional Solid Waste Plans, SWDA §§ 4001-4010, 42 U.S.C.A. §§6941-6949(a), which

requires that the EPA promulgate criteria for Municipal Solid Waste Landfill Units (“MSWLF’s) and which prohibits disposal of solid waste at landfills which do not satisfy such criteria. The 40 CFR Part 258 regulations contain the criteria for MSWLF’s, which became generally effective on October 9, 1993, although there are other effective dates under 40 CFR Part 258.

**“Toxic Materials”** means any chemical or mixture that presents an unreasonable risk or injury to human health or the environment.

**“Transfer/Processing Station”** means a facility used to receive, temporarily store, process or transfer solid waste directly from smaller to larger vehicles for transport.

“Transfer/processing station” does not include:

1. a facility the principal function of which is to receive, handle, process, treat or compost manure in accordance with Tribal minimum standards;
2. a facility the principal function of which is to receive or handle solid waste that has already been separated for reuse and is not intended for disposal; or
3. the operations premises 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.

**“Treatment”** means any method, technique or process designed or intended to change the physical, chemical or biological characteristics of solid waste 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 other additive.

**“Tribal Court”** means Gwichyaa Zhee Tribal Court.

**“Tribe’s Solid Waste Disposal Program”** means all the authorities, activities and procedures under this Ordinance, the Tribe’s Waste Management Plan and any other Tribal laws or regulations that comprise the Tribe’s system of permits and prior approval and conditions for regulating the collection, handling, transportation and disposal, treatment and storage of solid waste, including all of the location, operation, design, groundwater monitoring, corrective action, closure, post-closure and financial assurance requirements under Part 258 Criteria for MSWLF’s.

**“Variance”** means an authorized written permission for a delay or exception in the application of a given law, ordinance or regulation

**“Vector”** means 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.

**“Waste”** includes waste water and any and all other substances, liquid, solid, gaseous, radioactive, heat laden, associated with human habitation, or of human or animal origin, or from any of man’s activities including producing, manufacturing or processing

operation of whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal.

**“Waters of the Gwichyaa Zhee Gwich’in Tribal Government”** means any water, surface or underground, contained within, flowing through or bordering upon the Gwichyaa Zhee Gwich’in Tribal Government or any portion thereof.

**“Water Quality Control Plan”** is a document designating or establishing for the waters within a specified area:

- 1) beneficial uses to be protected;
- 2) water quality objectives; and
- 3) a program of implementation needed for achieving and maintaining water quality objectives.

**“Water Quality Criteria”** means specific levels of water quality which, if reached, are expected to render a body of water suitable for its beneficial use.

**TITLE 3**  
***TRIBAL ENVIRONMENTAL PROTECTION AGENCY***

- SECTION 9.03.01: Designation as Lead Tribal Agency
- SECTION 9.03.02: Creation of Position of Solid Waste Program Manager
- SECTION 9.03.03: Establishment of Solid Waste Management Committee
- SECTION 9.03.04: Powers and Duties of Solid Waste Management Committee
- SECTION 9.03.05: Powers and Duties of Tribal Solid Waste Program Manager

**SECTION 9.03.01**  
***Designation as Lead Tribal Agency***

The Tribal Environmental Protection Agency shall be the lead agency for implementing this Tribal Solid Waste Disposal Ordinance and for all purposes under 40 CFR Part 258. The Tribal Environmental Protection Agency shall communicate with the EPA regarding the Tribe's solid waste program; prepare the application for EPA approval of the Tribe's solid waste program under the Part 258 Criteria; and make reports to the EPA in a manner and containing such information as the Committee approves, excluding any confidential or privileged information.

**SECTION 9.03.02**  
***Creation of Position of Solid Waste Program Manager***

There is hereby created the position of Tribal Solid Waste Program Manager. The Tribal Solid Waste Program Manager shall serve under the direction of the Gwichyaa Zhee Gwich'in Tribal Government and shall be appointed by Gwichyaa Zhee Gwich'in Tribal Government which appointment shall be confirmed by Gwichyaa Zhee Gwich'in Tribal Government. The Tribal Solid Waste Program Manager shall cooperate with the Solid Waste Review Committee, the U.S. EPA and other federal agencies or the State of Alaska, as necessary to carry out the intent of this Ordinance and implement the Tribal Solid Waste Management Plan.

**SECTION 9.03.03**  
***Establishment of Solid Waste Management Committee***

There is hereby established a Solid Waste Committee, which shall be comprised of nine Board Members, all of whom shall be members of the Tribe. The Board Members shall be appointed by the Gwichyaa Zhee Gwich'in Tribal Council.

## **SECTION 9.03.04**

### ***Powers and Duties of the Solid Waste Management Committee***

#### **A. Powers and Duties**

The Solid Waste Management Committee shall implement, administer and enforce this Ordinance and the Tribe's solid waste program, pursuant to all of the powers and duties delegated to it herein. The Committee is not authorized to consent to jurisdiction, liability or waiver of sovereign immunity. The Committee shall also have the following powers and duties: Develop Tribe's Solid Waste Management Plan. The Committee, with the assistance of the Environmental Manager, shall develop the Tribe's Solid Waste Management Plan ("Plan"), which shall include the identification of, and a plan for closing of all "open dumps" within the Gwichyaa Zhee Gwich'in Tribal Territory, in accordance with the SWDA and Part 258 Criteria.

#### **B. Develop Tribal SWM Plan**

The Plan shall also include the formation of Tribal policies for all solid waste collection, transportation, handling, treatment and disposal on or off the Gwichyaa Zhee Gwich'in Tribal Territory. If feasible, the Plan shall include a resource recovery program for the recycling of solid wastes and a program for the disposal of household hazardous wastes other than in the MSWLF on the Gwichyaa Zhee Gwich'in Tribal Territory. The Plan shall also include a description of any MSWLF's on the Gwichyaa Zhee Gwich'in Tribal Territory that are in compliance with the Part 258 Criteria, which will continue to receive solid waste. Such Plan shall contain a descriptive narration of the location, design and operation of such MSWLF's and how such MSWLF's will satisfy the Part 258 Criteria.

The Plan shall also include:

1. An estimation of the volume and composition of all solid waste which is generated on the Gwichyaa Zhee Gwich'in Tribal Territory, and an estimation of the volume and composition of solid waste from sources outside the Gwichyaa Zhee Gwich'in Tribal Territory that may be disposed of in any MSWLF on the Gwichyaa Zhee Gwich'in Tribal Territory pursuant to any intergovernmental agreement that the Gwichyaa Zhee Gwich'in Tribal Government may authorize;
2. An identification of the responsibilities of other Tribal agencies and entities involved in the implementation of the Tribe's solid waste disposal program and the distribution of federal or state funds to the Tribal authorities responsible for development and implementation of the Tribe's solid waste disposal program;
3. A review of the Tribal regulatory systems which are necessary to implement the Tribe's solid waste disposal program, and enforce the Ordinance and rules or regulations promulgated hereunder;
4. A review of any contracts for the closing of all "open dumps" on the Gwichyaa Zhee Gwich'in Tribal Territory or the removal of solid waste disposed of at "open dumps"

5. On the Gwichyaa Zhee Gwich'in Tribal Territory to duly authorized facilities off the Gwitchyaa Zhee Gwichin Tribal Territory and an assessment of such costs;
6. A review of the 40 CFR Part 257 Criteria and the authorization of the disposal of any solid waste on the Gwichyaa Zhee Gwich'in Tribal Territory under the Part 257 Criteria under the rules and regulations to be adopted by the Committee;
7. The identification of preferred locations on the Gwitchyaa Zhee Gwich'in Tribal Territory for the establishment of new MSWLF's and a review of whether groundwater monitoring could be suspended at such locations under 40 CFR §258.50(b); and
8. A study of how solid waste will be disposed of on or off the Gwichyaa Zhee Gwich'in Tribal Territory in compliance with the Part 258 Criteria, including an assessment of costs for constructing and operating MSWLF's, or transfer stations on the Gwichyaa Zhee Gwich'in Tribal Territory and an assessment of costs for the collection and transportation of solid waste on or off the Gwichyaa Zhee Gwich'in Tribal Territory. The Plan may also include any other matters which are relevant for the Tribe's solid waste disposal program.

The Committee shall submit the Plan to the Gwitchyaa Zhee Gwich'in Tribal Government, in writing, for its review, modification and approval.

### **C. Inventory and Closure**

Identify and Close All Open Dumps on the Gwichyaa Zhee Gwich'in Tribal Territory. In compliance with the Solid Waste Disposal Act, the Committee shall identify and shall prohibit the disposal of any solid waste at all "open dumps" on the Gwichyaa Zhee Gwich'in Tribal Territory.

The Committee shall also take whatever action is necessary to close in a timely manner all "open dumps" on the Gwichyaa Zhee Gwich'in Tribal Territory as required by the Part 258 Criteria. An "open dump" is a landfill that does not satisfy the 40 CFR Part 258 Criteria.

### **D. Issue Solid Waste Disposal Permits**

The Committee shall have the authority and responsibility to issue permits for the location, design, construction, operation, closure, post-closure and financial assurance requirements for an MSWLF's on the Gwitchyaa Zhee Gwich'in Tribal Government. The Committee shall also have the authority and responsibility to issue permits for the collection and transportation of solid waste on the Gwichyaa Zhee Gwich'in Tribal Territory. This authority shall not be delegated to the Director of the Solid Waste Agency.

### **E. Conduct Hearings**

In addition to the other powers conferred upon it herein, the Committee shall have the power to hold all public or administrative hearings specifically provided for under this Ordinance.

### **F. Take Remedial Action, Assess Civil Penalties and Revoke, Suspend or Modify Permits**

The power of the Committee to enforce compliance with the Tribe's solid waste disposal program includes the power to take remedial action, assess civil penalties and revoke suspend or modify permits.

### **G. Promulgate Rules and Regulations and to Issue Solid Waste Guidance Documents**

The Committee shall promulgate rules and regulations from time to time, as required by the Ordinance, or to implement or enforce any provisions or requirements of the Ordinance, including a system of civil fines, sanctions and penalties, for violations of this Ordinance or any rules and regulations promulgated under this Ordinance. All rules and regulations promulgated by the Committee within the scope of its authority and responsibility shall be submitted to the Gwichyaa Zhee Gwich'in Tribal Government for its approval and adoption, before they are enforceable as Tribal law on the Gwichyaa Zhee Gwich'in Tribal Territory. The Committee shall adopt rules and regulations for landfills on the Gwichyaa Zhee Gwich'in Tribal Government under the 40 CFR Part 257 Criteria; for the collection and transportation of solid waste; and other rules and regulations as required herein.

The Committee, with the assistance of the Director of the Tribe's Solid Waste Agency, may also approve and issue "Guidance Documents" as part of the Tribe's solid waste program, which shall contain specific technical or scientific criteria for implementing the location, construction, design, operation, closure or post-closure requirements for MSWLF's. Guidance documents may supplement the Part 258 Criteria, but any criteria set forth in any guidance document shall not be in conflict with any Part 258 Criteria, or contain any criteria which are less stringent than the Part 258 Criteria. Guidance documents shall be enforceable if they are specifically referenced or attached, as part of, or as a condition of, any permit issued under the Ordinance.

### **H. Application for Financial and Technical Assistance**

Apply for and Obtain Federal or State Financial and Technical Assistance to Implement the Tribe's Solid Waste Program. The Committee is authorized to apply, as soon as practicable, for federal or state financial aid, training and technical assistance, for development of the Tribe's Solid Waste Management Plan and to implement the Tribe's solid waste program. This shall include grants available from EPA's Regional Office as may be authorized under the SWDA; and includes any other federal grants, funds or assistance which may be available from the EPA; the U.S. Department of the Interior, Bureau of Indian Affairs; the U.S Department of Housing and Urban Development; the Administration for Native Americans; and any other federal state or other governmental



agencies or sources; including any federal appropriations under the Indian Environmental General Assistance Program Act of 1992, P.L. 102-497.

**I. Hire a Qualified Director for the Tribe's Solid Waste Agency**

The Committee shall hire, subject to the approval of the Gwichyaa Zhee Gwich'in Tribal Government, a qualified person with professional experience and certifications relating to the management and disposal of solid waste, to be the Director of the Tribe's Solid Waste Agency. The Director shall be an employee of the Tribe and shall be paid a salary established by the Gwichyaa Zhee Gwich'in Tribal Government. The Director shall manage the Solid Waste Agency on a day-to-day basis acting within the scope of his or her duties and powers as set forth herein.

**J. Prepare and File and Annual Report with Gwichyaa Zhee Gwich'in Tribal Government**

The Committee shall prepare and file an annual report with Gwichyaa Zhee Gwich'in Tribal Government no later than July 1 of each year, which shall review the progress achieved under the Tribe's solid waste program, and shall include any reports requested by the Gwichyaa Zhee Gwich'in Tribal Government. The Committee shall recommend what specific actions should be taken by the Gwichyaa Zhee Gwich'in Tribal Government regarding the Tribe's solid waste program.

**SECTION 9.03.05**

***Powers and Duties of Tribal Solid Waste Program Manager***

**The specific duties of the Tribal Solid Waste Program Manager shall include:**

- A.** Assisting the Committee in developing the Tribe's Solid Waste Management Plan pursuant to the requirements of the Ordinance; the SWDA; 40 CFR Parts 257 and 258; and 40 CFR Part 239. The goal of this plan shall be the proper collection and disposal of all solid waste on 40 CFR Parts 257 and 158 and this Ordinance.
- B.** The development of rules and regulations and guidance documents which supplement the technical standards and criteria for the location, construction, design, operation, closure and post-closure requirements for MSWLF's and which also provide the technical standards and criteria for the collection and transportation of solid wastes.
- C.** The preparation of an inventory and location of all sites on the Gwichyaa Zhee Gwich'in Tribal Territory where solid waste has been disposed and a plan to close all sites as required under 40 CFR Part 258.
- D.** The location of appropriate sites on the Gwichyaa Zhee Gwich'in Tribal Territory where MSWLF's might be located in compliance with this Ordinance and 40 CFR Part 258.

**E.** The preparation of technical reports for the Committee or Gwichyaa Zhee Gwich'in Tribal Government's Territory, as may be requested from time to time, including environmental assessments as may be necessary.

**F.** The preparation of the application to EPA for approval of the Tribe's solid waste program under 40 CFR Part 239 and Part 258.

**G.** The administration, supervision, monitoring, investigation and enforcement of solid waste collection, transportation and disposal on the Gwichyaa Zhee Gwich'in Tribal Government's Territory in compliance with this Ordinance and all laws, rules and regulations and guidance documents promulgated thereunder.

**H.** The investigation and preparation of applications for federal or state grants, funding and financial and technical assistance to implement the Tribe's solid waste program.

**I.** The providing of any assistance to the Gwichyaa Zhee Gwich'in Tribal Government as requested from time to time, in matters involving the Ordinance and the Tribe's solid waste program; assisting in public education as to matters involving solid waste collection and disposal on the Gwichyaa Zhee Gwich'in Tribal Government's Territory collection and disposal on the Gwichyaa Zhee Gwich'in Tribal Government's Territory and assisting in any public, judicial or administrative hearings, as provided for under this Ordinance.

**J.** The supervision of the daily management of the Gwichyaa Zhee Gwich'in Tribal Government and the supervision, hiring and management of any employees of the Gwichyaa Zhee Gwich'in Tribal Government who are hired by the Tribe.

**K.** The issuance of compliance, cease and desist and remedial action orders to any permittee under this Ordinance as provided herein; and the application for injunctive relief to abate pollution and other unlawful activities under this Ordinance herein.

**L.** Upon complaint by any person which establishes reasonable grounds, or upon its own motion, the Gwichyaa Zhee Gwich'in Tribal Government shall investigate the activities of any permittee under this Ordinance. In conducting an investigation, the Gwichyaa Zhee Gwich'in Tribal Government shall have the authority, without reasonable notice, if necessary, to enter into the permittee's place of business, operation or facility, to inspect any books or records of the permittee, to inspect any of the permittee's property or sites of possible pollution and to take samples. In addition, the Gwichyaa Zhee Gwich'in Tribal Government may require, or monitor such tests as it deems necessary, to ensure that the provisions of this Ordinance or any permit conditions are being complied with by any owner/operator of an MSWLF, or transporter of solid waste.

Such authority may be exercised by the Gwichyaa Zhee Gwich'in Tribal Government, including any authorized employee, agent or representative of the Gwichyaa Zhee Gwich'in Tribal Government, and including any agents of the U.S. Environmental Protection Agency who are specifically authorized by the Gwichyaa Zhee Gwich'in

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Tribal Government. The Gwichyaa Zhee Gwich'in Tribal Government shall, in addition, have those powers and duties set forth herein regarding compliance monitoring of permittees. The Gwichyaa Zhee Gwich'in Tribal Government or its agents, are authorized to investigate the activities of any person who is suspected of violating or being in violation of any provisions of this Ordinance, any rules or regulations promulgated hereunder or any permit conditions.

**TITLE 4**  
***SOLID WASTE MANAGEMENT PLAN AND CONSIDERATIONS***

- SECTION 9.04.01: Approval of Plan
- SECTION 9.04.02: Contents of Plan
- SECTION 9.04.03: Prohibitions of Hazardous Waste
- SECTION 9.04.04: Prohibitions on Disposal in Open Dumps
- SECTION 9.04.05: Solid Waste Facility Sites
- SECTION 9.04.06: Storage
- SECTION 9.04.07: Collection
- SECTION 9.04.08: Disposal
- SECTION 9.04.09: Periodic Review of Plan

**SECTION 9.04.01**  
***Approval of Plan***

Within 180 days of the passage of this Ordinance, the Gwichyaa Zhee Gwich'in Tribal Government shall present to the Gwichyaa Gwichin Tribal Council for its approval a Solid Waste Management Plan. Within thirty (30) days of its presentation by the Gwichyaa Zhee Gwich'in Tribal Government to the Gwichyaa Gwich'in Tribal Council, the Gwichyaa Zhee Gwich'in Tribal Government shall publicize the existence of the Plan and make it widely available to all interested persons. Within sixty (60) days of its presentation, the Gwichyaa Zhee Gwich'in Tribal Government shall hold public hearings at locations of its choice to permit interested parties to comment on the proposed Plan. The Plan, as proposed by the Gwichyaa Zhee Gwich'in Tribal Government, shall go into effect, and the Gwichyaa Zhee Gwich'in Tribal Government shall commence its implementation, upon approval by the Tribal Council.

**SECTION 9.04.02**  
***Contents of Plan***

The Plan should include, at a minimum, those items listed in Section 304(A) of this Ordinance.

**SECTION 9.04.03**  
***Prohibitions of Hazardous Waste***

In order to protect the limited land, air and water resources of the Gwichyaa Zhee Gwich'in Tribal Government from irremediable hazardous pollution and to protect the health, safety and welfare of all residents on the Gwichyaa Zhee Gwich'in Tribal Government's Territory and surrounding communities, receiving, accepting, handling, transporting, treating, storing, composting, processing and disposing of hazardous waste is expressly prohibited within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Government's Territory except that Gwichyaa Zhee Gwich'in Tribal Government may permit the establishment of a program for the collection, storage, transfer, transportation and disposal off the Gwichyaa Zhee Gwich'in Tribal Government's

Territory of hazardous waste generated or found on Tribal lands subject to such conditions as Gwichyaa Zhee Gwich'in Tribal Government may impose.

**SECTION 9.04.04**  
***Prohibited Materials***

The following solid waste materials shall not be accepted at any MSWLF on the Gwichyaa Zhee Gwich'in Tribal Territory under any conditions:

1. Radioactive wastes.
2. All regulated hazardous waste as defined herein.
3. Unregulated small quantity generator hazardous wastes.
4. Infectious biomedical wastes which includes human tissue or human anatomical remains.
5. Animals or bedding exposed to infective agents.
6. Sharps, needles and lancets which have not been contained for disposal in leak-proof, rigid, puncture-resistant containers such as cartons or metal cans which are taped closed or tightly lidded to preclude loss of contents under severe compact conditions.
7. Bulk quantities of infectious-type wastes including blood, blood products and body fluids.
8. Any materials containing friable asbestos waste from building demolition or cleaning, and any friable asbestos materials.
9. Sewage or sewage sludge wastes.
10. Bulk liquids of any kind.
11. Polychlorinated biphenyls (PCBs)
12. Car batteries.
13. Used oil.
14. 55 gallon drums.
15. Explosives.
16. Tires.
17. Oil or gas exploration wastes.

The Gwichyaa Zhee Gwich'in Tribal Government may prohibit the disposal of other solid wastes at MSWLFs on the Gwichyaa Zhee Gwich'in Tribal Government's Territory as it deems necessary in its discretion, under rules and regulations to be adopted by the Gwichyaa Zhee Gwich'in Tribal Government. The Gwichyaa Zhee Gwich'in Tribal Government shall issue rules and regulations governing the disposal or prohibition of disposal of other solid wastes not listed herein, including, but not limited to, ashes and powders, and mineral wastes and soils. The Gwichyaa Zhee Gwich'in Tribal Government shall develop rules and regulations for special wastes, which require special handling, treatment and disposal.

## **SECTION 9.04.05**

### ***Prohibition on Disposal in Open Dumps***

In order to protect the limited land, air and water resources of the Gwichyaa Zhee Gwich'in Tribal Government's Territory from irremediable hazardous pollution and to protect the health, safety and welfare of all residents of the Gwichyaa Zhee Gwich'in Tribal Government's Territory and surrounding communities, disposal of solid waste in any open dump is expressly prohibited within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Government's Territory.

## **SECTION 9.04.06**

### ***Solid Waste Facility Sites***

#### **A. Site Considerations. 40 CFR Part 258 (Part 258 Criteria)**

**1) Airport Safety.** No solid waste disposal site or landfill may be located within 10,000 feet of any airport runway end used by jet aircraft, or within 5,000 feet of any airport runway end used only by piston-type aircraft, unless the owner/operator demonstrates that the units are designed and operated so that the MSWLF unit does not pose a bird hazard to aircraft. The owner or operator of the facility shall demonstrate in the facility plan that the facility is designed and operated so that it does not pose a bird hazard to aircraft and place this demonstration in the operating record. Any owner or operator who operates an MSWLF within a five mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the appropriate Federal Aviation Administration office in writing.

**2) Floodplains.** If a solid waste disposal site or landfill is located within a 100 year floodplain, the owner or operator must demonstrate that the MSWLF will not restrict the flow of a 100 year flood, reduce the temporary storage capacity of the floodplain or result in any washout of solid waste which would pose a hazard to human health or the environment.

**3) Wetlands.** "Wetlands" means those areas which are defined in 40 C.F.R. §232.2(r) and include, but are not limited to, swamps, marshes, bogs and similar areas, and are defined as those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. No MSWLF shall be located in wetlands, unless the owner/operator can make the demonstrations as required under the Federal criteria set forth in 40 C.F.R. §258.12. The Gwichyaa Zhee Gwich'in Tribal Government may, in its discretion, however, refuse to permit an MSWLF in any areas which are wetlands as defined herein.

**4) Fault Areas.** No solid waste disposal facility or landfill shall be located within 200 feet (60 meters) of a fault that has had displacement in Holocene time. For purposes of this section:

- a) "Fault" means any fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.
- b) "Displacement" means the relative movement of two sides of a fault measured in any direction.
- c) "Holocene" means the most recent epoch of the Quaternary period extending from the end of the Pleistocene Epoch to the present.

**5) Seismic Impact Zone.** No solid waste disposal facility or landfill shall be located in a seismic impact zone unless the owner/operator demonstrates to the satisfaction of the Gwichyaa Zhee Gwich'in Tribal Government and the Gwichyaa Zhee Gwich'in Tribal Government finds, that all containment structures, including liners, leachate collection systems and surface water control systems, are designed to resist the maximum peak ground acceleration associated with the maximum credible earthquake. For purposes of this Section, "seismic impact zones" are defined as areas having a 10 percent or greater probability that the maximum expected horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10 g in 250 years.

**6) Unstable Areas.** No solid waste disposal facility or landfill shall be located in an unstable area. "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terrains.

**7) Bodies of Water.** No solid waste disposal site or landfill shall be located within 1,000 feet of a lake, pond, slough, river, stream or other body of water. To the greatest extent possible, MSWLFs will be located at substantially greater distances from any surface water of significance.

**8) Adverse Impact.** No MSWLF shall be located in a manner that will cause significant adverse impact to recreational opportunities, wildlife habitat or populations or Gwichyaa Zhee Gwich'in Tribal Government's Territory aesthetics.

**9) Dwellings.** To the greatest extent possible, taking into account the requirements of this Ordinance, no MSWLF shall be located within 3,000 feet of a dwelling inhabited at the time the site is created.

**10) Domestic Water Well.** No solid waste disposal site or landfill shall be located within 2,000 feet of a domestic water well, unless the Gwichyaa Zhee Gwich'in Tribal Government determines in writing that the well will not be contaminated by the site and establishes a water monitoring program for the well, or the Gwichyaa Zhee Gwich'in Tribal Government provides a substitute water source of equal or better convenience and quality.

[40 CFR Part 258 establishes six location restrictions on Municipal Solid Waste Landfills (MSWLFs), including airport safety, floodplain criteria, wetland criteria, fault area criteria, seismic impact zones and unstable area criteria. All MSWLFs created after October 9, 1996, must comply with these restrictions. Before finalizing this portion of the Ordinance, the Tribe should check the most recent version of 40 CFR Part 258 to get the current restrictions. It should also be noted that the Tribe can adopt restrictions that are stricter than the ones set out in the CFR's (i.e., no solid waste facility can be located in any wetland area within the boundary of the Gwichyaa Zhee Tribal Lands).]

## **B. Determination Prerequisites for Gwichyaa Zhee Gwich'in Tribal Government of Site**

The following information shall be submitted to the Director for review and evaluation in order for a potential solid waste landfill site to be considered:

1. A map or aerial photograph of the proposed site that shows all land within one mile of the proposed MSWLF site. The map or aerial photograph shall be of sufficient scale to show the entire property owned or leased for the disposal site by the person proposing the landfill, all homes, industrial buildings, wells, watercourses, rock outcroppings, roads and other applicable details and shall indicate the general topography.
2. A summary of the geological formations and groundwater table to a depth of at least ten feet below the proposed excavation and at lowest elevation at the site. Such data shall be obtained by soil borings or other appropriate means.
3. Identification of source and characteristics of cover material.
4. Identification of watercourses within or adjacent to the proposed disposal site and, if no watercourse is involved, name of the watershed which will receive the drainage from the site.
5. Any other information pertinent to the proposed site.

### **SECTION 9.04.07**

#### ***Storage***

##### **Sanitary Site Conditions**

The owner, agent or occupant of any dwelling, residence, premises or business establishment shall be responsible for the sanitary condition of said residence, premises or business establishment. No person shall place or deposit refuse or allow refuse to be placed or deposited on any public street, road or alley within the Gwichyaa Zhee Gwich'in Tribal Government Territory.

##### **Storage of Solid Waste for Collection**

The owner, agent or occupant of any dwelling, residence, premises or business establishment shall be responsible for the storage and stockpiling of all solid waste accumulated for collection and disposal.



### **Container Specifications**

Commercial establishments shall be required to store garbage in durable, rust-resistant, non-absorbent and easily cleanable containers with close-fitting covers. Residents who transport solid waste to community transfer stations shall be required to haul their solid waste in such a way that it does not result in littering or wind-swept garbage.

### **Ashes**

Ashes, warm or cold, shall not be placed in plastic containers.

### **Hazardous Waste**

No owner, occupant, business establishment or agency shall store hazardous waste within the boundaries of the Gwichyaa Zhee Gwich'in Tribal Government's Territory. It shall be the responsibility of each occupant, business establishment or agency to locate a disposal service operating an EPA-approved site which accepts hazardous material and to arrange for its disposal.

## **SECTION 9.04.08** *Collection*

[This section should reflect the Tribe's collection procedures, and will vary depending on whether the Tribe has its own solid waste collection agency, whether it contracts for an outside agency to collect solid waste, or whether all persons and business entities are responsible for their own collection and disposal.]

## **Section 9.04.09** *Disposal*

### **A. Applicability of Standards**

This Ordinance shall apply to all MSWLFs and to all equipment used at disposal facilities on the Gwichyaa Zhee Gwich'in Tribal Government's Territory. In addition, 40 CFR §§258.20 through 258.29 are incorporated by reference herein. All owner/operators of MSWLFs shall comply with Part 258 Criteria, in addition to any additional waste management operating criteria specified in this Ordinance, rules or regulations, or in any conditions in the MSWLF facility operation permit, or in guidance documents, or in orders of the Gwichyaa Zhee Gwich'in Tribal Government.

### **B. Prohibition on Hazardous Waste**

The receipt, acceptance, handling, storage, processing or disposal of hazardous waste at any MSWLF for disposal on the Gwichyaa Zhee Gwich'in Tribal Government's Territory is prohibited, provided that Gwichyaa Zhee Gwich'in Tribal Government may establish a program for the collection, transfer, storage, transportation and disposal off the Gwichyaa Zhee Gwich'in Tribal Government's Territory of hazardous waste generated or found on the Gwichyaa Zhee Gwich'in Tribal Government's Territory. If an

operator knows or has reason to believe that hazardous waste has been received at a solid waste disposal facility, the operator shall notify Gwichyaa Zhee Gwich'in Tribal Government within two (2) hours of discovery of such waste.

The owner or operator of a solid waste disposal facility shall implement a program to detect and prevent the receipt, acceptance, handling, storage, processing or disposal of hazardous waste.

This program must include at a minimum:

- (1) Random inspections of incoming loads;
- (2) Inspection of suspicious loads;
- (3) Maintenance of records of inspections;
- (4) Training of personnel to recognize hazardous waste; and
- (5) Procedures for notifying Tribal Government if hazardous waste is discovered at the facility.

### **C. Design**

The uniform design criteria for MSWLFs contained in 40 CFR §258.40 are incorporated by reference for new MSWLFs. If the EPA has not approved the Tribe's solid waste program, then no new MSWLF units or lateral expansions shall be constructed unless they comply with Part 258 uniform design criteria, which includes a composite liner and a leachate collection system as set forth in 40 CFR §258.40(a)(2). If the EPA has approved the Tribe's solid waste program, the Gwichyaa Zhee Gwich'in Tribal Government may approve the design criteria for an MSWLF, on a site-specific basis, in accordance with 40 CFR §258.40(a)(1).

If the Tribe does not have an EPA approved solid waste program, then the uniform design criteria in 40 CFR §258.40(a)(2) shall apply as follows, unless the Gwichyaa Zhee Gwich'in Tribal Government determines that the small landfill exemption under 40 CFR §258.1(f)(1) applies, and that an MSWLF unit is exempt from the design criteria under Subpart D of 40 CFR Part 258.

**1.** There must be a composite liner, as defined in paragraph (2) below, and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner.

**2.** "Composite liner" means a system consisting of two components; the upper component must consist of a minimum 30 mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60-mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component. If EPA has approved the Tribe's solid waste program, then the design performance criteria in this section applies, and a composite liner and leachate collection system are not required, but the Gwichyaa Zhee Gwich'in Tribal Government may require the same in his/her discretion.

If the Tribe has an EPA approved solid waste program, or an MSWLF unit is determined to be exempt from Subpart D of 40 CFR Part 258, then the Gwichyaa Zhee Gwich'in Tribal Government in approving an alternative design for an MSWLF, must consider at least the following factors:

- a. The hydrogeologic characteristics of the facility and surrounding land; and
- b. The climatic factors of the area; and
- c. The volume and physical and chemical characteristics of the leachate.

In addition, any site-specific design must ensure that the concentration values for chemicals listed in Table I of 40 CFR Part 258, which is incorporated by reference herein, will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified in 40 CFR §258.40(d) as follows:

The relevant point of compliance specified by the Gwichyaa Zhee Gwich'in Tribal Government shall be no more than 150 meters from the waste management unit boundary and shall be located on land owned by the owner of the MSWLF unit. In determining the relevant point of compliance the Gwichyaa Zhee Gwich'in Tribal Government shall consider at least the following factors:

- (1) The hydrogeologic characteristics of the facility and surrounding land;
- (2) The volume and physical and chemical characteristics of the leachate;
- (3) The quantity, quality and direction of flow of ground water;
- (4) The proximity and withdrawal rate of the groundwater users;
- (5) The availability of alternative drinking water supplies;
- (6) The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water and whether the ground water is currently used or reasonably expected to be used for drinking water.
- (7) Public health, safety and welfare effects; and
- (8) Practicable capability of the owner/operator.

The design of an MSWLF site shall also be based on the service area, anticipated nature and quantity of solid waste to be received, adjacent land uses, number and type of vehicles anticipated to enter the disposal facility site, whether the facility will be used by the general public, ground and surface water, leachate control, soils, drainage, provisions for monitoring, venting, controlling and possible use of disposal facility decomposition gases and other pertinent information. The owner or operator shall design the disposal facility to maximize the protection of public health. The MSWLF design shall include one or more proposed ultimate uses of the site or the intent to develop the site as open space graded to harmonize with the setting and landscape of native shrubbery or low-maintenance ground cover.

#### **D. Records**

Copies of all reports, records, analytical data and other documents required by this Ordinance shall be maintained at the disposal facility, unless the Gwichyaa Zhee Gwich'in Tribal Government has authorized storage of the records at an alternative location. The owner or operator shall maintain records of weights, volumes and types of solid waste accepted at the facility, and shall be adequate for overall planning and control purposes and for forecasting the rate of filling. The owner or operator shall maintain adequate records regarding length and depth of any cuts made in natural terrain where fill

will be placed, together with the depth to the groundwater table. The owner or operator shall also adequately record other cuts that may affect the safe and proper operation of the disposal facility or cause damage to adjoining properties. The owner or operator shall maintain a log of the following: fires, earth slides, unusual or sudden settlement, personal injury, property damage, accidents, explosions, deliveries or discharge of hazardous waste or other materials not permitted at the disposal facility site, flooding, vandalism, contamination, pollution and other unusual occurrences. The owner or operator shall maintain inspection records, training procedures and notification procedures required herein. The owner or operator shall record and permanently maintain closure and post-closure maintenance plans as required by this Ordinance, any cost estimates and financial assurance documentation and information demonstrating compliance with the small community exemption as required by 40 CFR §258.1(f)(2). Disposal facility records shall be open to inspection by authorized representatives of Gwichyaa Zhee Gwich'in Tribal Government, and other regulatory and enforcement agencies during normal business hours. If information is identified as proprietary or confidential pursuant to this Ordinance, the Gwichyaa Zhee Gwich'in Tribal Government shall treat it as such.

#### **E. Personnel**

The owner or operator shall provide adequate numbers of qualified personnel to staff the disposal facility and deal effectively and promptly with matters of operation, maintenance, environmental controls, records, emergencies, and health and safety. Such personnel shall be adequately trained in the operation and maintenance of a disposal facility, including health, safety and environmental controls and emergency procedures. The owner or operator shall provide adequate supervision to insure proper operation of the disposal facility and compliance with requirements of this Ordinance. The owner or operator shall advise Gwichyaa Zhee Gwich'in Tribal Government of the names, addresses and telephone numbers of the owner or operator, the disposal facility manager and the supervisor. Any disposal facility that is open to the public shall have an attendant on duty during operating hours.

#### **F. Security**

The disposal facility shall have an adequate perimeter barrier designed to discourage unauthorized entry by persons or vehicles. Areas within the disposal facility where open storage or ponding of material occurs or which Gwichyaa Zhee Gwich'in Tribal Government deems hazardous shall be separately fenced and properly identified to create an adequate level of security.

#### **G. Roads**

Roads serving the disposal facility shall have reasonably smooth surfaces designed to minimize the generation of dust and the tracking of material onto adjacent paved public roads. Such roads shall allow vehicles using the disposal facility to have reasonable all-weather access to the facility. Roads within the disposal facility site shall be kept in safe condition, maintained such that vehicle access and unloading can be carried on during inclement weather, and identified with suitable signs showing direction to the operating area.

#### **H. Communications Facilities**

The owner or operator shall provide communications facilities available to users and disposal facility personnel to allow quick response to emergencies by the appropriate authorities and emergency services.

#### **I. Lighting**

The owner or operator shall equip the disposal facility and/or equipment with adequate lighting to insure safety and to permit monitoring of the effectiveness of cover and compaction operations.

#### **J. Fire Fighting Equipment**

The owner or operator shall keep adequate fire suppression equipment available at the disposal facility at all times.

#### **K. Confined Unloading**

The owner or operator shall confine unloading of solid waste to as small an area as practicable and provide adequate control and collection of windblown material. The owner or operator shall deposit solid waste at the toe of the fill or as otherwise approved by the Gwichyaa Zhee Gwich'in Tribal Government.

#### **L. Spreading and Compacting**

The owner or operator shall spread and compact solid waste in layers with repeated passages of equipment to eliminate voids within the cell that may produce potential harborage for vectors as rapidly as practicable. The loose layer shall not exceed a depth of two feet [or other depth] before compaction.

#### **M. Slopes and Cuts**

The owner or operator shall maintain the slope of the working face at a ratio that will allow effective compaction of the solid waste. The depth of the cuts and slopes of trench sides shall not exceed horizontal to vertical ratios approved by Gwichyaa Zhee Gwich'in Tribal Government.

#### **N. Stockpiling**

The placement of stockpiled cover material or unsuitable native material shall not interfere with unloading, spreading, compacting, access, safety, drainage or other operations.

#### **O. Daily Cover**

In order to prevent propagation, harborage or attraction of vectors, to control disposal facility fires and to prevent the creation of nuisances, the owner or operator shall compact cover material to a minimum thickness of six (6) inches and place cover material over all surfaces of the compacted solid waste at the disposal facility on a daily basis or at a more frequent intervals if required by Gwichyaa Zhee Gwich'in Tribal Government. Gwichyaa Zhee Gwich'in Tribal Government may establish different cover and compaction requirements for special operating practices, including, but not limited to, disposal of

shredded waste. Daily cover shall be designed and constructed to minimize percolation of precipitation through wastes.

**P. Liquid Waste**

The owner or operator may accept liquid waste and sewage sludge at the disposal facility only as specifically approved by Gwichyaa Zhee Gwich'in Tribal Government.

**Q. Dead Animals**

Dead animals may be accepted at a disposal facility only as specifically approved by Gwichyaa Zhee Gwich'in Tribal Government.

**R. Nuisance Control**

The owner or operator shall operate and maintain the disposal facility to prevent nuisance.

**S. Dust Control**

The owner or operator shall take all necessary measures to minimize the creation of dust.

**T. Contact with Water**

The owner or operator shall not deposit solid waste in such a manner that it has direct contact with either surface water or groundwater.

**U. Explosive Gas Control**

The owner or operator shall implement all necessary measures to prevent concentrations of methane gas at levels in excess of the requirements of this Ordinance.

**V. Maintenance**

Maintenance procedures and programs for equipment and site facilities shall be developed and followed throughout the active life and the closure and post-closure maintenance periods of all solid waste disposal facilities. The owner or operator shall frequently monitor and promptly repair or correct deteriorated or defective conditions in order to meet the requirements of this Ordinance and the permit conditions. The owner or operator shall develop and follow effective preventive maintenance procedures and programs for disposal facility equipment and facilities. The owner or operator shall notify Gwichyaa Zhee Gwich'in Tribal Government at least ten (10) days prior to completion or suspension of work at a disposal facility so that a site inspection may be conducted prior to removal of earth moving equipment. The owner or operator shall, at the beginning of disposal facility use and upon closure of the facility, file a detailed description of the disposal facility, including, but not limited to, a map with Gwichyaa Zhee Gwich'in Tribal Government and the Bureau of Indian Affairs.

**W. Containment Structures**

Containment structures shall be designed by and construction shall be supervised and certified by a registered civil engineer or a certified engineering geologist, and Gwichyaa Zhee Gwich'in Tribal Government shall conduct a final inspection and approve of the construction before use of the disposal facility commences. The owner or operator shall

maintain the integrity of containment structures. Excavations made as part of disposal operations shall not result in removal of any portion of a containment structure. Material used in containment structures shall have appropriate chemical and physical properties to ensure that such structures do not fail to contain solid waste because of pressure gradients, physical contact with solid waste or leachate, chemical reactions with soil and rock, climate conditions, stress of installation or the stress of daily operation. Permeabilities specified for containment structures other than cover shall be relative to the liquids, including solid waste and leachate, to be contained. Permeabilities specified for final cover shall be relative to water.

#### **X. Liners**

Liners shall be installed to cover all natural geologic material at a disposal facility likely to be in contact with solid waste or leachate and shall be made of high density polyethylene or clay sufficient for the containment of the types of solid waste to be disposed of at the disposal facility.

#### **SECTION 9.04.10** ***Periodic Review of Plan***

From the date of issuance of the permit, at least once each year, or more frequently as determined by Gwichyaa Zhee Gwich'in Tribal Government, the owner or operator shall cause a registered civil engineer to review the disposal facility design, implementation and operation plan to determine if any revisions are necessary and to estimate the remaining facility life. The conclusions and recommendations of this review shall be presented in a report and filed with Gwichyaa Zhee Gwich'in Tribal Government.

**TITLE 5**  
***RESOURCE RECOVERY PROGRAM***

SECTION 9.05.01: Policy and Program

**SECTION 9.05.01**  
***Policy and Program***

Tribal policy shall be that solid wastes which are reusable shall be recycled if economically feasible. The Gwichyaa Zhee Gwich'in Tribal Government shall include a study regarding the recycling of solid wastes on the Gwichyaa Zhee Gwich'in Tribal Government Territory as part of the Tribe's Solid Waste Management Plan. Such study shall include an analysis of technological and economically feasible systems for the collection, separation containerization and marketing of solid wastes that are recyclable. The study shall identify potential markets for recyclable solid wastes. The Gwichyaa Zhee Gwich'in Tribal Government shall issue rules and regulations for the recycling of solid wastes on Gwichyaa Zhee Gwich'in Tribal Government Territory based on the study.



**TITLE 6**  
***PERMIT AND INSPECTION PROGRAM***

SECTION 9.06.01: Solid Waste Facility and Transportation Permits  
SECTION 9.06.02: Permits for the Construction and Operation of MSWLFs  
SECTION 9.06.03: Permits for the Collection and Transportation of Solid Waste  
SECTION 9.06.04: Public Hearing on MSWLF Permit Application  
SECTION 9.06.05: Oath and Application Filing Fees  
SECTION 9.06.06: Other Fees and Taxes

**SECTION 9.06.01**  
***Solid Waste Facility and Transportation Permits***

Tribally chartered corporations or agencies, private enterprises and any other persons are required to obtain a permit from Gwichyaa Zhee Gwich'in Tribal Government to either collect and transport solid waste or to construct or operate a municipal solid waste landfill within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Government Territory. Any permittee shall be required to comply with this Ordinance, and any rules or regulations promulgated thereunder, all Tribal environmental standards and criteria, all relevant guidance documents, all permit conditions, all orders issued by the Gwichyaa Zhee Gwich'in Tribal Government under authority of this Ordinance, and all applicable federal or Tribal laws, environmental in nature or otherwise. No tribally chartered corporation or agency, private enterprise, or person may collect or transport solid waste, or construct or operate an MSWLF within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Government Territory without first having obtain from the Gwichyaa Zhee Gwich'in Tribal Government either:

- (1) a solid waste collection and transportation permit; or
- (2) a solid waste facility construction and/or operation permit.

Any qualified tribally chartered corporation, agency private enterprise or person may file an application with Gwichyaa Zhee Gwichin Tribal Government for a permit to collect and transport solid waste, or to construct and/or operate an MSWLF on the Gwichyaa Zhee Gwichin Tribal Government Territory.

**SECTION 9.06.02**  
***Permits for the Construction and Operation of MSWLFs***

Any application for a permit to construct and/or operate an MSWLF must contain all of the following information, tests, and data that are necessary to demonstrate that the permittee will comply with all of the provisions of this Ordinance; the SWDA; 40 CFR Part 258; and all solid waste rules or regulations, technical standards or criteria or applicable guidance documents. In addition, the Gwichyaa Zhee Gwich'in Tribal Government may require that a permittee acquire or perform such additional information, tests or studies as he/she deems reasonably necessary to demonstrate compliance with this Ordinance.

The permit application to construct and/or operate an MSWLF must contain the following minimum information:

- (1) A legal description and area map of the site of the proposed facility.
- (2) A title report showing ownership of the site of the proposed facility and all encumbrances, covenants, conditions, restrictions, reservations to title and easements and rights of way on or across the site.
- (3) Proof that the applicant is the owner or holds an interest or lease in the proposed site; that all taxes, fees and lease payments are current; and if not, that the applicant has a notarized consent of the owner approving the use of the land for the purposes set forth in the application; approval from the Gwichyaa Zhee Gwich'in Tribal Government and if the land is leased or permitted under Title 25 of the United States Code, approval of the Secretary of the Interior or his/her authorized delegate, and a certified copy of the lease or permit, with all exhibits and attachments thereto.
- (4) A general design plan for the facility certified by a professional engineer.
- (5) A map and aerial photograph of the area to be used for the MSWLF showing all land use and political jurisdiction within five miles of the landfill site. The map and aerial photograph shall be of sufficient scale to show all homes, airports, wells, water ways, topography, roads and other objects that may be affected.
- (6) A report indicating the following:
  - (a) The population and area to be served by the proposed site and life expectancy of the facility;
  - (b) The geological formation, aquifer characteristics and groundwater elevations below the lowest elevation of the site. Such data will be obtained by soil boring and other appropriate means;
  - (c) The source and characteristics of cover material to be used;
  - (d) Reliable data on existing ground water quality within 2,000 feet of the site;
  - (e) Topography of the site and drainage patterns; and
  - (f) Location of the 100 year flood plain as approved by the Gwichyaa Zhee Gwich'in Tribal Government in relation to the site.
- (7) A design and plan of operation for the facility, certified by a professional engineer, which identifies how the landfill will meet the standards and criteria of the Ordinance and 40 CFR Part 258 for the location, design, performance, operating standards, groundwater monitoring, closure, post-closure and financial assurance requirements. The design shall also include one or more topographic maps with contour intervals. The maps should show the proposed fill area, borrow areas, access roads, drainage areas, fencing, equipment and buildings and the groundwater monitoring systems.

**(8)** A financial statement, estimating the cost of construction, operation, closure and post-closure of the site, explaining the applicant's financial condition and the applicant's ability to fund the continued operation, closure and post-closure of the site in compliance with the Ordinance and the financial assurance requirements of 40 CFR Part 258.

**(9)** An identification statement certified as to its truth and accuracy, signed by the applicant, and notarized, containing the following information:

**(a)** Name, address, social security number and phone number of all persons owning or holding an interest in the applicant of 5% or more;

**(b)** Name, address, social security number and phone number of all officers, directors or partners;

**(c)** A statement that no officer, director, partner or holder of an interest of 5% or more has ever been convicted of a felony, and that no felony charges are currently pending;

**(d)** A statement which discloses in detail any charge, complaint, fine, order, decree, statement or finding of "no contest" for violation of any Tribal, federal, state, county or municipal environmental or health law, regulation, permit or condition against any officer, director, partner or holder of an interest of 5% or more within the past five (5) years, including the jurisdiction, disposition and name, address and phone number of the person who filed the original charge or complaint, and the name of the director, board, administrative body, judge, justice of the peace, magistrate or arbitrator who levied or entered any fine, order, penalty, decree, statement or finding.

**(10)** A current financial statement of the applicant's net worth, including a description of major assets and liabilities, and any other financial information requested by the Gwichyaa Zhee Gwich'in Tribal Government

**(11)** A description of any judgments rendered against any officer, director, partner or holder of an interest of 5% or more in the applicant for five (5) years preceding the date of the application.

**(12)** A description of any bankruptcy or insolvency proceedings instituted by any officer, director, partner or holder of an interest of 5% or more in the applicant for five (5) years preceding the date of application.

The Gwichyaa Zhee Gwich'in Tribal Government shall not issue a solid waste construction and/or operation facility permit unless the Tribe has issued a land use permit, or lease, authorizing the operation of the MSWLF facility. The Gwichyaa Zhee Gwich'in Tribal Government may issue a solid waste construction and/or operation facility permit, only if it finds, on the basis of information contained in the application and otherwise available to it, and only after conducting a public hearing as specified herein, that the applicant will comply with the Ordinance; the 40 CFR Part 258 Criteria; and all rules or regulations, technical standards and criteria, guidance documents and permit conditions. The Gwichyaa Zhee Gwich'in Tribal Government must also find that the applicant has the financial and technical ability to construct and/or operate, close and

post-close the MSWLF as required by the Ordinance. The burden of proof shall rest on the applicant to demonstrate compliance with all Tribal solid waste criteria and requirements. The issuance or denial of any permit by the Gwichyaa Zhee Gwich'in Tribal Government is completely discretionary.

In issuing any permit, the Gwichyaa Zhee Gwich'in Tribal Government may impose permit conditions which are more stringent than provided under the Ordinance, if such are reasonably necessary. The Gwichyaa Zhee Gwich'in Tribal Government shall not issue a solid waste construction and/or operation facility permit, unless it is convinced that the primary consideration of the permittee is to prevent environmental damage and protect the public health. The long-term protection of the Tribe's public health, environment and natural resources shall be a critical consideration for the Gwichyaa Zhee Gwich'in Tribal Government's issuance or denial of a permit.

A solid waste operation facility permit shall be valid for the operation, closure and postclosure period designated and required for such MSWLF, but such permit is subject to revocation, suspension or modification as provided herein. Any condition imposed on any solid waste construction and/or operation facility permit issued by the Gwichyaa Zhee Gwich'in Tribal Government may only be modified after a public hearing which is duly noticed regarding modification of such permit.

### **SECTION 9.06.03**

#### ***Permits for the Collection and Transportation of Solid Waste***

As a condition for the issuance of a solid waste collection and transportation permit, the Gwichyaa Zhee Gwich'in Tribal Government shall require every vehicle operated by the transporter to be conspicuously marked to identify the solid waste transported. Every vehicle shall be marked with the trade name of the transporter, and the number of the solid waste transportation permit issued pursuant to this Section. Every vehicle and driver must be licensed by the State of Alaska and must comply with all safety and insurance requirements of the State of Alaska.

As a condition for the issuance of a solid waste collection and transportation permit, a transporter agrees to make an annual report by December 1st of each year to the Gwichyaa Zhee Gwich'in Tribal Government indicating the number and type of installation emptied or cleaned, the volume and nature of solid waste disposed of, the place and manner in which such solid waste was finally disposed and such other information as the Gwichyaa Zhee Gwich'in Tribal Government may require. A renewal may be denied by the Gwichyaa Zhee Gwich'in Tribal Government for failure of the permittee to properly and timely file such annual report.

Solid waste permits for the collection and transportation of solid waste must be renewed annually by the Gwichyaa Zhee Gwich'in Tribal Government on a calendar basis. The Gwichyaa Zhee Gwich'in Tribal Government shall adopt rules and regulations for solid waste collection and transportation on the Gwichyaa Zhee Gwich'in Tribal Government Territory including the operation of transfer stations, and may impose whatever condition it deems reasonably necessary to protect the environment, and the health, safety and welfare of the Tribe and its members before issuing any permit under this section.

**SECTION 9.06.04**  
***Public Hearing on MSWLF Permit Application***

No solid waste construction and/or operation facility permit shall be issued unless there has been a public hearing conducted by the Gwichyaa Zhee Gwich'in Tribal Government at which the applicant and all interested persons shall have an opportunity to present relevant evidence and be heard on whether the permit should be granted, or whether there are any special conditions which should be included in such permit. All applications for a solid waste construction and/or operation facility permit, including all documentation required for such permit, shall be available for public review and inspection at least sixty (60) days in advance of the hearing. The Gwichyaa Zhee Gwich'in Tribal Government shall publish weekly notice of such public hearing on each application beginning at least sixty (60) days in advance of the hearing in the most widely circulated newspaper on the Gwichyaa Zhee Gwich'in Tribal Government Territory for three consecutive weeks. The Gwichyaa Zhee Gwich'in Tribal Government shall also post notice of the public hearing near the proposed permanent site for an MSWLF, but viewable to the public, at least sixty (60) days in advance of the hearing. The Gwichyaa Zhee Gwich'in Tribal Government may designate issues it deems most relevant for the public hearing in the public notice, but the Gwichyaa Zhee Gwich'in Tribal Government shall consider all issues which are raised at the hearing. The public hearing shall be continued until all persons have had an opportunity to present their views.

**SECTION 9.06.05**  
***Oath and Application Filing Fees***

Each report and application filed shall be signed or notarized under oath in a form approved by the Gwichyaa Zhee Gwich'in Tribal Government. Each application shall be accompanied by a reasonable filing fee established by the Gwichyaa Zhee Gwich'in Tribal Government to reflect the Tribe's costs of processing the application or preparing an environmental assessment, the public notice and hearing and the costs of technical and legal consultants to review the application, prepare the permit, exhibits and guidance documents.

**SECTION 9.06.06**  
***Other Fees and Taxes***

In order to recover operating costs, the Tribe may impose reasonable fees on each permittee who constructs or operates an MSWLF, or collects and transports solid waste. Any fees to be imposed by the Tribe shall be specifically referred to in each permit. In addition, the Tribe may impose taxes on each permittee who operates an MSWLF, or collects and transports solid waste. The payment of such fees or taxes shall be a condition of maintaining such permit.

**TITLE 7**  
***CLOSURE; POST-CLOSURE AND FINANCIAL ASSURANCES***

SECTION 9.07.01: Closure Care Requirements for MSWLF

SECTION 9.07.02: Post Closure Care Requirements for MSWLF

SECTION 9.07.03: Financial Assurance Requirements for Closure, Post-Closure  
and Corrective Action

**SECTION 9.07.01**  
***Closure Care Requirements for MSWLFs***

**A. Cover System**

The owner or operator of an MSWLF which has received solid waste after October 9, 1991, must install a final cover system that is designed to minimize infiltration and erosion in compliance with 40 CFR §258.60. The final cover system as set forth in 40 CFR §258.60(a) must be comprised of an erosion layer underlain by an infiltration layer as follows:

1. The infiltration layer must be comprised of a minimum of 18 inches of earthen material that has a permeability of less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than  $1 \times 10^{-5}$  cm/sec, whichever is less; and
2. The erosion layer must consist of a minimum of 6 inches of earthen material that is capable of sustaining native plant growth.

If EPA approves the Tribe's solid waste program, then the Gwichyaa Zhee Gwich'in Tribal Government may approve an alternative final cover design under 40 CFR §258.60(b) that includes:

- (a) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in §258.60(a)(1); and
- (b) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in §258.60(a)(2). This alternative final cover design may not be applied to landfills which ceased to receive solid waste on or after October 9, 1993.

**B. Closure Plan**

The owner or operator must prepare a written closure plan that describes the steps necessary to close an MSWLF unit at any point during its active life in accordance with the cover design requirements.

The closure plan, at a minimum, must include the following information:

1. A description of the final cover and the methods and procedures to be used to install the cover;
2. An estimate of the largest area of the MSWLF unit ever requiring a final cover at any time during the active life;
3. An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

4. A schedule for completing all activities necessary to satisfy the closure criteria in §258.60. The owner or operator must notify Gwichyaa Zhee Gwich'in Tribal Government that a closure plan has been prepared and placed in the operating record by the date of the first receipt of solid waste.

Prior to beginning closure of each MSWLF unit, the owner or operator must notify the Gwichyaa Zhee Gwich'in Tribal Government that a notice of intent to close the unit has been placed in the operating record. The owner or operator must begin closure activities of each MSWLF unit no later than 30 days after the date on which the MSWLF unit receives the known final receipt of wastes or, if the MSWLF unit has remaining capacity and there is a reasonable likelihood that the MSWLF unit will receive additional wastes, no later than one year after the most recent receipt of waste. Extensions beyond the one-year deadline for beginning closure may be granted by the Gwichyaa Zhee Gwich'in Tribal Government, if the Tribe has an EPA approved solid waste program, and if the owner or operator demonstrates that the MSWLF unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed MSWLF unit.

The owner or operator of any MSWLF unit must complete closure activities of each MSWLF unit in accordance with the closure plan within 180 days following the beginning of closure as specified in 40 CFR §258.60(f). Extensions of the closure period may be granted by the Gwichyaa Zhee Gwich'in Tribal Government, if the Tribe has an EPA approved solid waste program, and if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and he/she has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed MSWLF unit.

Following closure of each MSWLF unit, the owner or operator must supply the Gwichyaa Zhee Gwich'in Tribal Government with a certification signed by an independent registered professional engineer that verifies that closure has been completed in accordance with the closure plan, and shall place such certification in the operating record.

The Gwichyaa Zhee Gwich'in Tribal Government shall take whatever action is reasonably necessary in perpetuity to notify any potential users or purchasers of the landfill facility property that the land has been used as a landfill facility and that its use is restricted under 40 CFR §258.61(c)(3). Post-closure use of the property shall not disturb the integrity of the site, final cover, liner(s) or monitoring systems, unless necessary to comply with requirements under 40 CFR Part 258.

**SECTION 9.07.02**  
***Post-Closure Care Requirements for MSWLFs***

**A.** Following closure of each MSWLF unit, the owner or operator must conduct post-closure care. Post-closure care must be conducted for thirty (30) years, except as provided under Paragraph B of this section, and must include the following:

(1) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover; and

(2) Maintaining and operating the leachate collection system in accordance with the requirements in 40 CFR §258.40. The Gwichyaa Zhee Gwich'in Tribal Government may

allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

(3) Monitoring the ground water in accordance with the requirements of Subpart E of 40 CFR Part 258 and maintaining the groundwater monitoring system; and

(4) Maintaining and operating the gas monitoring system in accordance with the requirements of 40 CFR §258.23.

**B.** The length of the post-closure care period may be:

(1) Decreased by the Gwichyaa Zhee Gwich'in Tribal Government if the Tribe has an EPA approved solid waste program and if the owner or operator demonstrates to the satisfaction of the Gwichyaa Zhee Gwich'in Tribal Government that the reduced period is

sufficient to protect human health and the environment; or

(2) Increased by the Gwichyaa Zhee Gwich'in Tribal Government if the Gwichyaa Zhee Gwich'in Tribal Government determines that the lengthened period is necessary to protect human health and the environment.

**C.** The owner or operator of an MSWLF unit must prepare a written post-closure plan that includes, at a minimum, the following information:

(1) A description of the monitoring and maintenance activities required in 40 CFR §258.61(a) for each MSWLF unit, and the frequency at which these activities will be performed; and

(2) The name, address and telephone number of the person or office to contact about the facility during the post-closure period; and

(3) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in 40 CFR Part 258. The Gwichyaa Zhee Gwich'in Tribal Government may, if the Tribe has an EPA approved solid waste plan, approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any



removal of waste, will not increase the potential threat to human health or the environment.

**D.** The owner or operator must notify the Gwichyaa Zhee Gwich'in Tribal Government that a post-closure plan has been prepared and placed in the operating record prior to the initial receipt of waste by the facility.

**E.** Following completion of the post-closure care period for each MSWLF unit, the owner or operator must supply the Gwichyaa Zhee Gwich'in Tribal Government with a certification signed by an independent registered professional engineer which verifies that all post-closure care has been completed in accordance with the post-closure plan, and shall place such certification in the operating record.

### **SECTION 9.07.03**

#### ***Financial Assurance Requirements for Closure, Post-Closure and Corrective Action***

Owners or operators of MSWLFs on the Gwichyaa Zhee Gwich'in Tribal Government Territory are required to comply with the financial assurance criteria under Subpart G of 40 CFR Part 258, which are incorporated herein and contained at 40 CFR §258.71 (Financial Assurance for Closure); 40 CFR §258.72 (Financial Assurance For Post-Closure Care); 40 CFR §258.73 (Financial Assurance for Corrective Action); and 40 CFR §258.74 (Allowable Mechanisms To Demonstrate Financial Assurance).

[The Tribal Agency responsible for implementing and enforcing this Ordinance should review 40 CFR Part 258 annually to ensure the Tribe is complying with its provisions.]

#### **A. Financial Assurance for Closure**

The owner or operator of an MSWLF must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of each MSWLF unit ever requiring a final cover as required under 40 CFR §258.60 at any time during the active life in accordance with the closure plan. The owner or operator must notify the Gwichyaa Zhee Gwich'in Tribal Government that the estimate has been placed in the operating record. The cost estimate must equal the cost of closing the largest area of an MSWLF unit ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. During the active life of the MSWLF unit, the owner or operator must annually adjust the closure estimate for inflation. The owner or operator must increase the closure cost estimate and the amount of financial assurance provided, if changes to the closure plan or MSWLF unit conditions increase the maximum cost of closure at any time during the remaining active life. The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under Section B herein, if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the MSWLF unit. The owner or operator must notify the Gwichyaa Zhee Gwich'in Tribal Government that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record. The owner or operator of each MSWLF unit must establish financial assurance for closure of the MSWLF unit in compliance with 40 CFR §258.74. The owner or operator must provide

continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with 40 CFR §258.60(h) and (i).

**B. Financial Assurance for Post-Closure Care**

The owner or operator must have a detailed estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the MSWLF unit in compliance with the post-closure plan developed under 40 CFR §258.61. The post-closure cost estimate used to demonstrate financial assurance must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator must notify the Gwichyaa Zhee Gwich'in Tribal Government that the estimate has been placed in the operating record.

The cost estimate for post-closure care must be based on the most expensive cost of post-closure care during the post-closure care period. During the active life of the MSWLF unit and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation. The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided if changes in the post-closure care plan or MSWLF unit conditions increase the maximum cost of post-closure care. The owner or operator may reduce the post-closure care cost estimate and the amount of financial assurance provided if the cost estimate exceeds the maximum costs of the post-closure care remaining over the post-closure care period.

The owner or operator must notify the Gwichyaa Zhee Gwich'in Tribal Government that the justification for the reduction of the post-closure care cost estimate and the amount of financial assurance has been placed in the operating record. The owner or operator of each MSWLF unit must establish financial assurance for the costs of post-closure care of the MSWLF unit in compliance with 40 CFR §258.74. The owner or operator must provide continuous coverage and financial assurance for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with 40 CFR §258.61(e).

**C. Financial Assurance for Corrective Action**

An owner or operator of an MSWLF unit required to undertake a corrective action program under 40 CFR §258.58 must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under 40 CFR §258.58. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must notify the Gwichyaa Zhee Gwich'in Tribal Government that the estimate has been placed in the operating record. The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with 40 CFR §258.58(f).

The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided if changes in the corrective action program or MSWLF unit conditions increase the maximum cost of corrective action. The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator must notify the Gwichyaa Zhee Gwich'in Tribal

Government that the justification for any reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record. The owner or operator of each MSWLF unit required to undertake a corrective action program under 40 CFR §258.58 must establish, in a manner in accordance with 40 CFR §258.74, financial assurance for the most recent corrective action program. The owner or operator must provide continuous coverage and financial assurance for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with 40 CFR §258.58(f) and (g).

#### **D. Allowable Financial Mechanisms**

40 CFR §258.74 requires that an owner or operator of an MSWLF unit provide financial assurance to ensure that funds necessary to meet the costs of closure, post-closure care and corrective action for known release will be available in a timely fashion when they are needed. There are four mechanisms available to provide financial assurance, including a trust fund; a surety bond; a letter of credit; an insurance policy; or a combination of the four mechanisms. Any mechanism(s) that is/are used by an owner or operator must comply with all of the criteria in 40 CFR §258.74, which is incorporated by reference herein, and must be legally valid, binding and enforceable under state, federal and Tribal law. The financial assurance mechanism(s) must be obtained by the owner or operator before the initial receipt of waste in the case of closure and post-closure care cost estimates; and no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with the requirements of 40 CFR §258.58, and maintained as required by 40 CFR §§258.71-74.

The Gwichyaa Zhee Gwich'in Tribal Government must approve the actual financial assurance mechanism(s) and financial assurance agreements that is/are provided by the owner or operator. The Gwichyaa Zhee Gwich'in Tribal Government may also require in its discretion, in addition to the criteria for financial assurance under 40 CFR Part 258, that an owner or operator provide financial assurance for corrective action for other than known releases as a condition for issuing an MSWLF permit.

The Gwichyaa Zhee Gwich'in Tribal Government shall also require that liability and property damage insurance coverage be provided by an owner or operator for claims arising from personal injury or property damage, including any claims arising from releases from an MSWLF unit. If a trust fund mechanism is used, the trustee must be an entity who has the authority to act as a trustee, and whose trust operations are regulated and examined by a federal agency. Trust fund payments must be made as specified in 40 CFR §258.74 criteria. The Gwichyaa Zhee Gwich'in Tribal Government must approve the terms of any trust agreement which is to be used as a financial assurance mechanism. The trust agreement shall be irrevocable. Trust funds shall only be released to reimburse the owner or operator for closure, post-closure and corrective action costs actually incurred, but only if sufficient funds remain in the trust to cover the remaining costs.

If any surety bond is used, the surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties in federal bonds in Circular 570 of the U.S. Department of the Treasury. If any letter of credit is used, the issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal agency.

**TITLE 8**  
***ENFORCEMENT PROGRAM/ADMINISTRATIVE PROCEDURES***

- SECTION 9.08.01: Enforcement Policy
- SECTION 9.08.02: Enforcement Agency
- SECTION 9.08.03: Enforcement Activities
- SECTION 9.08.04: Notice of Violation, Cease and Desist Order
- SECTION 9.08.05: Informal Conference
- SECTION 9.08.06: Reports Required
- SECTION 9.08.07: Enforcement Hearing
- SECTION 9.08.08: Civil Remedies and Corrective Action
- SECTION 9.08.09: Judicial Enforcement
- SECTION 9.08.10: Special Provisions for Tribal Departments and Agencies

**SECTION 9.08.01**  
***Enforcement Policy***

It is the policy of the Gwichyaa Zhee Gwich'in Tribal Government to encourage informal, practical, result-oriented resolution of alleged violations and actions needed to prevent damage to Gwichyaa Zhee Gwich'in Tribal Government Territory resources or harm to the health, safety or welfare of the Gwichyaa Zhee Gwich'in Tribal Government Territory population. It is also the policy of the Gwichyaa Zhee Gwich'in Tribal Government consistent with the principles of due process, to provide effective procedures for enforcement.

**SECTION 9.08.02**  
***Enforcement Agency***

The Gwichyaa Zhee Gwich'in Tribal Government shall be responsible for enforcing the provisions of this Ordinance. Specifically, the Gwichyaa Zhee Gwich'in Tribal Government shall conduct investigations when a complaint is received by the Gwichyaa Zhee Gwich'in Tribal Government or other Tribal agency believes that a violation of this Ordinance has occurred.

**SECTION 9.08.03**  
***Enforcement Activities***

Where a written and verified complaint shall be filed with the Gwichyaa Zhee Gwich'in Tribal Government and reviewed by the Gwichyaa Zhee Gwich'in Tribal Government alleging that, or where the Gwichyaa Zhee Gwich'in Tribal Government itself shall have cause to believe that, any person is violating any solid waste regulation or permit condition, the Gwichyaa Zhee Gwich'in Tribal Government shall cause a prompt investigation to be made.

**SECTION 9.08.04**

***Notice of Violation; Cease and Desist Order***

If the Gwichyaa Zhee Gwich'in Tribal Government finds after an investigation pursuant to Section 803 of this Ordinance that a violation of any regulation or permit condition exists, the Gwichyaa Zhee Gwich'in Tribal Government shall promptly notify both the alleged violator and the Gwichyaa Zhee Gwich'in Tribal Council in writing. In the case of an apparent violation of this Ordinance, the Gwichyaa Zhee Gwich'in Tribal Government is authorized to issue a Notice of Violation to the person(s) apparently responsible for the violation, and, if the apparent violation occurred on property owned by a person other than the alleged violator, a Notice of Violation shall also be issued to the landowner. In the case of a continuing violation or a threatened violation, the Gwichyaa Zhee Gwich'in Tribal Government is authorized to issue a Cease and Desist Order to prevent the violation from continuing or occurring.

Failure to comply with a Cease and Desist Order shall constitute a violation of this Ordinance. Both a Notice of Violation and a Cease and Desist Order may be issued for a single incident. A Notice of Violation will include a Summons to appear before the Gwichyaa Zhee Gwich'in Tribal Government at an enforcement hearing at a specified time and date, and shall advise the alleged violator that failure to appear may result in the imposition of civil penalties. If a Cease and Desist Order is issued without an accompanying Notice of Violation, the Order will inform the recipient that failure to comply with the Order will constitute a violation of this Ordinance which will result in the issuance of a Notice of Violation and may result in the imposition of civil penalties.

**SECTION 9.08.05**

***Informal Conferences***

The Gwichyaa Zhee Gwich'in Tribal Government shall afford the landowner or his or her representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the Gwichyaa Zhee Gwich'in Tribal Government determines that there may be either imminent environmental damage to a Gwichyaa Zhee Gwich'in Tribal Government Territory resource or adverse impact upon the health, safety and welfare of the Gwichyaa Zhee Gwich'in Tribal Government Territory population. Informal conferences may be used at any stage in the enforcement proceedings, except that the Gwichyaa Zhee Gwich'in Tribal Government may refuse to conduct informal conferences with respect to any matter then pending before the Gwichyaa Zhee Gwich'in Tribal Government or Gwichyaa Zhee Gwich'in Tribal Court.

**SECTION 9.08.06**  
***Reports Required***

The Gwichyaa Zhee Gwich'in Tribal Government shall keep written notes of the date and place of the conference, the persons in attendance, the subject matter discussed and any decisions reached with respect to further enforcement action.

**SECTION 9.08.07**  
***Enforcement Hearings***

If the landowner and the Gwichyaa Zhee Gwich'in Tribal Government are unable to resolve the matter via an informal conference, the Gwichyaa Zhee Gwich'in Tribal Government is authorized to conduct adjudicatory hearings to determine if a violation of this Ordinance has occurred. In such a hearing the Gwichyaa Zhee Gwich'in Tribal Government in cooperation with the Gwichyaa Zhee Gwich'in Tribal Court shall present the case to establish that the person(s) charged has (have) committed a violation of this Ordinance. Any person so charged shall be entitled, at his or her own expense, to be represented by an attorney or other representative.

**A. Burden of Proof**

The Gwichyaa Zhee Gwich'in Tribal Government shall have the burden of proving that a violation of this Ordinance has occurred and that a person charged was responsible for the violation. The Gwichyaa Zhee Gwich'in Tribal Government shall rule that a violation of this Ordinance has occurred if it finds that the charges are supported by substantial evidence and that a preponderance of the credible evidence supports a finding that a violation has occurred.

**B. Enforcement Orders.**

Within thirty (30) days after the date of any enforcement hearing, the Gwichyaa Zhee Gwich'in Tribal Government shall issue a written decision. If the Gwichyaa Zhee Gwich'in Tribal Government determines that a violation has occurred and that the person(s) charged was (were) responsible for the violation, the Gwichyaa Zhee Gwich'in Tribal Government's decision shall include an Enforcement Order.

**SECTION 9.08.08**  
***Civil Penalties and Corrective Action***

An Enforcement Order shall direct any person(s) found to have committed a violation of this Ordinance to take whatever corrective action the Gwichyaa Zhee Gwich'in Tribal Government deems appropriate under the circumstances. An Enforcement Order may impose civil penalties in accordance with a schedule of civil penalties prescribed in the Committee's rules. Alternatively, an Enforcement Order may impose civil penalties in the event that a person found to have committed a violation of this Ordinance does not

take corrective action in accordance with the Order within a prescribed time frame. If a person who has been found to have committed a violation does not take corrective action within the prescribed time frame, an appropriate department or agency of the Tribal government may take the necessary corrective action, in which case the amount of any civil penalty shall be increased by twice the amount of the cost incurred by the Tribal department or agency in taking the corrective action.

**A. Emergency Orders**

Notwithstanding any other provision of this Ordinance, if the Gwichyaa Zhee Gwich'in Tribal Government determines that noncompliance with this Ordinance is presenting an imminent and substantial threat to the public health, welfare or environment and determines, in consultation with the Tribe's attorneys, that it is not practicable to assure prompt protection of the public health, welfare or environment of an administrative or judicial enforcement action under this Part, the Gwichyaa Zhee Gwich'in Tribal Government may issue such orders as may be necessary to protect the public health, welfare or environment. Any such order shall be effective immediately upon issuance and shall remain in effect for a period not to exceed sixty (60) days.

**B. Revocation of Permit**

Failure of any person to comply with any Enforcement Orders will result in an immediate revocation of his or her permit. In order to obtain a reinstatement of such permit, the person(s) against whom the Enforcement Order was issued must first demonstrate compliance with the Order and pay all outstanding penalties and then petition for reinstatement of the permit with Gwichyaa Zhee Gwich'in Tribal Government.

**SECTION 9.08.09**  
***Judicial Enforcement***

The Gwichyaa Zhee Gwich'in Tribal Court shall have jurisdiction of all cases and controversies arising under this Ordinance.

**A.** The Gwichyaa Zhee Gwich'in Tribal Government may request the Gwichyaa Ghee Gwich'in Tribal Council to authorize the Gwichyaa Zhee Gwich'in Tribal Government to file an action in Tribal Court pursuant to this Ordinance for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties and clean up and administrative costs associated with the enforcement of this Ordinance (except that any suit against the Tribe or a tribal department or agency shall be for injunctive relief only and not for penalties or other money damages), in any of the following instances:

- (1) whenever a person has violated, or is in violation of, any provision of this Ordinance, including but not limited to a regulation, permit or order issued pursuant to this Ordinance;
- (2) whenever a person submits false information under this Ordinance or regulations promulgated under this Ordinance; or

(3) whenever a person is creating an imminent and substantial endangerment to the public health, welfare, environment or cultural resources of the Tribe, in which case the Gwichyaa Zhee Gwich'in Tribal Government shall pursue injunctive relief but not the assessment of penalties, unless the endangerment is caused by a violation, as specified in paragraphs (1) and (2) above.

**B.** Any person who in violation of this Ordinance stores, collects, transports or disposes of any solid waste or hazardous waste within the boundaries of the Gwichyaa Zhee Gwich'in Tribal Government shall be liable for all costs associated with or necessary to clean up, abate or remove said waste from the Gwichyaa Zhee Gwich'in Tribal Government Territory and restore the quality of the land and waters of the Gwichyaa Zhee Gwich'in tribal government Territory to their condition as they existed immediately prior to the storage, collection, transportation or disposal.

#### **SECTION 9.08.10**

##### ***Special Provisions for Tribal Departments and Agencies***

In any case in which the Gwichyaa Zhee Gwich'in Tribal Council or any Tribal agency or department is alleged to have violated the terms and conditions of a solid waste permit, or to have conducted activities without a permit, the Gwichyaa Zhee Gwich'in Tribal Government shall bring the matter to the attention of Gwichyaa Zhee Gwich'in Tribal Government who shall consider taking action to ensure compliance with this Ordinance. If the matter cannot be resolved informally, the Gwichyaa Zhee Gwich'in Tribal Court shall conduct an enforcement hearing for the purpose of making factual determinations and issuing a decision recommending a course of corrective action if necessary.



**TITLE 9**  
***APPEALS***

SECTION 9.09.01: Judicial Review

**SECTION 9.09.01**  
***Judicial Review***

Any person who is aggrieved by the issuance or denial of a solid waste permit without respect to whether that person, corporation or other entity is a party to such permit application, or who is the subject of an Enforcement Order, may file an appeal with the Tribal Court. The Court is authorized to hear such appeal.

**TITLE 10**  
***OTHER PROVISIONS***

SECTION 9.10.01: Severability  
SECTION 9.10.02: Amendments  
SECTION 9.10.03: Modification and Applicability of Part 258 Criteria  
SECTION 9.10.04: Effective Date

**SECTION 9.10.01**  
***Severability***

If any provision of this Ordinance, or the application thereof, is held invalid, the remainder of this Ordinance, or applications of such provisions, shall not be affected.

**SECTION 9.10.02**  
***Amendments***

The Gwichyaa Zhee Gwich'in Tribal Government reserves the sole right to amend this Gwichyaa Zhee Gwich'in Tribal Ordinance and to issue rules effecting all aspects of the Ordinance. Provisions in the Ordinance allow the Gwichyaa Zhee Gwich'in Tribal Government full flexibility to enact measures which will benefit the Tribe. The inclusion of these provisions does not necessitate their implementation, but allows the Gwichyaa Zhee Gwich'in Tribal Government flexibility to alter the Ordinance according to the evolving needs of the Gwichyaa Zhee Gwich'in Tribal Territory.

**SECTION 9.10.03**  
***Modifications and Applicability of Part 258 Criteria***

This Ordinance incorporates by reference all of the criteria contained in 40 CFR Part 258. If any part of 40 CFR Part 258 is modified, any modifications are automatically incorporated by reference and become part of this Ordinance, and supersede any of the provisions that were modified. If any of the part 258 Criteria are not actually restated in this Ordinance, they are nevertheless incorporated by reference and are applicable. If the EPA approves the Tribe's solid waste program, then the Tribe has all of the flexibility granted to it under the Part 258 Criteria, whether or not such flexibility is specifically restated in this Ordinance. Any specific provisions of this Ordinance which are more stringent than the Part 258 Criteria are applicable and controlling.

**SECTION 9.10.04**  
***Effective Date***

This Ordinance shall become effective upon Tribal Council Approval.

**TITLE 11**  
***SOVEREIGN IMMUNITY PRESERVED***

SECTION 9.11.01: Sovereign Immunity Preserved

**SECTION 9.11.01**  
***Sovereign Immunity Preserved***

Nothing in this Ordinance is intended to, nor should be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages from the Tribe.

**APPENDIX A**  
**PERMIT APPLICATION FORM**  
[to be completed by Tribe this can be done once the committee is formed]

**APPENDIX B**  
**FLOW CHART OF ENVIRONMENTAL AGENCIES**  
[to be completed by Tribe this can come from environmental office]

**CHAPTER 10**

**Reserved**

**CHAPTER 11  
TRIBAL SAFE DRINKING WATER**

**TITLE 1  
*SHORT TITLE, FINDINGS, AND PURPOSE***

- SECTION 11.01.01: Short Title
- SECTION 11.01.02: Findings
- SECTION 11.01.03: Purpose
- SECTION 11.01.04: Authority and Scope
- SECTION 11.01.05: Consensual Relations among Non-members, the Tribe and Tribal Members

**SECTION 11.01.01  
*Short Title***

This Ordinance shall be titled: the Gwichyaa Zhee Gwich'in Tribal Government **Safe Drinking Water Ordinance**. The ordinance shall be effective immediately upon adoption by resolution by the Gwichyaa Zhee Gwich'in Tribal Government.

**SECTION 11.01.02  
*Findings***

The Gwichyaa Zhee Gwich'in Tribal Government hereby finds as follows:

**A.** It is the policy of the Gwichyaa Zhee Gwich'in Tribal Government to protect the health and welfare of Gwich'in people by ensuring that water on the Gwichyaa Zhee Gwich'in Tribal Government's Territory is safe for drinking and other domestic purposes.

**B.** Pursuant to federal law as determined by the U.S. Supreme Court in such cases as *Montana v. United States*, 450 U.S. 544 (1981) and reaffirmed in *Strate v. A-1 Contractors* 117 S.Ct. 1404 (1997), the Gwichyaa Zhee Gwich'in Tribal Government possesses inherent sovereign authority to regulate collection and treatment of drinking water on the Gwichyaa Zhee Gwich'in Tribal Government's Territory and all on-Reservation pollution discharges that could adversely affect drinking water on the Gwichyaa Zhee Gwich'in Tribal Government's Territory or any other fundamental Tribal interest, or the public health and safety, including when such activities are conducted by non-members of the Tribe on privately owned land within the Gwichyaa Zhee Gwich'in Tribal Government's Territory.

**C.** Under the federal Safe Drinking Water Act, 42, U.S.C. §§300f, et seq. (SDWA), the Administrator of the USEPA may delegate to tribes primary enforcement responsibility for public water systems (42 U.S.C. §300j-11) and underground injection control (42 U.S.C. §300h-1(e)).

### **SECTION 11.0.03**

#### ***Purpose***

The purpose of this Ordinance is to promote the protection of the health and welfare of the Gwichyaa Zhee Gwich'in people and the environment by establishing appropriate water quality standards to ensure that the drinking water within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Government's Territory is safe for consumption.

### **SECTION 11.01.04**

#### ***Authority and Scope***

##### **A. Authority**

This Safe Drinking Water Ordinance is hereby adopted by Gwichyaa Zhee Gwich'in Tribal Government pursuant to Article 4 of the Tribe's Constitution authorizing the Gwichyaa Zhee Gwich'in Tribal Government to undertake such actions.

##### **B. Scope**

The Gwichyaa Zhee Gwich'in Tribal Government hereby finds as follows:

**A.** Except as otherwise provided in this section, the provisions of this Ordinance and the regulations promulgated hereunder shall apply to all public water systems within the boundaries of the Gwichyaa Zhee Gwich'in Tribal Government's Territory.

**B.** This Ordinance does not apply to any water system that meets all of the following conditions:

- 1.** It consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
- 2.** It obtains all of its water from, but is not owned or operated by, a public water system to which these regulations apply;
- 3.** It does not sell water to any person;
- 4.** It is not a carrier which conveys passengers in interstate commerce; and
- 5.** It does not provide water to any school, tribal, state or federal governmental employees or private entity serving twenty-five (25) or more employees or individuals.

**C.** Subject to the provisions of subsections (D) and (E) of this section, the provisions of this Ordinance shall not apply to any person or property where such application would be in violation of any valid waiver of jurisdiction or covenant not to regulate or otherwise exercise jurisdiction over such person or property; provided, however that before any person claiming a right under a purported waiver of jurisdiction may be released from

compliance with this Ordinance that person must offer clear and convincing evidence that:

1. That person does not operate a public water system subject to this Ordinance;  
or
2. That person operates a public water system which provides no drinking water to any resident or visitor of the Gwichyaa Zhee Gwich'in Tribal Government's Territory at any time; and
3. The public water system is subject to the jurisdiction of another state or tribal regulatory body which imposes standards as stringent or more stringent than those imposed by this Ordinance; and
4. No underground or surface waters of the Gwichyaa Zhee Gwich'in Tribal Government's Territory enter the public water system seeking to establish a regulatory waiver; and
5. The party seeking to establish the waiver has the written consent of the Administrator to do so.

**D.** Notwithstanding the provisions of subsection (C) of this section, the provisions of this Ordinance shall apply to any person who has submitted an application for a permit pursuant to this Ordinance.

**E.** Nothing in this Ordinance shall excuse the required performance of any act as set out in any other applicable law or regulation of the Gwichyaa Zhee Gwichin Tribal Government.

#### **SECTION 11.01.05**

##### ***Consensual Relations among Non-members, the Tribe and Tribal Members***

Any person who is not a member of the Tribe who uses land anywhere within the exterior boundaries of the Gwichyaa Zhee Gwich'in Tribal Government's Territory, whether trust or non-trust land, shall be deemed to have entered into consensual relationships with the Tribe or its members. Such person's discharge of pollutants into or other activities which affect the drinking water within the exterior boundaries of the Reservation will have demonstrably serious impact upon the environment, natural resources, public health and safety of the Tribe and its members, unless such use is in compliance with the provisions of this Ordinance and any regulations promulgated hereunder.



## TITLE 2

### SECTION 11.02.01: DEFINITIONS

For the purposes of this Ordinance, the following words and phrases shall have the following meanings:

**“Action Level” (AL)** means the concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.

**“Administrator”** means the Administrator of the United States Environmental Protection Agency.

**“Best Available Technology”** means the best technology, treatment techniques, or other means which the USEPA Administrator finds, after examination for efficiency under field conditions and not solely under laboratory conditions, are available for specific containment or category of contaminants.

**“Certified Laboratory”** means an analytical laboratory licensed by the State of California or the Tribe, to perform biological, microbiological section, chemical or radio-chemical examination of potable water.

**“Tribal Council”** means the Gwichyaa Zhee Gwich’in Tribal Council.

**“Coagulation”** means a process using thickening chemicals and mixing by which colloidal and suspended materials are destabilized and gathered into flocs.

**“Community Water System”** refers to a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Community water systems serve a residential population on a year-round basis. Users of community systems are likely to be exposed to any contaminants in the water supply over an extended time period.

**“Contaminant”** means any physical, chemical, biological, or radiological substance or matter in water that has the potential to adversely affect human health.

**“Conventional filtration treatment”** means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

**“Direct filtration”** means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

**“Director”** means director of the Gwichyaa Zhee Gwich’in Tribal Environmental Protection Agency.

**“Disinfection”** means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

**“EPA” and “USEPA”** refer to the United States Environmental Protection Agency.

**“Exemption”** means a waiver granted by the Director to a public water system pursuant to this Ordinance and regulations promulgated thereunder.

**“Filtration”** means a process for removing particulate matter from water by passage through porous media.

**“Human Consumption”** means the use of water for drinking, bathing, showering, hand washing or oral hygiene.

**“Lead Free”** when used with respect to solders and flux, “lead free” shall mean not more than 0.2 percent lead, and when used with respect to pipes and pipe fittings, “lead-free” shall mean not more than 8.0 percent lead.

**“Legioella”** means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

**“Maximum Contaminant Level Goal” (MCLG)** means the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLG’s allow for a margin of safety.

**“Maximum Contaminant Level” (MCL)** means the highest level of a contaminant that is allowed in drinking water. MCL is determined at a point of entry into the distribution system or at any point in the distribution system as determined by the Director based on the nature of the contaminants and/or other relevant factors, with the following exceptions:

- a) Turbidity contaminant levels are applicable only to a surface water source as determined at a point of entry into the distribution system.
- b) Total trihalomethane contaminant levels are applicable to disinfected community water systems as described herein.
- c) Microbiological contaminant levels are applicable to each point of entry into the distribution and at any point in the distribution system. MCL’s are set as close to the MCLG’s as feasible using the best available treatment technology.

**“Maximum Residual Disinfectant Level” (MRDL)** means the highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

**“Maximum Residual Disinfectant Level Goal” (MRDLG)** means the level of a drinking water disinfectant below which there is no reason or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

**“Near the first service”** means at one of the 20 percent nearest service connections to the water supply treatment facility, as measured by water transport time within the distribution system.

**“Non-community Water System”** means a public water system that is not a community water system.

**“Non-transient Non-community Water Systems”** means a non-community water system that regularly services at least twenty-five (25) of the same persons over six (6) months per year.

**“Person”** shall include an individual, partnership, association, or corporation, company, limited liability company, municipality, public utility, local, federal, or state government agency, or Indian tribe, tribal division, tribal department, tribal enterprise, or tribal entity or other public body, institution or legal entity.

**“Point of Disinfectant Application”** is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water run off.

**“Point-of-use Treatment Device”** means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water.

**“Primary Drinking Water Standard/Regulation”** means a standard or regulation which:

- a) applies to public water systems;
- b) Specifies contaminants which, in the judgment of the Tribe/Department, may have an adverse effect on human health;
- c) Specifies for each contaminant a maximum contaminant level adopted by the Tribe/Department; and
- d) contains criteria and procedures to assure a supply of drinking water which dependably complies with maximum contaminant levels, including quality control and testing procedures, to ensure compliance with such levels and to ensure proper operation and maintenance of the public water system, and requirements as to the minimum quality of water which may be taken into the system and siting for new facilities for public water systems.

**“Public Water System Owner or Operator”** means any person who owns and/or operates a public water system.

**“Public Water Systems”** means a system for the provision to the public of piped water for human consumption through pipes or other conveyances, provided such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. The term “public water system” shall include all sources and facilities involved in collecting, treating, storing and distributing the water.

**“Regularly Serves”** means a public water system that serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year.

**“Resident”** means a person who physically occupies, whether by ownership, rental, lease, or other means, the same dwelling for at least 60 days out of the year.

**“Residual Disinfectant Concentration”** (“C” in CT calculation) means the concentration of disinfectant measured in mg/l in a representative sample of water.

**“Sanitary Survey”** means an on-site review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation, and maintenance for producing and distributing safe drinking water.

**“Secondary Drinking Water Standards”** means standards promulgated under this Ordinance that apply to public water systems and specify the maximum contaminant levels which, in the judgment of the Gwichyaa Zhee Gwich’in Tribal Government, are requisite to protect the public welfare primarily with regard to aesthetic qualities. Such standards may apply to any contaminant in drinking water (a) which may adversely affect the odor or appearance of water and, consequently, may cause a substantial number of persons served by the public water system to discontinue its use; or (b) which may otherwise adversely affect the public welfare. Such standards may vary according to geographic location and other circumstances.

**“Sedimentation”** means a process for removal of solids before filtration by gravity or separation.

**“Surface Water”** means all water which is open to the atmosphere and subject to surface runoff.

**“System with a Single Service Connection”** means a system which supplies drinking water to consumers via a single service line.

**“Tamper”** means the introduction of a contaminant into or other interference with the operation of a public water system with the intention of harming persons.

**“Treatment Technique”** means a required process intended to reduce the level of a contaminant in drinking water.

**“User”** means any person using water for domestic purposes. User does not include any person processing, selling or serving water or operating a public water system.

**“Variance”** means a waiver granted by the [name of Tribal agency] to a public water system pursuant to this Ordinance and regulations promulgated hereunder.

“**Virus**” means a virus of fecal origin which is infectious to humans by waterborne transmission.

“**Water purveyor**” is any person who owns or operates a public water system.

“**Waterborne Disease Outbreak**” means the significant occurrence of acute infectious illness, epidemiologically [through the study of infectious diseases] associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate Tribal agency.

“**Water Treatment Plant**” means a group or assemblage of structures, equipment, and processes that treat, blend or condition the water supply or a public water system for the purpose of meeting primary drinking water standards.

“**Water Distribution System**” means any combination of pipes, tanks, pumps, and other physical features that deliver water from the source or water treatment plant to the consumer.

**TITLE 3**  
***TRIBAL ENVIRONMENTAL PROTECTION AGENCY***

SECTION 11.03.01: Designation as Lead Tribal Agency  
SECTION 11.03.02: Powers and Duties  
SECTION 11.03.03: Tribal Court

**SECTION 11.03.01**  
***Designation as Lead Tribal Agency***

The Tribal Environmental Protection Agency shall be the lead agency for implementing this Safe Drinking Water Ordinance.

**SECTION 11.03.02**  
***Powers and Duties***

There is hereby created the position of Tribal Drinking Water Quality Control Officer. The Tribal Drinking Water Quality Control Officer shall serve under the direction of the Gwichyaa Zhee Gwich'in Tribal Government and shall be appointed by the Gwichyaa Zhee Gwich'in Tribal Government. The Tribal Drinking Water Quality Control Officer shall cooperate with the USEPA and other agencies of the federal government or the State of Alaska, as necessary to carry out the intent of this Ordinance. The powers and duties of the Tribal Drinking Water Quality Control Officer include:

**A. Adopt and Enforce Regulations**

The Gwichyaa Zhee Gwich'in Tribal Government is responsible for adopting and enforcing regulations promulgated pursuant to this Ordinance.

**B. Annual Report**

The Gwichyaa Zhee Gwich'in Tribal Environmental Department shall submit an annual report to the Gwichyaa Zhee Gwich'in Tribal Government. The Gwichyaa Zhee Gwich'in Tribal Environmental Department shall also submit reports to the USEPA as required by 40 CFR §142.15, as amended from time to time.

**C. Establish Drinking Water Standards**

The Gwichyaa Zhee Gwich'in Tribal Government shall establish drinking water standards pursuant to this Ordinance that are at least as stringent as the federal standards, and can be more stringent than the federal standards.

**D. Procedures for Permit and Inspection Program**

The Gwichyaa Zhee Gwich'in Tribal Government shall establish procedures for a permit and inspection program for all public water systems serving the Tribe.

### **E. Studies, Investigations and Information Systems**

The Gwichyaa Zhee Gwich'in Tribal Government shall conduct all studies and investigations and implement such information systems as necessary to carry out this Ordinance.

### **F. Records**

The Gwichyaa Zhee Gwich'in Tribal Government shall establish and maintain a file for each public water system that provides drinking water on the Gwichyaa Zhee Gwich'in Tribal Government's Territory. Each file shall contain the information and be maintained as required by 40 CFR §142.14, as that regulation may be amended from time to time, as well as any additional information deemed appropriate by the Gwichyaa Zhee Gwich'in Tribal Government. These records shall be available for public inspection at the office of the Gwichyaa Zhee Gwich'in Tribal Government during regular business hours.

### **G. Contracts and Coordination with Other Agencies**

The Gwichyaa Zhee Gwich'in Tribal Government shall enter into agreements, contracts of cooperative arrangements with other Tribal departments, divisions or entities; with state, federal or inter-state agencies; municipalities; local health departments, educational institutions or other organizations; or other persons for the purpose of ensuring the safety of drinking water within the Gwichyaa Zhee Gwich'in Tribal Government's Territory.

### **H. Primary Drinking Water Regulations**

The Gwichyaa Zhee Gwich'in Tribal Government may prescribe the maximum permissible levels for contaminants in all public water systems on the Gwichyaa Zhee Gwich'in Tribal Government's Territory. These regulations shall govern monitoring and reporting of the water quality of all public water systems and shall be at least as stringent as federal regulations promulgated pursuant to the SDWA.

### **I. Secondary Drinking Water Standards**

The Gwichyaa Zhee Gwich'in Tribal Government may prescribe controls including water purification systems for contaminants in drinking water that primarily affect the aesthetic qualities (such as taste, color and smell) relating to the public acceptance of drinking water. Such secondary regulations should be guided by any national secondary drinking water regulations, but may vary from any non-mandatory federal guidelines.

### **J. Sampling and Analytical Regulations**

The Gwichyaa Zhee Gwich'in Tribal Government may prescribe the microbiological, inorganic, organic, radioactivity and turbidity sampling requirements for public water systems.

### **K. Investigations and Hearings**

In order to fulfill the obligations of this Ordinance, the Gwichyaa Zhee Gwich'in Tribal Government is authorized to:

1. Conduct investigations, inspections and tests to carry out the duties of this Ordinance;
2. Hold hearings related to any aspect of or matter within the duties of this Ordinance and, in connection therewith, compel the attendance of witnesses and the production of records according to the procedures established in this Ordinance;
3. Encourage voluntary cooperation by advising and consulting with persons or affected groups, tribes or states to achieve the purposes of this Ordinance;
4. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, to carry out the purposes of this Ordinance;
5. Compile and publish, from time to time, reports, data and statistics with respect to matters studied or investigated by the Gwichyaa Zhee Gwich'in Tribal Government at its discretion;
6. Implement and administer the provisions of this Ordinance; and
7. Perform such other activities as the Gwichyaa Zhee Gwich'in Tribal Government may find necessary to carry out its functions under this Ordinance.

**L. Rules and Regulations:** The Gwichyaa Zhee Gwich'in Tribal Government is authorized to promulgate such rules and regulations from time to time as may be necessary to carry out the provisions of this Ordinance.

**M. Emergency Powers:** Notwithstanding any other provisions of this Ordinance, the Gwichyaa Zhee Gwich'in Tribal Government, upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water may present an imminent and substantial endangerment to the health of persons, and that appropriate authorities have not acted to protect the health of such persons, may take such actions as the Gwichyaa Zhee Gwich'in Tribal Government may deem necessary in order to protect the health of such persons, including requiring the immediate closure of such public water system. To the extent the Gwichyaa Zhee Gwich'in Tribal Government determines it to be practicable in light of such imminent endangerment, the Gwichyaa Zhee Gwich'in Tribal Government shall consult with federal, state and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this section is based and to ascertain the action which such authorities are or will be taking. The actions which the



Gwichyaa Zhee Gwich'in Tribal Government may take include, but shall not be limited to:

1. Issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment; and
2. Requesting the Tribal prosecutor to commence a civil action for appropriate relief, including a restraining order or permanent or temporary injunction. Any person who violates or fails or refuses to comply with any order issued by the Gwichyaa Zhee Gwich'in Tribal Government under this section may, in an action brought in a court of competent jurisdiction to enforce such order, be subject to a civil penalty not to exceed \$5,000 for each day in which such violation occurs or failure to comply continues.

**SECTION 11.03.03**  
*Tribal Court*

The Gwichyaa Zhee Gwich'in Tribal court shall have exclusive jurisdiction to hear any disputes arising out of this Ordinance or the enforcement thereof.

**TITLE 4**  
***PUBLIC WATER SYSTEMS***

- SECTION 11.04.01: General Requirements
- SECTION 11.04.02: Design Criteria
- SECTION 11.04.03: Site Plan
- SECTION 11.04.04: Primary Drinking Water Regulations
- SECTION 11.04.05: Inspections
- SECTION 11.04.06: Violations
- SECTION 11.04.07: Laboratory Requirements
- SECTION 11.04.08: Record Keeping
- SECTION 11.04.09: Reporting Test and Analyses Results
- SECTION 11.01.10: General Public Notification Requirements
- SECTION 11.04.11: Public Notification Requirements for Lead
- SECTION 11.04.12: Emergency Water Plan

**SECTION 11.04.01**  
***General Requirements***

**A.** No person shall develop, maintain or operate a public water supply system that operates within the Gwichyaa Zhee Gwich'in Tribal Government's Territory unless the system is approved by the Gwichyaa Zhee Gwich'in Tribal Government. All public water supply systems must be developed, operated and maintained in accordance with the requirements and provisions of this Ordinance in order for a public water supply system to maintain approval by the Gwichyaa Zhee Gwich'in Tribal Government.

**B.** Should the Gwichyaa Zhee Gwich'in Tribal Government find that a public water supply system is not developed, maintained or operated in compliance with this Ordinance the Gwichyaa Zhee Gwich'in Tribal Government may revoke, suspend or otherwise limit the approval previously granted.

**C.** The Gwichyaa Zhee Gwich'in Tribal Government is authorized to enter at all reasonable times in or upon any private or public property for the purpose of carrying out the provisions of this Ordinance or making an inspection or investigation of a condition which the Gwichyaa Zhee Gwich'in Tribal Government believes may be hazardous to the health of the consumers serviced by any public water supply system or in violation of this Ordinance.

**SECTION 11.04.02**  
***Design Criteria***

**A.** No new or substantially modified public water system shall be authorized to begin construction or operation on the Gwichyaa Zhee Gwich'in Tribal Government's Territory until such time as the Gwichyaa Zhee Gwich'in Tribal Government has reviewed the proposed design of such facility to ensure that it is capable of compliance with applicable minimum construction guidelines for public water systems. In conducting this review, the Gwichyaa Zhee Gwich'in Tribal Government is authorized to rely upon the technical

assistance of the Office of Environmental Health and Engineering, United States Indian Health Service.

**B.** In the event that the proposed design is satisfactory, the Gwichyaa Zhee Gwich'in Tribal Government shall so advise the applicant, in writing, in a timely manner. Appropriate design changes must be made by the applicant prior to initiating any operation of the system.

**C.** No source of water shall be developed for a public water system until a site plan prepared by a professional engineer or land surveyor has been approved by the Gwichyaa Zhee Gwich'in Tribal Government.

### **SECTION 11.04.03**

#### ***Site Plan***

**A.** The site plan shall include an appropriately scaled topographic map of the area under consideration.

**B.** Approval of the plans and specifications granted to an applicant shall expire within two (2) years if construction of the approved system has not begun within that period.

**C.** Expired approvals may be renewed if the data provided in the application is unchanged and attested to by the applicant and plans conform to all construction standards and testing requirements in effect at the time of the application for renewal.

**D.** All revisions to approved plans must be submitted to the Gwichyaa Zhee Gwich'in Tribal Government for approval. The Gwichyaa Zhee Gwich'in Tribal Government may require a new application and/or site plan if the revisions are deemed significant.

**E.** All consumers are to be protected. Every building connected to the public water system must have a point-of-entry device installed, maintained and adequately monitored. The Tribe must be assured that every building is subject to treatment and monitoring and that the rights and responsibilities of the public water system customer are conveyed upon the sale of property.

### **SECTION 11.04.04**

#### ***Primary Drinking Water Regulations***

The Gwichyaa Zhee Gwich'in Tribal Government may prescribe the maximum permissible levels for contaminants in all public water systems on the Gwichyaa Zhee Gwich'in Tribal Government's Territory. These regulations shall govern monitoring and reporting of the water quality of all public water systems, and shall be at least as stringent as federal regulations promulgated pursuant to the United States Safe Drinking Water Act.

**SECTION 11.04.05**  
***Inspections***

The Gwichyaa Zhee Gwich'in Tribal Government or a designated representative shall:

**A.** Make such investigations and inspections as are necessary to ensure the compliance of public water systems with this Ordinance and other applicable laws, decisions, orders, rules or other actions taken pursuant to this Ordinance.

**B.** Have the right to enter the property of any public water system for the purpose of inspecting and investigating the sanitary condition of the public water system, the quality of the water and compliance with applicable Tribal law. This right shall include the right to review and copy the records required to be established and maintained by this Ordinance.

**C.** Except in an emergency, as determined by the Gwichyaa Zhee Gwich'in Tribal Government, notify and permit the public water system owner or operator to be present when an inspection or investigation is being conducted. The Gwichyaa Zhee Gwich'in Tribal Government is authorized to utilize the services of the United States Indian Health Service or appropriate tribal departments to ensure that necessary inspections are performed, to coordinate its activities with those agencies or departments and to rely upon competent inspections and investigations performed by those agencies or departments.

**SECTION 11.04.06**  
***Violations***

**A. Use of Lead Pipes, Solder and Flux**

It shall be unlawful for any person to use any pipe, solder or flux used in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system that is not lead-free. This subsection shall not apply to leaded joints necessary for the repair of cast iron pipes.

**B. Tampering with Public Water Systems** - It shall be unlawful to tamper or attempt or threaten to tamper with a public water system. Any person who tampers or attempts or threatens to tamper with a public water system may be subject to civil and/or criminal fines.

**C. Other Violations**

No person shall violate any conditions of any variance, exemption, permit or order, including cease and desist orders and orders to comply, decisions, rules or any other actions taken pursuant to this Ordinance. Upon adoption of regulations requiring a permit, no person shall operate or construct a public water system unless said person obtains a permit from Gwichyaa Zhee Gwich'in Tribal Government.

**SECTION 11.04.07**  
***Laboratory Requirements***

The Tribe adopts the certified laboratory lists maintained by the USEPA or the State of California, as they may be amended from time to time. Public water system owners or operators are required to use a certified laboratory from such lists in contracting for laboratory services. The Gwichyaa Zhee Gwich'in Tribal Government may maintain a service contract with one or more certified laboratories to meet this requirement.

**SECTION 11.04.08**  
***Record Keeping***

A public water system owner or operator shall retain, on the premises or at a convenient location near the premises of the public water system, the following records:

**A.** Records of microbiological analyses made pursuant to this Ordinance shall be kept for not less than five (5) years. Records of chemical analyses made pursuant to this Ordinance shall be kept not less than ten (10) years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

1. The date, place and time of sampling, and the name of the person who collected the sample;
2. Identification of the sample as to whether it was routine distribution system sample, check sample, raw or processed water sample or other special purpose sample;
3. Date of analysis;
4. Laboratory and person responsible for performing analysis;
5. The analytical technique or method used; and
6. The results of the analysis

**B.** Records of actions taken by the public water system owner or operator to correct violations of this Ordinance shall be kept for a period of not less than three (3) years after the last action taken with respect to the particular violation involved.

**C.** Copies of any written reports, summaries or communication relating to sanitary surveys of the system conducted by the system itself, by a private consultant or by a tribal, state or federal agency, shall be kept for a period of not less than ten (10) years after completion of the sanitary survey involved.

**D.** Records concerning a variance or exemption to the system shall be kept for a period ending not less than five (5) years following the expiration of such variance or exemption.

**SECTION 11.04.09**  
***Reporting Test and Analyses Results***

**A.** It shall be the duty of each public water system owner or operator to ensure that copies of all tests and analyses performed on each public water system, pursuant to the requirements of the Primary Drinking Water Regulations and other applicable tribal and federal law, are made available to the Gwichyaa Zhee Gwich'in Tribal Government, on a timely basis, for inclusion in such files.

**B.** Except where a shorter period is specified in this Ordinance, each public water system owner or operator shall report to the Gwichyaa Zhee Gwich'in Tribal Government the results of any test, measurement or analysis required by this Ordinance within:

1. The first ten (10) days following the month in which the result is received; or
2. The first ten (10) days following the end of the monitoring period required by the Gwichyaa Zhee Gwich'in Tribal Government, whichever is shortest.

**C.** The public water system owner or operator shall report to the Gwichyaa Zhee Gwich'in Tribal Government within 48 hours any violation of a primary drinking water regulation (including failure to comply with monitoring requirements) set forth in this Ordinance.

**D.** The public water system owner or operator is not required to report analytical results to the Gwichyaa Zhee Gwich'in Tribal Government in cases where a USEPA-approved laboratory performs the analysis and reports the results to the Gwichyaa Zhee Gwich'in Tribal Government.

**E.** The public water system owner or operator shall, within ten (10) days of completion of each public notice requirement by this Ordinance, submit to the Gwichyaa Zhee Gwich'in Tribal Government a representative copy of each type of notice distributed, published, posted and/or made available to the media or to persons served by the system.

**F.** The Gwichyaa Zhee Gwich'in Tribal Government may request from the public water system owner or operator all pertinent information. The public water system owner or operator shall submit to the Gwichyaa Zhee Gwich'in Tribal Government, within the time stated in the request, copies of any records required by this Ordinance to be maintained and copies of any documents which the Gwichyaa Zhee Gwich'in Tribal Government is entitled to inspect pursuant to this Ordinance.

**SECTION 11.04.10**

***General Public Notification Requirements***

**A.** Each owner or operator of a public water system shall give notice to the persons served by it whenever the public water system:

1. Fails to comply with an applicable maximum contaminant level or treatment technique, as specified in the regulations promulgated under this Ordinance;
2. Fails to limit fluoride concentrations to less than 2.0 mg/l;
3. Fails to comply with an applicable testing procedure established by this Ordinance;
4. Is granted a variance or exemption from an applicable maximum contaminant level;
5. Fails to comply with a schedule prescribed pursuant to such variance or exemption; or
6. Fails to perform any monitoring required by this Ordinance.

**B.** If a community water system has violated an applicable maximum contaminant level, the public water system owner or operator shall notify the public of such violation in addition to the notification required hereunder, as follows:

1. By publication on not less than three (3) consecutive days in a newspaper or newspapers of general circulation in the area served by the system. Such notice shall be completed within fourteen (14) days after the public water system owner or operator learns of the violation.
2. By furnishing a copy of the notice to the radio and television stations serving the area served by the system. Such notice shall be furnished within seven (7) Days after the public water system owner or operator learns of the violation.
3. The requirements of paragraph (2) of this subsection may be waived by the Gwichyaa Zhee Gwich'in Tribal Government if the Gwichyaa Zhee Gwich'in Tribal Government determines that the violations have been corrected promptly after discovery, the causes of the violation have been eliminated, and there is no longer a risk to public health.

**C.** In addition, in the case of a community water system and with respect to all violations listed above, and the grant of variances and exemptions, the owner or operator of the system shall notify the users of the water system as soon as possible and in any event within three (3) months after a violation or grant of an exemption or variance. The notification shall be by any means necessary to ensure that all users are notified of the problem. This may require the house-to-house distribution of handouts in cases where

inclusion with monthly utility bills is not practical. Such notice shall be repeated at least once every three (3) months as long as the violation or the variance or exemption remains in effect.

**D.** Customers of a community water system must be notified by the owner or operator of the public water system in question every three (3) months when drinking water concentrations for fluoride exceed 2.0 mg/l. The notification must consist of any means necessary to make users aware of the problem. The notice must also be mailed on a quarterly basis to tribal and federal public health officials and published in the local newspaper(s). Continued notification is desirable to alert new users who may begin using the system. The exact form and manner of such notice shall be prescribed by the Gwichyaa Zhee Gwich'in Tribal Government as may be necessary to ensure adequate notice.

**E.** In the case of a non-community water system, the public water system owner or operator shall give notice by continuous posting of any violation of an applicable maximum contaminant level or of the granting of a variance or exemption from any such level to the persons served by the system as long as the violation or variance or exemption continues. The form and manner of such notice shall be prescribed by the Gwichyaa Zhee Gwich'in Tribal Government, and shall ensure that the public using the system is adequately informed of the violation or the variance or exemption.

**F.** Notice given pursuant to this section other than that otherwise specified shall be written in a manner reasonably designed to inform fully the users of the system. The notice shall be conspicuous and shall not use unduly technical language, unduly small print or other methods which could frustrate the purpose of the notice. The notice shall disclose all material facts regarding the subject, including the nature of the problem, and when appropriate, a clear statement that a primary drinking water regulation has been violated and preventive measures that should be taken by the public, such as the necessity for seeking alternative water supplies. Notices may include a balanced explanation of the significance or seriousness to the public health of the subject of the notice, a fair explanation of steps taken by the system to correct any problem and the results of any additional sampling.

**G.** Notice to the public required by this section may be given by the Gwichyaa Zhee Gwich'in Tribal Government on behalf of the public water system owner or operator, where, in the Gwichyaa Zhee Gwich'in Tribal Government's discretion, this is warranted.

**H.** In any instance in which notification by mail or other suitable means is required by this section but notification by newspaper, radio or television stations is not required by this section, the Gwichyaa Zhee Gwich'in Tribal Government may nevertheless require the owner or operator of a public water system to provide notification by newspaper and to radio and television stations when circumstances make more immediate or broader notice appropriate to protect the public's health.



I. Any person who violates this section shall be subject to a civil penalty not to exceed \$25,000.

**SECTION 11.04.11**

***Public Notification Requirements for Lead***

Each public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from the lead content in the construction materials of the public water distribution system or the corrosivity of the water supply sufficient to cause leaching of lead. Notice shall be provided in such manner and form as may be reasonably required by the Gwichyaa Zhee Gwich'in Tribal Government. Notice under this section shall be provided notwithstanding the absence of a violation of any other provision of this Ordinance.

**SECTION 11.04.12**

***Emergency Water Plan***

Each public water system owner or operator shall develop an emergency water plan and submit a copy to the Gwichyaa Zhee Gwich'in Tribal Government for review within 180 days after the enactment of this Ordinance. An emergency water plan is a plan for the provision of alternative safe drinking water in emergencies. The Gwichyaa Zhee Gwich'in Tribal Government shall review and comment on the emergency water plan and notify the public water system owner or operator of its determination within ninety (90) days after having received the emergency water plan. The public water system owner or operator shall incorporate the changes or modifications, if any, recommended by the Gwichyaa Zhee Gwich'in Tribal Government.

**TITLE 5**  
***CERTIFICATION OF OPERATORS OF DRINKING WATER SUPPLY***  
***FACILITIES***

- SECTION 11.05.01: Committee for Certification of Operators of Water Supply Treatment Facilities
- SECTION 11.05.02: Duties of the Advisory Committee
- SECTION 11.05.03: Certification Process
- SECTION 11.05.04: Definitions as Used in This Section
- SECTION 11.05.05: Mandatory Certification of Public Water Supply Operator
- SECTION 11.05.06: Certification and Revocation

**SECTION 11.05.01**  
***Committee for Certification of Operators of Water Supply Treatment Facilities***

There will be created an advisory committee for certification of operators of water supply treatment facilities to insure the proper management, operation and maintenance of water supply treatment facilities. At least one member of the committee shall be a registered certified professional engineer engaged in the practice of water supply engineering.

**SECTION 11.05.02**  
***Duties of the Advisory Committee***

The Advisory Committee shall:

- A.** Recommend to the Gwichyaa Zhee Gwich'in Tribal Government a classification of all water supply treatment facilities using surface water or groundwater under the direct influence of surface water as determined by the Gwichyaa Zhee Gwich'in Tribal Government as to their size and type and recommend specifications for certification of operators of each class of water supply treatment facilities.
- B.** Recommend to the Gwichyaa Zhee Gwich'in Tribal Government based on examination, and from the applicant's training and experience, the class of certificate, if any, he/she should be issued. Examinations shall be held at least once each year at a time and place designated by the Gwichyaa Zhee Gwich'in Tribal Government.
- C.** Make recommendations to the Gwichyaa Zhee Gwich'in Tribal Government on the issuance of a nonrenewable provisional certificate to an individual where the Advisory Committee deems necessary; provided, however, that any individual receiving a provisional certificate shall pass the examination and meet other requirements for such position within one (1) year after issuance of such certificate.
- D.** Keep records of its proceedings and all applications for certification.

**E.** Encourage all operators to attend classes, seminars and/or other educational programs periodically to keep abreast of changes and advances in the fields of water supply treatment and management.

**SECTION 11.05.03**  
*Certification Process*

A person who desires to be certified as an operator of a drinking water supply facility shall file with the Advisory Committee an application on a form to be furnished by the Advisory Committee and signed under oath. If the application is accepted, the Gwichyaa Zhee Gwich'in Tribal Government shall issue a certification, which shall expire at the end of the calendar year and may be renewed from year to year thereafter.

**SECTION 11.05.04**  
*Definitions as Used in This Section*

**“Operator”** means an individual who is responsible for one (1) or more mechanical treatment units, processes or other important functions at a water supply treatment facility.

**“Superintendent”** means the individual operator who is responsible for the management, operation and maintenance of a water supply treatment facility during all working shifts at the facility and who shall hold a certificate equal to the grade or classification of the water treatment facility. It does not apply to any official who does not work at the water supply treatment facility as an operator.

**“Assistant Superintendent”** means the operator who is responsible for the management, operation and maintenance of a water supply treatment facility in the absence of the superintendent and who shall have a certificate equal to the grade or classification of the water supply treatment facility.

**“Water Supply Treatment Facility”** means an arrangement of devices, equipment and structures constructed and/or installed for the purpose of treatment of water to be supplied to the public.

**“Certificate”** means a certificate of competency issued by the Gwichyaa Zhee Gwich'in Tribal Government for certification of operators of drinking water supply facilities to an individual to operate one or more specified classes of water supply treatment facilities.

**SECTION 11.05.05**

***Mandatory Certification of Public Water Supply Operator***

It shall be unlawful for any public water supply system using surface water or groundwater under the direct influence of surface water as determined by the Gwichyaa Zhee Gwich'in Tribal Government to supply water for human consumption unless the treatment of such water is under the supervision of a superintendent or assistant superintendent who is responsible for the management, operation and maintenance of a water supply treatment facility during all working shifts at the facility and who shall hold a certificate equal to the grade or classification of the water supply treatment facility, established by this section or unless a temporary emergency certification has been issued by the Gwichyaa Zhee Gwich'in Tribal Government. The Advisory Committee shall advise the Gwichyaa Zhee Gwich'in Tribal Government on the need for individual emergency certifications for a duration of not more than six (6) months.

**SECTION 11.05.06**

***Certification and Revocation***

The Advisory Committee shall advise the Gwichyaa Zhee Gwich'in Tribal Government on the following:

**A.** Upon satisfactory fulfillment by an applicant of the provisions of this section, the Gwichyaa Zhee Gwich'in Tribal Government shall issue a suitable certificate designating competency. This certificate shall expire at the end of the calendar years and may be renewed from year to year thereafter. The certificate shall indicate the class of treatment facility for which the operator is qualified. The certificate for the superintendent and assistant superintendent shall be prominently displayed in the office of the water treatment facility.

**B.** Certificates may be issued, upon application, without examination, in a comparable classification to any individual who holds a certificate issued by any state, territory or possession of the United States.

**C.** The Gwichyaa Zhee Gwich'in Tribal Government may revoke the certificate of an operator when it is found after such an individual has been granted a hearing that he/she performed his/her duties in a manner that produced a supply that is out of compliance with this Ordinance or that he/she has practiced fraud or deception; or that reasonable care, judgment or the application of his/her knowledge or ability was not used in the performance of his/her duties or that an individual is incompetent or unable to perform his/her duties properly.

**TITLE 6**  
***PERMIT AND INSPECTION PROGRAM***

SECTION 11.06.01: Permits  
SECTION 11.06.02: Permit Application; Hearing; Fees  
SECTION 11.06.03: Variances  
SECTION 11.06.04: Exemptions

**SECTION 11.06.01**  
***Permits***

**A. Permits Required**

No person shall operate or construct a public water system on the Gwichyaa Zhee Gwich'in Tribal Government's Territory without first obtaining a permit from the Gwichyaa Zhee Gwich'in Tribal Government.

**B. Emergency Powers of Tribe**

Nothing in any permit shall ever be construed to prevent or limit the application of any emergency power of the Tribe.

**SECTION 11.06.02**  
***Permit Application; Hearing; Fees***

**A. Contents of Application**

Permit applications will include the following information:

1. Identification and address of owner and operator of the public water system;
2. Location of the water source that will be used to supply the public water system and whether that source is surface water or groundwater;
3. Location of water treatment facility and type of water treatment the facility will use (filtration and/or disinfection);
4. Location and character of any potential pollution sources that could adversely affect the water quality of the system, including the location of sewage treatment plants, solid and/or hazardous waste disposal sites;
5. The number of service connections anticipated;
6. The nature of the services to be provided by system (i.e., storage, collection, treatment and/or distribution);
7. Equipment and procedures required for mandatory monitoring as well as record-keeping and reporting requirements;

8. Procedures to be followed by tribal personnel for entering and inspecting the premises;
9. Restrictions on the transfer of the permit;
10. Emergency water plan information; and
11. Duration of permit and renewal procedures.

**B. Required Consent**

All permit applications shall contain the following statement to which the applicant must agree and subscribe for the application to be complete and as a condition precedent to the issuance of any permit:

“Applicant hereby consents to the jurisdiction of Gwichyaa Zhee Gwich’in Tribal Government in connection with all activities conducted pursuant to or in connection with any permit issued pursuant to this application or to which the provisions of the Gwichyaa Zhee Gwich’in Tribal Government Safe Drinking Water Ordinance otherwise apply. This consent is without reservation or limitation and is intended to be construed broadly to the fullest extent permitted by law, notwithstanding any prior waiver of jurisdiction or covenant not to regulate or otherwise exercise jurisdiction over Applicant or any activity conducted by, for or on behalf of Applicant. This consent shall be effective whether or not a permit is issued or is in effect, and may not be withdrawn by Applicant. This consent shall extend to and be binding upon all successor, heirs, assigns, employees and agents, including contractors and subcontractors, of Applicant.”

Applicant shall include the foregoing statement as a term and condition of any agreement it executes for services to be performed or goods to be provided within the Gwichyaa Zhee Gwich’in Tribal Government’s Territory in connection with any permit issued under this Ordinance, and each party to any such agreement must agree and subscribe to said statement, substituting the name of the party for “Applicant” as appropriate and substituting the phrase “this agreement” in place of the phrase “any permit issued pursuant to this application.” Failure by Applicant to include such a statement, or of any party to agree and subscribe to such statement, shall render the contract or other agreement void and unenforceable and shall subject Applicant to civil penalty in accordance with this Ordinance.

**C. Application under Oath**

Each applicant shall sign the permit application under oath, certifying the truth and accuracy of the information contained in the permit application.

**D. Fees**

A processing fee, established by the Gwichyaa Zhee Gwich'in Tribal Government shall be paid to the Tribe at the time of filing. These fees shall be used for costs associated with administering this Ordinance.

**E. Public Notice and Hearing on Permit Application**

Public notice of every complete application for a permit to construct and/or operate a public water system shall be circulated in a manner designed to inform interested and potentially interested persons of the application and of the proposed determination to issue or deny a permit. Procedures for the circulation of public notice shall be established by the Tribe and shall include at least the following:

1. Notice shall be circulated within the geographical areas to be serviced by the public water system.
2. Notice shall be mailed to any person or group upon request.
3. The Tribe shall promulgate such regulations as are necessary and appropriate to provide an opportunity for public hearing, when appropriate, prior to granting or denying a permit, variance or exclusion.

**F. Denial of Permit**

Upon denial of a permit, the Gwichyaa Zhee Gwich'in Tribal Government shall give written notice of the denial to the applicant and any other person who has requested in writing that such notice be given. Notice to the operator shall be accompanied by a form request for re-hearing. An operator who desires an appeal of the denial of a permit shall file with the Gwichyaa Zhee Gwich'in Tribal Government a written request for a re-hearing before the agency within fifteen (15) days after receiving notice of the denial of the permit. The hearing procedures will be the same as the "Enforcement Program/Administrative Procedures" set out herein.

**SECTION 11.06.03**

*Variances*

**A.** The Gwichyaa Zhee Gwich'in Tribal Government may grant one or more variances from an applicable Primary Drinking Water Regulation to one or more public water systems which, because of characteristics of the raw water sources that are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation. A variance may only be issued to a system after the system's application of the best technology, treatment techniques or other means, as promulgated by the Administrator pursuant to §1415 of the SDWA. Before the Gwichyaa Zhee Gwich'in Tribal Government may grant a variance under this Ordinance, the Gwichyaa Zhee Gwich'in Tribal Government must find that the variance will not result in an unreasonable risk to health. If the Gwichyaa Zhee Gwich'in Tribal Government grants a public water system a variance under this Ordinance, the Gwichyaa

Zhee Gwich'in Tribal Government shall prescribe, at the time the variance is granted, a schedule for:

**1.** Compliance (including increments of progress) by the public water system with each contaminant level requirement with respect to which the variance was granted; and

**2.** Implementation by the public water system of such additional control measures as the Gwichyaa Zhee Gwich'in Tribal Government may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

**a.** The Gwichyaa Zhee Gwich'in Tribal Government shall provide notice and opportunity for the public hearing on the schedule before such schedule may take effect. A notice given pursuant to the preceding sentence may cover the granting of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice. A schedule prescribed pursuant to this Ordinance for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable as the Gwichyaa Zhee Gwich'in Tribal Government may reasonably determine.

**B.** The Gwichyaa Zhee Gwich'in Tribal Government may grant to one or more public water systems one or more variances from any provision of a primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the Gwichyaa Zhee Gwich'in Tribal Government that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system. A variance granted under this Ordinance shall be conditioned on such monitoring and other requirements as the Administrator may prescribe.

**C.** Before a variance proposed to be granted by the Gwichyaa Zhee Gwich'in Tribal Government under this Ordinance may take effect, the Gwichyaa Zhee Gwich'in Tribal Government shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The Gwichyaa Zhee Gwich'in Tribal Government shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance and the basis for any findings required before granting the variance, and documentation of the need for the variance.

**D.** The Gwichyaa Zhee Gwich'in Tribal Government shall condition each public water system's variance granted under this Ordinance upon compliance by the public water system with the schedule prescribed pursuant to this Ordinance. Any schedule or other



requirement on which a variance granted under this Ordinance is conditioned may be enforced as if such requirement were part of a primary drinking water regulation.

**E.** Each schedule prescribed pursuant to this Ordinance shall be deemed approved by the Administrator pursuant to §1415(a) of the SDWA unless the variance for which it was prescribed is revoked by the Administrator or the schedule is revised by the Administrator under such section.

**F.** If an application for a variance is made, the Gwichyaa Zhee Gwich'in Tribal Government shall act upon such application within sixty (60) days of its submission.

**G.** For purposes of this Ordinance, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with §1401(1) (C)(ii) of the SDWA) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of §1412(b)(3) of the SDWA.

#### **SECTION 11.06.04**

##### ***Exemptions***

**A.** The Gwichyaa Zhee Gwich'in Tribal Government may exempt any public water system from any requirement respecting a maximum contaminant level or any treatment technique requirement, or both, of an applicable primary drinking water regulation upon a finding that:

- 1.** Due to compelling factors (which may include economic factors) the public water system is unable to comply with such contaminant level or treatment technique requirement;
- 2.** The public water system was in operation on the effective date of such contaminant level or treatment technique requirement or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system; and
- 3.** The granting of the exemption will not result in an unreasonable risk to human health.

**B.** If the Gwichyaa Zhee Gwich'in Tribal Government grants a public water system an exemption under this Ordinance, the Gwichyaa Zhee Gwich'in Tribal Government may prescribe, at the time the exemption is granted, a schedule for:

- 1.** Compliance (including increments of progress) by the public water system with each contaminant level requirement and treatment technique requirement with respect to which the exemption was granted; and

2. Implementation by the public water system of such control measures as the Gwichyaa Zhee Gwich'in Tribal Government may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required. Before a schedule prescribed by the Gwichyaa Zhee Gwich'in Tribal Government pursuant to this Ordinance may take effect, the Gwichyaa Zhee Gwich'in Tribal Government shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

**C.** A schedule prescribed pursuant to this section for a public water system granted an exemption hereunder shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the Gwichyaa Zhee Gwich'in Tribal Government may reasonably determine) but (except as provided herein):

1. In the event of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the national primary drinking water regulations promulgated under §1412(a) of the SDWA, not later than twelve (12) months after the enactment of the Safe Drinking Water Act amendments; and

2. In the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the national primary drinking water regulations other than a regulation referred to in §1412(a) of the SDWA, twelve (12) months after the date of the issuance of the exemption.

**D.** The final date for compliance provided in any schedule in the case of any exemption may be extended by the Gwichyaa Zhee Gwich'in Tribal Government for a period not to exceed three (3) years after the date of the issuance of the exemption if the public water system establishes that:

1. The system cannot meet the standard without capital improvements which cannot be completed within the period of such exemption;

2. In the case of a system which needs financial assistance for necessary improvements, the system has entered into an agreement to obtain such financial assistance;

3. The system has entered into an enforceable agreement to become a part of a regional public water system; and

4. The system is taking all practicable steps to meet the standard.

**E.** In the case of a system which does not serve more than 500 service connections and which needs financial assistance for the necessary improvements, an exemption granted above may be renewed for one or more additional two year periods if the system establishes that it is taking all practicable steps to meet the requirements of this Ordinance.

**F.** Each public water system's exemption granted by the Gwichyaa Zhee Gwich'in Tribal Government under this Ordinance shall be conditioned upon compliance by the public water system with the schedule prescribed pursuant to this Ordinance. Requirements of each such schedule shall be enforceable by the Gwichyaa Zhee Gwich'in Tribal Government under Tribal law. Any requirements of a schedule on which an exemption granted under this section is conditioned may be enforced under this Ordinance as if such requirement were part of a primary drinking water regulation.

**G.** Each schedule prescribed pursuant to this Ordinance shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under §1416(d)(2) of the SDWA or the schedule is revised by the Administrator under such section.

**H.** The Gwichyaa Zhee Gwich'in Tribal Government will promptly notify the Administrator of the granting of any exemption under this section. Such notification shall contain the reasons for the exemptions (including the basis for the finding required by subsections (a) (3) of the SDWA, before the exemption may be granted) and document the need for the exemption.

**I.** If an application for an exemption under this section is made, the Gwichyaa Zhee Gwich'in Tribal Government shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

**J.** The Gwichyaa Zhee Gwich'in Tribal Government shall make any revisions or revocation of exemptions or schedules that may be required by the Administrator, pursuant to the Administrator's authority to review such exemptions or schedules under the SDWA.

**TITLE 7**  
***ENFORCEMENT PROGRAM/ADMINISTRATIVE PROCEDURES***

- SECTION 11.07.01: Enforcement Policy
- SECTION 11.07.02: Enforcement Agency
- SECTION 11.07.03: Enforcement Activities
- SECTION 11.07.04: Notice of Violation; Cease and Desist Order
- SECTION 11.07.05: Informal Conferences
- SECTION 11.07.06: Reports Required
- SECTION 11.07.07: Enforcement Hearings
- SECTION 11.07.08: Civil Penalties and Corrective Action
- SECTION 11.07.09: Judicial Enforcement
- SECTION 11.07.10: Special Provisions for Tribal Departments and Agencies

**SECTION 11.07.01**  
***Enforcement Policy***

It is the policy of the Gwichyaa Zhee Gwich'in Tribal Government to encourage informal, practical, result oriented resolution of alleged violations and actions needed to prevent damage to Gwichyaa Zhee Gwich'in Tribal Government's Territory resources or harm to the health, safety or welfare of the Gwichyaa Zhee Gwich'in Tribal Government's Territory population. It is also the policy of the Gwichyaa Zhee Gwich'in Tribal Government, consistent with the principles of due process, to provide effective procedures for enforcement.

**SECTION 11.07.02**  
***Enforcement Agency***

The Gwichyaa Zhee Gwich'in Tribal Government shall be responsible for enforcing the provisions of this Ordinance. Specifically, the Gwichyaa Zhee Gwich'in Tribal Government shall conduct investigations when a complaint is received by the Gwichyaa Zhee Gwich'in Tribal Government or other Tribal agency believes that a violation of this Ordinance has occurred.

**SECTION 11.07.03**  
***Enforcement Activities***

Where a written and verified complaint shall be filed with the Gwichyaa Zhee Gwich'in Tribal Government and reviewed by the Gwichyaa Zhee Gwich'in Tribal Government alleging that, or where the Gwichyaa Zhee Gwich'in Tribal Government itself shall have cause to believe that, any person is violating any drinking water regulation or permit condition, the Gwichyaa Zhee Gwich'in Tribal Government shall cause a prompt investigation to be made.

**SECTION 11.07.04**

***Notice of Violation; Cease and Desist Order***

If the Gwichyaa Zhee Gwich'in Tribal Government finds after an investigation pursuant to this Ordinance that a violation of any regulation or permit condition exists, the Gwichyaa Zhee Gwich'in Tribal Government shall promptly notify both the alleged violator and the Gwichyaa Zhee Gwich'in Tribal Council in writing. In the case of an apparent violation of this Ordinance, the Gwichyaa Zhee Gwich'in Tribal Government is authorized to issue a Notice of Violation to the person(s) apparently responsible for the violation, and, if the apparent violation occurred on property owned by a person other than the alleged violator, a Notice of Violation shall also be issued to the landowner. In the case of a continuing violation or a threatened violation, the Gwichyaa Zhee Gwich'in Tribal Government is authorized to issue a Cease and Desist Order to prevent the violation from continuing or occurring. Failure to comply with a Cease and Desist Order shall constitute a violation of this Ordinance. Both a Notice of Violation and a Cease and Desist Order may be issued for a single incident. A Notice of Violation will include a Summons to appear before the Gwichyaa Zhee Gwich'in Tribal Government at an enforcement hearing at a specified time and date, and shall advise the alleged violator that failure to appear may result in the imposition of civil penalties. If a Cease and Desist Order is issued without an accompanying Notice of Violation, the Order will inform the recipient that failure to comply with the Order will constitute a violation of this Ordinance which will result in the issuance of a Notice of Violation and may result in the imposition of civil penalties.

**SECTION 11.07.05**

***Informal Conferences***

The Gwichyaa Zhee Gwich'in Tribal Government shall afford the owner or operator of a public water system or his or her representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the Gwichyaa Zhee Gwich'in Tribal Government determines that there may be either imminent environmental damage to a Gwichyaa Zhee Gwich'in Tribal Government's Territory resource or adverse impact upon the health, safety and welfare of the Gwichyaa Zhee Gwich'in Tribal Government's Territory population. Informal conferences may be used at any stage in the enforcement proceedings, except that the Gwichyaa Zhee Gwich'in Tribal Government may refuse to conduct informal conferences with respect to any matter then pending before the Gwichyaa Zhee Gwich'in Tribal Government or Gwichyaa Zhee Gwich'in Tribal Court.

**SECTION 11.07.06**  
***Reports Required***

The Gwichyaa Zhee Gwich'in Tribal Government shall keep written notes of the date and place of the conference, the persons in attendance, the subject matter discussed and any decisions reached with respect to further enforcement action.

**SECTION 11.07.07**  
***Enforcement Hearings***

If the owner or operator of a public water system and the Gwichyaa Zhee Gwich'in Tribal Government are unable to resolve the matter via an informal conference, the Gwichyaa Zhee Gwich'in Tribal Government is authorized to conduct adjudicatory hearings to determine if a violation of this Ordinance has occurred. In such a hearing the Gwichyaa Zhee Gwich'in Tribal Environmental Department, in cooperation with the Gwichyaa Zhee Gwich'in Tribal Government shall present the case to the Gwichyaa Zhee Gwich'in Tribal Court to establish that the person(s) charged has (have) committed a violation of this Ordinance. Any person so charged shall be entitled, at his or her own expense, to be represented by an attorney or other representative.

**A. Burden of Proof**

The Gwichyaa Zhee Gwich'in Tribal Environmental Department shall have the burden of proving that a violation of this Ordinance has occurred and that a person charged was responsible for the violation. The Gwichyaa Zhee Gwich'in Tribal Court shall rule that a violation of this Ordinance has occurred if it finds that the charges are supported by substantial evidence and that a preponderance of the credible evidence supports a finding that a violation has occurred.

**B. Enforcement Orders**

Within thirty (30) days after the date of any enforcement hearing, the Gwichyaa Zhee Gwich'in Tribal Government shall issue a written decision. If the Gwichyaa Zhee Gwich'in Tribal Environmental Department determines that a violation has occurred and that the person(s) charged was (were) responsible for the violation, the Gwichyaa Zhee Gwich'in Tribal Environmental Department's decision shall include an Enforcement Order.

**SECTION 11.07.08**  
***Civil Penalties and Corrective Action***

An Enforcement Order shall direct any person(s) found to have committed a violation of this Ordinance to take whatever corrective action the Gwichyaa Zhee Gwich'in Tribal Government deems appropriate under the circumstances. An Enforcement Order may impose civil penalties in accordance with a schedule of civil penalties prescribed in the Gwichyaa Zhee Gwich'in Tribal Government's rules. Alternatively, an Enforcement Order may impose civil penalties in the event that a person found to have committed a violation of this Ordinance does not take corrective action in accordance with the Order

within a prescribed time frame. If a person who has been found to have committed a violation does not take corrective action within the prescribed time frame, an appropriate department or agency of the Tribal government may take the necessary corrective action, in which case the amount of any civil penalty shall be increased by twice the amount of the cost incurred by the Tribal department or agency in taking the corrective action.

**A. Emergency Order**

Notwithstanding any other provision of this Ordinance, if the Gwichyaa Zhee Gwich'in Tribal Government determines that noncompliance with this Ordinance is presenting an imminent and substantial threat to the public health, welfare or environment and determines, in consultation with the Tribe's attorneys, that it is not practicable to assure prompt protection of the public health, welfare or environment of an administrative or judicial enforcement action under this section, the [name of Tribal Agency] may issue such orders as may be necessary to protect the public health, welfare or environment. Any such order shall be effective immediately upon issuance and shall remain in effect for a period not to exceed sixty (60) days.

**B. Revocation of Permit**

Failure of any person to comply with any Enforcement Orders will result in an immediate revocation of his or her permit. In order to obtain a reinstatement of such permit, the person(s) against whom the Enforcement Order was issued must first demonstrate compliance with the Order and pay all outstanding penalties and then petition for reinstatement of the permit with the Gwichyaa Zhee Gwich'in Tribal Government.

**SECTION 11.07.09**  
***Judicial Enforcement***

The Gwichyaa Zhee Gwich'in Tribal Court shall have jurisdiction of all cases and controversies arising under this Ordinance.

**A.** The Gwichyaa Zhee Gwich'in Tribal Government may request the Gwichyaa Zhee Gwich'in Tribal Council to authorize the Gwichyaa Zhee Gwich'in Tribal Government to file an action in Tribal Court pursuant to this Ordinance for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties and clean up and administrative costs associated with the enforcement of this Ordinance (except that any suit against the Tribe or a Tribal department or agency shall be for injunctive relief only and not for penalties or other money damages), in any of the following instances:

1. Whenever a person has violated, or is in violation of, any provision of this Ordinance, including but not limited to a regulation, permit or order issued pursuant to this Ordinance;
2. Whenever a person submits false information under this Ordinance or regulations promulgated under this Ordinance; or

3. Whenever a person is creating an imminent and substantial endangerment to the public health, welfare, environment or cultural resources of the Tribe, in which case the Gwichyaa Zhee Gwich'in Tribal Government shall pursue injunctive relief but not the assessment of penalties, unless the endangerment is caused by a violation, as specified in paragraphs (1) and (2) above.

**B.** Any person who in violation of this Ordinance emits pollutants into the water within the boundaries of the Gwichyaa Zhee Gwich'in Tribal Government's Territory shall be liable for all costs associated with or necessary to clean up, abate or close the source and restore the quality of the water of the Gwichyaa Zhee Gwich'in Tribal Government's Territory to its condition as it existed immediately prior to the emissions.

### **SECTION 11.07.10**

#### ***Special Provisions for Tribal Departments and Agencies***

In any case in which the Gwichyaa Zhee Gwich'in Tribal Government or any Tribal agency or department is alleged to have violated the terms and conditions of a permit, or to have conducted activities without a permit, the Gwichyaa Zhee Gwich'in Tribal Government shall bring the matter to the attention of Gwichyaa Zhee Gwich'in Tribal Council who shall consider taking action to ensure compliance with this Ordinance. If the matter cannot be resolved informally, the Gwichyaa Zhee Gwich'in Tribal Government shall conduct an enforcement hearing for the purpose of making factual determinations and issuing a decision recommending a course of corrective action if necessary.



**TITLE 8**  
***APPEALS***

SECTION 11.08.01: Judicial Review

**SECTION 11.08.01**  
***Judicial Review***

Any person who is aggrieved by the issuance or denial of a permit without respect to whether that person, corporation or other entity is a party to such permit application, or who is the subject of an Enforcement Order, may file an appeal with the Tribal Court. The Court is authorized to hear such appeal.

**TITLE 9**  
***OTHER PROVISIONS***

SECTION 11.09.01: Severability  
SECTION 11.09.02: Amendments  
SECTION 11.09.03: Effective Date

**SECTION 11.09.01**  
***Severability***

If any provision of this Ordinance, or the application thereof, is held invalid, the remainder of this Ordinance, or applications of such provisions, shall not be affected.

**SECTION 11.09.02**  
***Amendments***

The Gwichyaa Zhee Gwich'in Tribal Council reserves the sole right to amend this Ordinance and to issue rules affecting all aspects of the Ordinance. Provisions in the Ordinance allow the Gwichyaa Zhee Gwich'in Tribal Council full flexibility to enact measures which will benefit the Tribe. The inclusion of these provisions does not necessitate their implementation, but allows the Gwichyaa Zhee Gwich'in Tribal Council flexibility to alter the Ordinance according to the evolving needs of the Gwichyaa Zhee Gwich'in Tribal Government's Territory.

**SECTION 11.09.03**  
***Effective Date***

This Ordinance shall become effective on \_\_\_\_\_ [date].

**TITLE 10**  
***SOVEREIGN IMMUNITY PRESERVED***

Nothing in this Ordinance is intended to, nor should be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages from the Tribe.

**APPENDIX A  
PERMIT APPLICATION FORM**

**APPENDIX B**

**List of Potential Sources of Groundwater Contamination**

- Airports-Commercial (maintenance & repair, fuel storage)
- Metal & Drum Cleaning/Reconditioning
- Automotive Repair Shops Paint Shops
- Automotive Body Shop Photographic Processors
- Boat Builders and Refinishers Printers, Blueprint Shops
- Bus and Truck Terminals Railroad yards
- Chemical Manufacturers Repair Shops (engines, appliances, etc.)
- Dry Cleaners Rust Proofers
- Dumps Service Stations (gas station)
- Fuel Oil Distributors (product storage, equipment maintenance and storage)
- Waste Storage, Treatment, & recycling (hazardous & non-hazardous waste)
- Furniture Strippers, Refinishers Military facilities (past & present)
- Industrial Manufacturers Nursing Homes
- Junkyards and Salvage Yards Pipelines (oil & sewer)
- Agricultural Related Activities (pesticide & fertilizer storage & application, machinery maintenance & fueling)
- Prisons
- Asphalt, Coal, Tar & Concrete Companies Research Laboratories
- Car Dealers
- Road Salt Storage
- Dredge Disposal Sites Schools, Colleges & Trade Centers
- Medical Facilities (hospitals clinics, laboratories)
- Wastewater Treatment Plants (past or present sludge disposal)
- Animal Care and Holding Areas (stables, kennels & pet shops)
- Wood Preserves
- Auto Parts Stores Residential Development (lawn care & septic systems)
- Beauty Salons Restaurants & Taverns
- Construction Sites Retail Shopping Centers, Malls
- Funeral Homes & Cemeteries Sawmills
- Golf Courses Storm-water Management Facilities (leaching systems)
- Hotels & Motels Transmission Line Rights of Way
- Land Application of Sewage Sludge Transportation Corridors (road deicing, materials transport)
- Laundromats Utility Substations/Transformers
- Nurseries Waste Transfer Stations
- Landfills Machine Shops
- Food Processors (meat packers, dairies, bakeries)
- Sand & Gravel Mining Operations

**CHAPTER 10**

**Reserved**