

TITLE 40

**SOLID WASTE MANAGEMENT
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TITLE 40
SOLID WASTE MANAGEMENT

CHAPTER 40.01
GENERAL

- 40.0101 Short Title. This Act shall be known as the Turtle Mountain Band of Chippewa Solid Waste Management Act.
- 40.0102 Purpose. To provide for the establishment of a comprehensive solid waste collection and disposal system to protect the health, safety, and well being of residents within the jurisdiction of the Turtle Mountain Band of Chippewa, (Tribe) to regulate the storage, collection, disposal, treatment, and management of solid waste to protect the human health and environment of the Turtle Mountain Indian Reservation.
- 40.0103 Findings. The Turtle Mountain Tribal Council finds and declares as follows: (a) the governing body of the Tribe, known as the Turtle Mountain Tribal Council, (Tribal Council) has the authority to pass resolutions and Acts to protect the general welfare of the Reservation residents and the Reservation environment; (b) the increasing volume and variety of solid and hazardous waste being generated on the reservation and often inadequate existing methods of managing solid waste and hazardous waste are creating conditions that threaten the public health, safety and well-being by contributing to land, air and water pollution; (c) the enactment of a Solid Waste Management Act by the Tribe is in the best interest of ensuring, promoting, and protecting the character of the Reservation and is consistent with previous policy and Acts enacted for the protection of the Reservation natural environment.
- 40.0104 Authority. This Act is adopted pursuant to authority vested in the Tribal Council under the Constitution and By-laws of the Turtle Mountain Band of Chippewa Indians, Article IX (c) to manage lands or assets under Tribal Jurisdiction and Article (a) to regulate and license activities on the Reservation The Tribe shall have full authority over enforcement of this Act and may delegate authority to Tribal Solid Waste Management Program - (SWMP) to implement provisions of this Act and to the Compliance Officer to enforce provisions of this Act.

40.0105 Scope. This Act shall apply to all persons and households, commercial businesses, schools, governmental facilities, and all other facilities regarding the storage, collection, disposal, and treatment of solid waste within the Reservation.

40.0106 Jurisdiction. The Tribal Court of the Turtle Mountain Band of Chippewa Indians has civil jurisdiction under this act over the conduct of Tribal members and all other persons on all lands within the Reservation to maintain the environment, natural resources, public health, safety, welfare, political integrity and economic well-being of the Tribe.

- a. The Water Utility Board has jurisdiction for the collection and enforcement of fee provisions under this act.

CHAPTER 40.02 RESPONSIBILITIES OF OWNERS

40.0201 Owner. The owner, agent, or occupant of every dwelling, residence, premises or business establishment shall be responsible for the sanitary condition of said dwelling, residence, premises, or business establishment. No person shall place, deposit or allow to be placed or deposited on his premises or on any public street, road or alley, streams, springs, or bodies of surface or ground water, any refuse or other objectionable waste, except in a manner described in this Act.

- a. The owner, agent, or occupant of any dwelling, residence, premises, or business establishment, shall be responsible for the storage and stockpiling of all refuse accumulated for proper collection and disposal.
- b. It is the responsibility of each owner or occupant of every dwelling, residence, premises or business establishment, or agency to properly store hazardous wastes and to locate an approved certified hazardous waste site which accepts such waste and arrange for its disposal.

- c. All dangerous materials and substances shall be rendered harmless prior to collection and disposal.

CHAPTER 40.03
DEFINITIONS

40.0301 Definitions as used in this Act and any regulations, the words and terms below shall have the following meanings:

1. "Agricultural waste" Waste generated from agricultural activities.
2. "Approved container" Any receptacle intended for the temporary storage of waste, that is durable, leak proof, nonabsorbent, water tight, corrosion resistant, rodent and insect resistant, easily cleanable, has close-fitting covers and adequate handles to facilitate handling, and is in good condition. Containers are further limited to the following:
 3. "Individual household containers" must be at least 95 gallon capacity.
 4. "Business and drop box containers" must be compatible with the collection vehicle used by the Solid Waste Program or its agents or contractors.
5. "Approved site" A disposal site or facility which has met all the requirements of this Act and any other applicable regulations and is approved by the Tribal Council as the place for final depositing of solid waste.
6. "Bulky Wastes" Large items of refuse, such as car bodies, appliances, furniture, trees and stumps and other oversized wastes.
7. "Carcass" Any dead animal or portion of any dead animal.

8. "Closure" The termination of the receiving, handling, recycling, treatment, or disposal of solid waste at an approved site, and includes all operations necessary to prepare the facility for post-closure maintenance.
9. "Collection" The gathering of solid or hazardous waste at the place of generation by an approved collection agent, and transfer to the place of final utilization or disposal.
10. "Construction and Demolition Waste" Refuse associated with the construction or dismantling of such objects as roads, buildings, or similar structures.
11. "Disposal" The discharge, abandonment, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any soil, air or water, intentional or otherwise.
12. "Franchised Service" Any solid waste collection service operating within Tribal jurisdiction.
13. "Garbage" Putrescible (see 3.23) material including, but not limited to, animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.
14. "Hazardous Wastes" Include, but are not limited to, explosives, medical by-products, radioactive materials, pesticides, oil, gas, anti-freeze or any other listed or characteristic wastes which are harmful to the public health or the environment.
15. "Incineration" To reduce to ashes through combustion using a containment device which provides for control of combustion parameters.
16. "Leachate" Potential contaminant resulting from liquid running or percolating through waste; usually unsightly, has a bad odor, and may contain both organic and inorganic materials.

17. "Liquid" Any material that when put into an ordinary paint filter, some part of which will pass through the filter.
18. "Litter" Solid waste that is scattered intentionally or in a careless manner.
19. "Nuisance" Any act or condition created by a person(s) which results in an inconvenience to or affects the health of the public.
20. "Open Burning" The burning of solid waste in an open area, field, pile, barrel or in any other uncontrolled manner
21. "Person" Any individual, firm, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.
22. "Pollution" 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.
23. "Premise" A tract or parcel of land with or without habitable buildings.
24. "Putrescible" Organic matter that is capable of being decomposed by micro-organisms and that can result in the formation of foul smelling products.
25. "Refuse" See Solid Waste (3.30).
26. "Reservation" Includes all land within the boundaries of the Turtle Mountain Reservation and any trust land within the Tribe's service area.
27. "Responsible Authority" The Tribal Solid Waste Program, Solid Waste Team, Public Utility or the compliance officer, as defined and with authorities and responsibilities delineated in this Act.

28. "Rubbish" Non-putrescible solid wastes, including ashes, consisting of both combustible and non combustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, tires, or litter of any kind.
29. "Sanitary Landfill" An approved 40CFR258 land disposal facility at which solid waste is spread in thin layers, compacted to the smallest practical volume, and covered with soil at the end of each operating day in a manner which minimizes environmental hazards.
30. "Scavenging" The uncontrolled removal of solid waste materials from containers, vehicles, or an approved disposal site.
31. "Solid Waste" All putrescible and non-putrescible solid and semi-solid wastes (except human wastes) including garbage, rubbish, ashes, incinerator residue, abandoned automobiles or parts thereof, street sweepings, solid market and industrial wastes, demolition and construction wastes and discarded commodities.
32. "Solid Waste fees" All residents of the reservation will be assessed a monthly solid waste fee as set.
33. "Solid Waste Plan (SWP)" A document prepared by the Solid Waste Management Program and approved by the Tribal Council which defines the objectives, procedures, responsibilities and management of the Solid Waste Management Program.
34. "Solid Waste Management Program (SWMP)" The designated implementation authority of the Tribe, which is authorized to implement and enforce provisions of this Act.
35. "Solid Waste Management Team (SWMT)" A six (6) member team appointed and authorized by the Tribal Council to implement the goals and objectives of the SWP.

36. "Storage" The confining, containing or stockpiling of solid waste for a limited period of time prior to collection, transportation, utilization, processing or final disposal.
37. "Transfer Station" A temporary holding facility for solid waste for the purpose of collection and transfer to a landfill or other facility.
38. "Transporter" Any person, contractor, facility operator who transports solid waste to solid waste facilities on or off the reservation.
39. "Treatment" The modification of solid waste in such a manner as to cause it to be safe to dispose of in a sanitary landfill.
40. "Tribe" The Turtle Mountain Band of Chippewa, including any department or agency thereof, or any business entity owned and operated by the Tribe.
41. "Vehicle" A Solid waste commercial compactor or other conveyance that is easily cleanable and capable of transporting solid waste without spillage and/or littering.

CHAPTER 40.04
SOLID WASTE MANAGEMENT TEAM

- 40.0401 Definition. The Solid Waste Management Team is a six (6) member team appointed and authorized by the Tribal Council to implement the goals and objectives of the Solid Waste Plan (SWP). The team is composed of one (1) representative from the Indian Health Service Office of Environmental Health, one (1) representative from Turtle Mountain Community College, one (1) representative from the Bureau of Indian Affairs, one (1) representative from the Tribal Environmental Protection Office, one (1) representative from the public at-large and one (1) non-voting representative acting as liaison with the Tribal Council. Three (3) voting members represent a quorum.
- 40.0402 Responsibility. In conjunction with implementing the goals and objectives of the SWP, the SWMT shall act as Hearing Officer for Solid Waste Matters.

CHAPTER 40.05
SOLID WASTE MANAGEMENT PROGRAM

- 40.0501 Powers and duties. The Tribal Solid Waste Management Program (SWMP) is hereby designated to implement solid waste handling, treatment, and disposal within the Reservation, provide or cause the provision of adequate solid waste handling services, including but not limited to collection, processing, and disposal within the Reservation, prepare Tribal policies for solid waste management; prepare and implement the Solid Waste Plan and amendments and, implement management activities regarding the handling, treatment, and disposal of solid waste within the Reservation. The SWMP shall have the authority to provide for off-Reservation disposal of solid waste under a plan approved by the Tribal Council.
- 40.0502 The Compliance Officer is hereby designated as the responsible party for ensuring entities covered by this act are in compliance. The Compliance Officer will be housed as decided by the Tribal Council. It shall not be housed within the SWMP. Unresolved compliance issues can be appealed to the Solid Waste Management Team.
- 40.0503 Annual Report. The SWMP shall prepare and file an annual report with the Tribal Council no later than September 1 of each year, commencing September 11, 2001, describing progress achieved under the program as described herein and containing recommended additional administrative and legislative actions necessary to implement such policies and programs.
- 40.0504 Tribal Solid Waste Plan (SWP). The SWMP shall adopt a Tribal plan for solid waste management including, but not limited to, minimum standards as set forth in Code of Federal Regulations, Title 40, Chapter 1, Part 258 for solid waste handling, treatment and disposal for the protection of land, air and water from pollution. During the process of formulating or revising the Tribal policy for solid waste management, the SWMP shall consult with and carefully evaluate the recommendations of all concerned public.

- 40.0505 Adopt and Enforce Regulations. The Compliance Officer shall adopt, amend, and enforce such regulations as are reasonably necessary to implement and carry out the policies, requirements, and duties described in this Act, and shall establish standards by regulation to govern the handling, treatment, and disposal of solid waste, the design, construction, operation, monitoring, monitoring after closure of solid waste facilities, and permitting.
- 40.0506 Contracts. The SWMP may recommend to the Tribal Council such contracts as deemed necessary, for the accomplishment of essential services and for the planning, design and construction of solid waste projects, provided that the SWMP monitors all such contracts for the Tribe.
- 40.0507 Studies, Investigations and Information Systems. The SWMP may conduct studies and investigations regarding new or improved methods of solid waste handling, treatment, and disposal and prepare and implement a solid waste management information storage and retrieval system coordinated with other information systems.
- 40.0508 Specification of Exempt Wastes. The Compliance Officer in coordination with SWMP may, by regulation, specify classifications of solid waste that shall be exempt from the requirements of the Solid Waste Management Plan, provided that the quantity of exempt solid waste to be disposed of at any facility is in household measure, and the nature of the exempt waste poses no significant threat to the public health, the public safety, or the environment.
- 40.0509 Public Information Program. The SWMP may implement a public information program to provide information to other governments, private industry, and the general public concerning environmental protection, effective reuse of solid waste, and other management matters as it deems appropriate.

- 40.0510 Studies of Municipal Solid Waste Stream. The SWMP may conduct studies of the nature, extent, and methods of reducing and controlling litter problems on the Reservation including, but not limited to, methods of improving public education and incentives to reduce waste generation and littering, necessary additional legislation, and improved methods of implementing existing laws.
- 40.0511 Coordination and Cooperation with other Agencies. The SWMT and SWMP, jointly or individually, may coordinate solid waste handling, treatment, and disposal with federal, state and local agencies and with persons in the solid waste industry; may render or receive technical assistance to or from Tribal, state, and local agencies and officials thereof and others involved in the planning and operation of solid waste program and facilities; The Compliance Officer may assist or receive assistance from other Tribal, state, and federal agencies in the development, and maintenance of their inspection, enforcement, training, and regulatory programs; may organize, operate, and conduct any solid waste enforcement activity the SWMT or SWMP deems advisable upon the request of the governing body of the federal agency or Tribal Council upon the appropriation for such purposes by the federal agency or Tribe of a sum adequate to compensate the SWMT or SWMP for the full cost of that activity, and; may request, as necessary, any Tribal federal, agency having jurisdiction to investigate and report on any questions or matters involved in solid waste handling, treatment and disposal affecting the Reservation.
- 40.0512 Procedures for Permitting and Inspection Program. The Compliance Officer shall develop procedure for carrying out a permit and inspection program, including but not limited to requiring operators file reports with the Compliance Officer in order to monitor solid waste handling, treatment disposing within the Reservation.

CHAPTER 40.06
SOLID WASTE PLAN AND CONSIDERATION

40.0601 Approval of plan. The Solid Waste Plan, describing the location, design, operation, maintenance and ultimate use of solid waste facilities within the Reservation, shall be submitted for approval to the SWMT and Tribal Council.

40.0602 Contents of plan. The Solid Waste Plan (SWP) shall, at a minimum:

- a. Include an implementation schedule of recommended management actions;
- b. Estimate the volume and composition of solid waste generated on or illegally imported to the Reservation and explain the basis of the estimate;
- c. Identify the responsibilities of other Tribal agencies and entities in the implementation of the SWP, the distribution of funds to the authorities responsible for development and implementation of the SWP, and the means for coordinating all planning and implementation under the SWP;
- d. Prohibit the disposal of solid waste in open dumps within the Reservation;
- e. Provide for the closing of all existing open dumps within the Reservation pursuant to this Act and Federal law;
- f. Prohibit open burning within the Reservation;
- g. Prohibit incineration within the Reservation;

- h. Provide that the SWMT may negotiate and recommend to the Tribal Council long-term contracts for the removal of solid waste to solid waste facilities, the construction and operation of solid waste facilities, securing long-term markets for material and energy recovered from solid waste facilities, and conserving material or energy by reducing the volume of solid waste;
- i. Provide for resource conservation or recovery, for disposal of solid waste in sanitary landfills, and for any combination of practices as may be necessary to handle, treat, or dispose of solid waste in a manner that is environmentally sound and in compliance with Tribal code
- j. Establish and specify a goal of recycling the solid waste accepted by any recycling facility within the Reservation to the maximum extent possible;
- k. Adhere to the federal guidelines for the disposal of solid waste and incorporate the recommended procedures, design, and operations described in Code of Federal Regulations, Chapter 1, Title 40, Parts 241 and 257 as amended;
- l. Identify areas for the establishment or expansion of solid waste facilities and seek Tribal Council and/or BIA action to reserve such areas.

40.0603 Solid Waste Facility Sites. In identifying and reserving areas for the establishment or expansion of solid waste facilities, the SWMP shall ensure that the land uses adjacent to or near such areas are compatible with solid waste facilities and shall consider the following:

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

- b. Characteristics and conditions of handling, treatment, and disposal methods, techniques, and practices, and locations of solid waste facilities where such methods, techniques, and practices are conducted, taking into account the nature of the material to be handled;
- c. Site Specific Flexibility Requests by 40CFR258, for closing open dumps for purposes of eliminating potential health hazards;
- d. Population density, distribution, and projected growth;
- e. Geographic, geologic, climatic, and hydrologic characteristics;
- f. The types and locations of transportation facilities;
- g. The profiles of industries;
- h. The constituents and general rates of solid waste;
- i. The political, economic, organizational, financial, and management problems affecting comprehensive solid waste management on the Reservation;
- j. Types of resource recovery facilities and resource conservation system that are appropriate
- k. Available new and additional markets for recovered material and energy resources recovered from solid waste as well as methods for conserving such material and energy

40.0604 Solid Waste Plan. The Solid Waste Plan shall serve as a guideline in the interpretation of this Act as it relates to the operation of the Solid Waste Program.

40.0605 Periodic Review of Plan. The SWMP shall review and evaluate the Solid Waste Plan at least every five (5) years to obtain maximum consistency with Tribal and federal policy. After such review and evaluation, the SWMP shall propose appropriate amendments to the SWP for the consideration of the SWMT.

CHAPTER 40.07
STORAGE

40.0701 Containers. The owner, agent or occupant of every dwelling, business establishment or other premises where refuse accumulates, shall provide a sufficient number of suitable and approved containers for receiving and storing of refuse and shall keep all refuse therein. The owner, agent or occupant of every dwelling, business establishment or other premises where refuse accumulates, shall be responsible for the safe and sanitary storage of all solid waste accumulated at that premise until it is removed,

1. Approved containers shall be maintained in a manner consistent with this Act and acceptable to the SWP. Containers that are broken or otherwise fail to meet the requirements of the Act, shall be replaced.
2. Drop-box containers shall be periodically disinfected, and shall be steam cleaned and painted as deemed necessary by the SWP.
3. Approved individual containers shall be stored off the ground on racks or stands and easily accessible for collection by the SWMP or authorized representatives.

40.0702 Storage of Solid Waste Solid Waste shall be stored according to the following provisions:

1. Rubbish Rubbish shall be stored in an approved container or in a manner that will confine the waste in one area, and not create a public nuisance. Bulky rubbish such as tree trimming, newspaper, weeds and large cardboard boxes shall be handled as directed by the SWMP. Where garbage separation is not required, containers for the storage of mixed rubbish and garbage shall meet the requirements specified by definition 3.02 above.
2. Garbage Garbage shall be stored in approved containers.
3. Hazardous Wastes Hazardous wastes shall be appropriately labeled and stored in a manner not accessible to the public and in an area where the waste is not harmful to the public or the environment.
4. Medical Wastes Waste from medical and dental clinics, including infectious wastes shall be stored in containers with disposable plastic liners with special identification and stored in a manner not accessible to the public and in an area not harmful to the environment.
5. Agricultural wastes Agricultural waste and products shall be stored as to minimize nuisance, flies, rodents and odor, and shall not result in the contamination of ground or surface water sources.
6. Leachate Waste shall be stored as to minimize or eliminate the
7. production of Leachate.
8. Bulky Waste Bulky waste shall not be allowed to accumulate on any premise.

CHAPTER 40.08
COLLECTION TRANSFER and DISPOSAL

- 40.0801 Collection Schedule. The SWP shall establish a schedule and arrange for the collection of solid waste on a timely basis but no less than once every seven days.
- 40.0802 Collection Service. All Reservation residents shall be required to subscribe to the Tribal refuse collection service or its franchisee. Reservation residents may take their own trash to an on-Reservation disposal or transfer site and dump for a fee.
- 40.0803 Collection Vehicles. Only vehicles approved by the Compliance Officer in coordination with the SWMP shall be used for the collection of solid waste. Vehicles used for the collection of solid waste shall be kept cleaned and maintained.
- 40.0804 Collection Standards. Solid Waste shall be deposited, stored and collected in a manner that prevents spillage and littering. Should spillage and/or littering occur, the waste shall be immediately picked up by the responsible person and returned to the vehicle or appropriate facility.
- 40.0805 Pets and Animals. Pets and animals shall be controlled to provide for the safety of the collector and prevent interference with collection service.
- 40.0806 Access. Access to storage containers should be kept clear to prevent interference with collection services.
- 40.0807 Animal Carcasses. Animal carcasses or parts of animal carcasses shall be disposed of pursuant to SWP specifications, see section 9.09.
- 40.0808 Permitted Vehicles. Permitted vehicles used for the collection and transportation of garbage or refuse containing garbage shall have covered, watertight, metal bodies of easily cleanable construction shall be cleaned frequently to prevent a nuisance, and shall be maintained in good repair.

- 40.0809 Private Vehicles. Private vehicles used for collection and transportation of refuse shall be loaded and moved in such a manner that the contents, including ashes, will not fall, leak or spill from vehicles. There shall be a tarp or other covering over the load to insure load security. Where spillage does occur, it shall be picked up immediately by the transporter and returned to the vehicle or container.
- 40.0810 Service Fees. Fees for transfer, recycling, or other special services shall be collected as prescribed by Council. Fees will be set by the Solid Waste Team with concurrence from Tribal Council based upon the cost of services of a competitive bid process for franchise.
- 40.0811 Non-payment of Fees. Non-payment of transfer fees, after ninety days, shall, be a violation of this Act and result in action being taken by the Water Utility Board. Action may include the discontinuation of other utilities provided by the Board.
- 40.0812 Load Rejection. The SWMP reserves the right to refuse any and all materials at the collection sites, transfer stations, or any other solid waste facility.
- 40.0813 Material Separation. The SWMP reserves the right to require separation of any materials deemed necessary prior to collection or acceptance.

CHAPTER 40.09
SOLID WASTE FACILITY AND TRANSPORTATION PERMITS

- 40.0901 Authorized Solid Waste Facilities. Existing solid waste facilities on the Reservation must obtain a permit to continue in operation. All conditions required for a new facility shall apply an existing one. Where 40 CFR 258 conditions do not exist at an existing solid waste facility, compliance with the law will be required or the facility must cease operation and be closed.

- 40.0902 Open Burning. There shall be no open burning of solid waste on the Reservation without a permit from the Compliance Office. The Compliance Officer will coordinate the approval of burning permits with the SWMT, or its designee, Police Department and Fire Department.
- 40.0903 Hazardous Waste. Hazardous waste shall be deposited only at a site approved by the SWMT.
- 40.0904 Agricultural Wastes. Agricultural waste may be disposed of at an approved site by prior arrangement with the SWMP.
- 40.0905 Septic Tank Waste Disposal. No disposal of septic tank waste disposal shall be made at the transfer stations. Septic tank waste disposal shall only be allowed at tribally controlled sewage lagoons.
- 40.0906 Liquids. Liquids shall be deposited within approved containers or transfer stations.
- 40.0907 Scavenging. Scavenging, due to the black marketing of scavenged material and the liability of the Tribe for injury while engaging in the act, is prohibited on the reservation.
- 40.0908 Construction and Demolition Wastes. The SWMT will arrange for development of an appropriate site for the final disposal of construction and demolition wastes.
- 40.0909 Carcasses. Private commercial animal removal companies shall be used for all livestock; pets shall be buried or taken to an approved transfer and disposal site.
- 40.0910 Prohibition on Disposal in Open Dumps. In order to protect the limited land, air, and water resources of the Reservation from permanent damage due to hazardous pollution and to protect the health, safety, and welfare of all residents of the Reservation and surrounding communities, disposal of solid waste in any open dump is expressly prohibited within the jurisdiction of the Reservation.

- 40.0911 Business License Required. No person shall construct or operate a solid waste facility within the jurisdiction of the Reservation except as authorized by a business license.
- 40.0912 Transportation of Solid Waste. No person shall engage in the transportation of solid waste originating or terminating at a location within the jurisdiction of the Reservation except as authorized by a solid waste business license.
- 40.0913 Issuance of Permit: Contents. The Tribal Council may issue, modify, or revise a permit that shall contain all terms and conditions that the SWT determines to be appropriate for the construction and/or operation of a solid waste facility or for the transportation of solid waste. A permittee must comply with all terms and conditions of the permit and any modifications or revisions.
- 40.0914 Conditions for Issuance. The Tribal Council shall not issue, modify, or revise a facility or transportation permit unless it is convinced that primary consideration is given by the permittee to preventing environmental damage and that the long-term protection of the environment is the guiding criterion. To achieve these purposes, the Tribal Council may prohibit or condition the handling, treatment, or disposal of solid waste to protect, rehabilitate, or enhance the environmental quality of
- a. The proposed facility or transportation operation will be in full compliance with the applicable rules and regulations in effect on the date of permit issuance;
 - b. Feasible mitigation measures identified in any Environmental Assessment or Environmental Impact Statement prepared pursuant to the Tribal Environmental Policy Act (TEPA) Title _____, Turtle Mountain Tribal Code or the National Environmental Policy Act (NEPA 1505.2c, 42 USC 4321-370a), have been incorporated as permit conditions; and

c. There has been opportunity for public review and comment at relevant stages of the permitting process.

40.0915 Permit Denial. The Tribal Council may deny the permit or may impose permit conditions that will adequately protect against unreasonable degradation of the environment and natural resources of the Reservation, if the Solid Waste Management Team determines that:

a. The proposed method of transportation, the place or manner in which the solid waste is to be handled, treated or disposed of, or the method or location of temporary storage will be detrimental to or damage or pollute the environment or natural resources of the Reservation; or

b. The applicant has an incidence or history of failing to comply or is reasonably deemed not likely to comply with permit conditions.

40.0916 Additional Conditions for Facility permit. The Tribal Council shall not issue, modify, or revise a facility permit unless it is accompanied by a Tribal building, special use, or other applicable permit(s) or lease authorizing the establishment of the facility, and such permit or lease has been approved by the Bureau of Indian Affairs, if appropriate. The decision to issue, modify, or revise a facility permit requires a finding by the SWT that the proposed permit is consistent with the Solid Waste Management Plan and with the standards adopted by the SWT.

40.0917 Additional Conditions for Solid Waste Transportation Permit. As a condition for the issuance of a solid waste transportation permit, the SWMT shall:

a. Require every vehicle operated by the transporter to be conspicuously marked or placarded to identify the solid waste transported and its principal hazard. Any such vehicle shall be marked in a like manner with the full name or legally registered trade names or names of the transporter and the number of the solid waste transportation permit issued pursuant to this Section;

b. Require the transporter to make an annual (or as otherwise conditioned in the permit) report to the SWT, indicating the number and type of installations 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 SWMT may require.

- 40.0918 Renewal Denied. The Tribal Council may deny renewal ~~of a permit for failure of the permittee to properly report or otherwise comply with this Act.~~
- 40.0919 Periodic Review. Any permit issued, modified, or revised hereunder shall be reviewed and, if necessary, be revised by the SWT at least every year. Solid waste transportation permits may be issued for a period of up to twelve (12) months and must be renewed annually and approved by the Tribal Council.
- 40.0920 Compliance with Applicable Law, . Receipt of a permit shall not relieve any person of the responsibility to construct and operate all solid waste facilities and collection systems in a manner that complies with any and applicable Tribal and Federal laws, rules, or regulations.
- 40.0921 Application for Permit. Any person who proposes to become an operator of a solid waste facility or a transporter of solid waste shall file with the SWT an application for a facility or transportation permit at least 120 days in advance of the date on which such person desires to commence construction of a solid waste facility or transportation of solid waste. The decision to issue or not issue the permit shall be made by the Tribal Council within 120 days of the time the application is filed, unless, in the SWT's best judgment, additional time is necessary to gather additional information on the application, to conduct environmental studies related to the application, or to require further analysis related to the application.

40.0922 Contents of Application. Applications filed pursuant to this Section shall:

- a. Indicate the mechanical and other equipment, holding tanks, vehicles, and place of temporary storage used or to be used by the applicant;
- b. A site evaluation report describing the geographic, geologic, climatic, and hydrologic characteristics of the place or places where and the manner in which the applicant will handle, treat, or dispose of the solid waste;
- c. The practices, technologies and procedures that will be employed to ensure adequate protection of the quality of groundwater and surface waters from surface runoff contamination, and adequate protection of ambient air quality;
- d. The manner in which the applicant will meet the financial assurance requirements established pursuant to this Act;
- e. A training program for employees of the solid waste facility to educate employees on environmental concerns in managing solid waste and to provide such employees with needed skills for the safe operation of the facility or transportation equipment, and
- f. A closure and post-closure maintenance plan for the solid waste facility, and
- g. Such other information as the Tribal Council and or the SWT deems necessary.

40.0923 Application for Revision of Permit. If a permittee wishes to modify his operation, he shall file an application for revision of his existing permit at least 120 days in advance of the date when the proposed modification is to take place. Under circumstances that present an immediate danger to public health, as determined by the SWT, the 120 day filing period may be waived by the Tribal Council. No operator of a permitted solid waste facility or transportation service shall make any significant

change in the design or operation of any solid waste facility or transportation service except in conformity with the terms and conditions of the permit issued to such operator.

40.0924 Application Submittal; Filing Fee. Each report and application filed hereunder shall be submitted in a form approved by the SWMT. Each application shall be accompanied by a reasonable filing fee established by SWMT according to a fee schedule to reflect the cost of processing such applications, including but not limited to the cost of technical and legal consultants, office staff, and overhead. This fee is in addition to the fees authorized for operation and enforcement.

40.0925 Financial Assurance for Solid Waste Facilities.

- a. The SWT shall adopt standards and make rules and regulations requiring that, as a condition for the issuance, modification, revision, or review of a facility permit, the operator shall provide assurance of adequate financial ability to respond to personal injury claims, public or private property damage claims, and natural resource damage claims, that may result from the construction and/or operation of the facility.
- b. Any person operating or intending to operate a solid waste facility within the Reservation shall submit to the SWT a satisfactory plan for the closure and post-closure maintenance of the solid waste facility prior to commencing operation of the facility. In its closure plan, such person shall submit evidence of financial ability to provide for the cost of closure and post-closure maintenance in an amount equal to the estimated cost of closure and thirty years of post-closure maintenance.
- c. The evidence of financial ability shall be in the form of a trust fund into which funds shall be deposited on an annual basis in amounts sufficient to meet closure and post-closure maintenance costs when needed, or an equivalent financial arrangement acceptable to the S WT. The

SWT shall review and approve such evidence. Such person shall certify to the SWT that he has prepared an initial estimate of closure and post closure maintenance costs and has established a trust fund or other acceptable financial arrangement as described above; that the amounts that the operator will deposit annually in the trust fund or other acceptable financial arrangement will ensure adequate resources for closure and post-closure maintenance; and that the SWT may draw upon the trust fund, in its discretion, to monitor and maintain facility before or after closure or to take any necessary remedial or cleanup actions.

40.0926 Closure and Post-Closure for Solid Waste Facilities.
The SWP shall adopt regulations specifying closure plan and post-closure maintenance plan adoption procedures and uniform post-closure standards. The SWT shall review closure plans and post-closure maintenance plans to determine their compliance with this Act and the regulations (40 CFR 258). If the plans comply with this Act and the regulations, the SWT shall approve the plans. The regulations also shall require solid waste facility operators to calculate and periodically revise cost estimates for closure and post-closure maintenance for a period of not less than thirty (30) years after closure. The SWT may adopt regulations that distinguish between preliminary and final plans and provide that preliminary plans may require less specifically and engineering detail than final plans. Preliminary plans shall provide sufficient detail to enable the operator and the SWT to estimate accurately the costs for closure and post-closure maintenance.

- a. All documentation relating to the preparation of the closure and post-closure maintenance plan shall be retained by the operator and shall be available for inspection and copying by the SWMT and Tribal Council at all reasonable times upon request.

- 40.0927 After closure and during post-closure maintenance, the operator shall maintain evidence of financial ability for post-closure maintenance at all times equal to the estimated costs of thirty (30) years of post-closure maintenance, except at fifteen years before the end of the post-closure maintenance period specified in the post-closure maintenance plan, the operator may request approval of Tribal Council to provide evidence of financial ability in a lesser amount. Throughout the closure and post-closure period, the progress shall be monitored and certified by registered Civil Engineer (P .E.) to ensure the closure and post-closure plans are followed.
- 40.0928 Public Hearing on Permit Application. No permit shall be issued except after a public hearing at which the applicant and all interested parties have an opportunity to present evidence on whether the application should be granted and the conditions to be included in the permit.
- 40.0929 The notice of hearing shall be the form approved by the Tribal Council, as specified in the Turtle Mountain Band of Chippewa Administrative Procedures Act, as amended Title 22 of the Turtle Mountain Tribal Code. The Tribal Council shall hold the hearing no earlier than twenty (20) days and no later than forty-five (45) days from applicant's receipt of the Statement of Issues. All written notices, requests, and statements shall be delivered personally or by certified or registered mail, return receipt requested.
- 40.0930 To determine whether a permit should be issued, A written Statement of Issues delivered by the SWT to the applicant shall specify the laws, rules and regulations with which the applicant shall show compliance. This Statement shall specify any particular facts or matters that the Tribal Council determines would justify a denial of the permit.

40.0931 If, after the public hearing, the Tribal Council denies a permit or if the applicant deems the terms and conditions of the permit inappropriate the applicant may request reconsideration in writing within fifteen days after the applicant receives notice of the denial or of the terms and conditions of the permit.

40.0932 In the event that the permit is denied after reconsideration, the applicant may file a written request for hearing on contested case before the Tribal Council. The request must be filed within 30 days after the receipt of the decision on the permit has been issued by the Tribal Council. Copies of the request shall be served upon the, the Tribe and all parties of record by certified mail, return receipt requested.

40.0933 Investigations, Reports, Inspections. The Compliance Officer shall make periodic inspections of any premises, container, equipment, or vehicle used for collection, storage, transportation or disposal of solid waste to ensure compliance with this Act.

1. Investigations. The Tribal Council, Compliance Officer and the SWT, in issuing or reviewing any facility permit or solid waste transportation permit or in connection with any action relating to or authorized by this Act, may investigate the construction, maintenance, and operation of any facility or transportation service owned or operated by the permittee or applicant.

2. Reports by Operators. In such an investigation, the Tribal Council may require that the permittee or applicant furnish such technical or monitoring program reports or other reports as the Tribal Council may specify.

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

- 40.0934 Protection of Proprietary Information. Upon the Tribe's approval of the written request of any person furnishing any report, notice, application, or other document required hereby, the Tribe shall not make available for inspection by the public those portions of such report, notice, application, or other document that contains:
- a. Availability to Tribe, however, such report, notice, application, or other document or portions thereof, shall be made available to the Tribe or its agencies and to any other government agency or agencies, provided that, the information is at all times kept confidential, and/or used for enforcement or investigative purposes.
- 40.0935 Facility and Transportation Fees. In order to recover operating costs, the SWT shall impose reasonable fees on each operator of a solid waste facility and solid waste transportation service. The fee may be based on the weight, volume, or type of solid waste received, handled, treated, or disposed of by any such operator, or on any other appropriate basis or combination thereof.
- 40.0936 Individual Collection Fees and Transfer Station Fees. A fee for the collection of the individual household garbage shall be imposed to defray costs of the service. This fee will be determined by and approved by SWMT and Tribal Council before it is imposed.
- 40.0937 Revenues and Taxes. Fees, fines and proposed taxes are to be developed in cooperation with the Tribal Rights Employment Office (TERO) to meet the requirements of the Tribal TERO fee/fine structure.

CHAPTER 40.10
ENFORCEMENT

- 40.1001 ENFORCEMENT AGENCY. The Compliance Officer is hereby designated as the enforcement agency entrusted with the duty and responsibility of ensuring the proper handling, treatment and disposal of solid waste on the Reservation and of ensuring compliance by all persons with this Act. Decisions of the Compliance Officer may be appealed under the procedures set forth in the Tribal Administrative Procedures Act. Decisions of the Compliance Officer may be appealed to the SWT. Final Agency decisions may be appealed to the Tribal Court of the Turtle Mountain Band of Chippewa, which has jurisdiction over all offenses and violations of this Act.
- 40.1002 Duties. The Compliance Officer's duties shall include:
- 40.1003 Enforcement of Act. Enforce all provisions of this Act and regulations adopted hereunder that pertain to the minimum standards for solid waste handling, treatment, and disposal, all for the protection of the public health and safety and of land, air and water.
- 40.1003 Enforcement of Mitigation Measures. Enforce compliance with feasible mitigation measures identified within Environmental Assessment/Environmental Impact Statement prepared pursuant to the Tribal Environmental Protection Act (TEPA) Title - of the Turtle Mountain Tribal Code and the National Environmental Protection Act (NEP A).
- 40.1004 Enforcement by Federal Agencies. Request enforcement by federal agencies of their respective laws governing solid waste handling, treatment, and disposal where those laws do not conflict with this Act.
- 40.1005 Provide Information. Provide information to the affected public, the Tribal Council, and other Tribal departments as requested and where such requests do not conflict with other provisions of this act.
- 40.1006 Development of Program: Develop, implement, and maintain inspection, enforcement and training programs.

- 40.1007 Record Keeping. Keep and maintain accurate records of its inspection, enforcement and training programs.
- 40.1008 Consultation with Health Agencies. Consult with appropriate health agencies concerning all actions involving solid waste handling, treatment and disposal.
- 40.1009 Periodic Review. The SWT shall periodically review the Compliance Officer and its implementation of the enforcement program. This review may include the inspection by the SWT, or any person authorized by the SWT, of all books, records, accounts and other documents of the Compliance Officer. If the SWT finds that the Compliance Officer is not adequately fulfilling its enforcement responsibilities, the SWT shall notify the Compliance Officer and the Tribal Council of its intention to take remedial action if the Compliance Officer does not correct the problems specified by SWT.
- 40.1010 Enforcement Actions
- 40.1011 Notice to SWT, Chairman and Tribal Council. Ten (10) days before issuing an enforcement order that is not for an emergency, within five (5) days after issuing an enforcement order for emergency, and within fifteen (15) days after discovering a violation of a Tribal law, regulation, or permit that is likely to result in an enforcement action, the Compliance Officer shall provide a written statement providing an explanation and justification for the enforcement order and a description of the violation to the SWT and the Director of the Tribe's Environmental Protection Program.
- 40.1012 Actions on Complaints If the Compliance Officer receives a complaint concerning the violation of applicable tribal or federal environmental or solid waste laws, regulations or permit conditions, the Compliance Officer shall investigate to ensure proper consideration of the complaint. The Compliance Officer's investigation may include the inspection of the facility or transportation to determine whether any applicable tribal or federal law, regulation, or permit has been or is being violated.

- 40.1013 If the SWP receives a complaint concerning a solid waste facility, collection system, or other activity, and the SWP is not able or authorized to take action concerning the complaint, the SWP shall refer the complaint within ten days of receipt to the appropriate state or federal agency.
- 40.1014 If the Compliance Officer receives a complaint concerning a solid waste facility, collection system, or other activity, and the Compliance Officer does not refer it to another agency, or if the Compliance Officer receives a complaint referred to it by another agency, the Compliance Officer shall either take enforcement action concerning that facility or transporter or provide the person who filed the complaint with a written statement within thirty (30) days explaining why an enforcement action would not be appropriate.
- 40.1015 Cease and Desist Orders: Remedial Actions
- 40.1016 Cease and Desist Orders: Remedial Actions by Operators
Any person who constructs or operates a solid waste facility in violation of his facility permit; who, constructs or operates a solid waste facility without a facility permit, who transports solid waste in violation of his solid waste transportation permit; who transports solid waste without a solid waste transportation permit; who violates any requirements found in this Act, or violates any standard adopted by the Compliance Officer and the SWT for the handling, treatment, or disposal of solid waste shall, upon order of the Compliance Officer and the SWT, cease and desist any improper action, clean up any solid waste, and any other remedial action ordered, abate the effects thereof, and take any other remedial action directed by the Compliance Officer and the SWT. Whenever the Compliance Officer and the SWT determines that the construction or operation of a solid waste facility or the transportation of solid waste is causing or threatening to cause a condition of hazard, pollution, or nuisance due to the migration of hazardous waste or solid waste or for any other reason, the Compliance Officer may require the operator of the solid waste facility or the solid waste transporter to take corrective action necessary

to abate any hazard, pollution, or nuisance or to protect public health and safety and the environment.

- 40.1017 Imminent Threats: Remedial Actions by the Compliance Officer and SWT If any of the circumstances set forth herein above pose an imminent threat to life or health, the SWT may approve the Compliance Officer to expend any available monies of section 11.0102 of this Act to perform any cleanup, abatement, and remedial work required.
- 40.1018 Remedial Actions by the Compliance Officer and SWT If any of the circumstances set forth herein above do not pose an imminent threat to life or health, but the SWT deems it necessary for the public health and safety to perform clean up, abatement work or remedial work, the SWT may approve the Compliance Officer to perform such work and expend monies thereon.
- 40.1019 Remedial Actions by the Compliance Officer and SWT: Contracts Any action taken may be taken in the absence of, or in addition to, cleanup, abatement, or remedial work by the operator or other persons. The Compliance Officer, Solid Waste Program or the Tribal Franchisee may perform the work themselves or the work may be performed by or in cooperation with any other Tribal or federal agency or private contractor. To this end, and notwithstanding any other provisions of law, the SWT may request that the Tribal Council enter into written contracts for such work, and the contacts, whether written or oral, may include provisions for equipment rental and the furnishing of labor and materials necessary to accomplish the work. .
- 40.1020 Liabilities of Operators and Other Persons If solid waste or hazardous waste is cleaned up, the effects thereof abated, or other necessary remedial action is taken as described above, the person or persons who committed or allowed the improper action shall be liable to the SWT and Compliance Officer for the reasonable costs actually incurred in clearing up any solid waste or hazardous waste, abating the effects thereof, or taking other remedial action. The amount of such costs shall be recoverable in a civil action, taken by the SWT in the Turtle Mountain Tribal Court, together with the costs of suit incurred by the SWT in

recovering such monies. A judgment ordering the payment of these costs to the SWT will bear interest at the rate of fifteen percent (15%) a year or at the maximum rate of interest allowable on judgments under Turtle Mountain Tribal law, whichever is greater. The SWT shall reimburse the Tribe to the extent of the latter's contribution.

40.1021 Compliance Schedule The Compliance Officer shall develop a compliance schedule for any permitted solid waste facility or solid waste transporter that violates the Compliance Officer's minimum standards. The compliance schedule shall assure that diligent progress shall be made to bring the solid waste facility or solid waste transporter into compliance with the Compliance Officer's minimum standards within a specific period of time determined by the SWT and the Compliance Officer. If the solid waste facility or solid waste transporter is not in compliance within the period specified, the SWT may recommend to the Tribal Council that they revoke, suspend, or modify the permit until such time as violations of the minimum standards are remedied.

40.1022 Revocation, Suspension, or Modification of Permit.

40.1023 Grounds for Suspension, Revocation, or Modification. After a hearing before the SWT, any permit may be recommended to the Tribal Council to be suspended, modified, or revoked by the for cause, including but not limited to any or all of the following:

- a. Any violation of any term or condition contained in the permit, this Act or regulations promulgated hereunder, or the underlying lease or Tribal land use permit;
- b. Obtaining the permit by misrepresentation or failing to disclose fully all relevant facts
- c. A change in any condition that requires a temporary or permanent modification, reduction, or elimination of the permitted operation to bring it into compliance with the terms or conditions of the permit.

This Act or regulations promulgated hereunder, the underlying lease or Tribal land use permit.

d. The revocation or suspension of a permit shall not relieve the owner or operator of the facility from any legal liability.

40.1024 Statement of Charges A hearing to determine whether a permit should be revoked, suspended or modified may be initiated by the Compliance Officer by filing a written statement of Charges that sets forth the acts or omissions with which the permittee is charged and specifies the terms, laws, conditions, rules, or regulations that the permittee is alleged to have violated. The Statement of Charges and all accompanying documents shall be delivered personally or by certified or registered mail, return receipt requested to the permittee.

40.1025 Notice of Defense The Statement of Charges shall be accompanied by a notice advising the permittee of a date for a hearing, which hearing shall be held no earlier than twenty (20) days and no later than forty-five (45) days from the SWP's mailing or personal delivery of the Statement of Charges. The notice shall inform the permittee that the permittee has the right to inspect and copy documents relative to the Statement of Charges.

40.1026 Notice of Defense Within fifteen (15) days after service upon the permittee, the permittee may deliver to the Compliance Officer a Notice of Defense in which the permittee may object to the Statement of Charges upon the ground that it does not state acts or omission upon which the Compliance Officer may proceed or to the form of the Statement of Charges on the ground that it is so indefinite or uncertain that the permittee cannot identify the acts or omissions or prepare the permittee's defense.

a. The Notice of Defense shall be deemed a specific denial of all parts of the Statement of Charges not expressly admitted. Failure to file a Notice of Defense shall constitute a waiver of the right to a hearing. The Statement of Charges will stand and legal action for remedy will begin.

- b. The Notice of Defense shall be in writing signed by or on behalf of the permittee.
- c. A copy of any Statement of Charges and Notice of Defense shall be sent by the SWT to the Chairman and the Tribal Council.

40.1027 Hearings All hearings shall be conducted pursuant to Chapter 22.11 of the Tribal Administrative Procedures Act, as amended, Title 22 of the Turtle Mountain Tribal Code (TAPA). The SWMT will serve as the hearing officer for Solid Waste Matters.

40.1028 Discovery Prior to the hearing, any party, upon written request made to any other party prior to the hearing is entitled to:

- a. Obtain the names and addresses of witnesses to the extent known to the other party, including but not limited to, those intended to be called to testify at the hearing; and
- b. Inspect and make a copy of any relevant documents in the possession or custody or under the control of the other party, including but not limited to statements made by any person pertaining to the subject matter of the proceeding, all writings pertaining to the subject matter of the proceeding, and investigative reports pertaining to the subject matter of the proceeding. Nothing in this Section shall authorize the inspection or copying of any writing or thing that is privileged from disclosure by law or otherwise made confidential or protected as attorney work product or otherwise.
- c. Before the hearing has commenced, the hearing panel shall request the participation, at the request of any party, for attendance of witness or production of documents at the hearing.

40.1029 Issuance of Decision Cases shall be decided by concurrence of at least two members of the appeal panel. The decision shall be based on the rules of the TAPA, shall be in writing and shall contain findings of fact, a determination of the issues presented, and the assessment of costs and penalties, if any. Copies of the decision shall be sent to all parties and to the Chairman and the Tribal Council.

40.1030 Law Enforcement Service The Turtle Mountain Law Enforcement, Police and Game and Fish Departments are hereby given authority for citation of persons found to be in violation of this Act. It shall be the duty of these departments to enforce the provisions of this Act fairly as to all persons within the Reservation.

**CHAPTER 40.11
VIOLATIONS CRIMINAL AND CIVIL PENALTIES**

40.1101 Any person who violates any provision of this Act may be subject to fines and penalties imposed by the Compliance Officer, Water Utility or civil and criminal fines and penalties imposed by the Tribal Court in addition to remedies specifically provided for any violation.

a. Non-payment of Fees. The Water Utility Board shall have jurisdiction to hear matters regarding the non-payment of collection fees. Decisions may be appealed to the Tribal Court.

b. Illegal dumping and Littering. Persons found to be responsible for illegal dumping or littering on or near any other public grounds, or in or around any public waters of the Reservation, shall be required to remove all solid waste disposed of illegally; to restore the site to a condition acceptable to the SWT; and to dispose of the solid waste at an approved disposal site or drop box location.

- c. Maintaining a Public Nuisance. Any person(s) who shall act in such a manner as to pellllit his property or other private property to become dangerous or hazardous, or impair the safety, health or comfort of the public by the discarding of refuse or rubbish, will be required to remove such nuisance.
- d. Polluting Streams. It shall be unlawful for any person(s) to throw or discharge into any creek, river, ditch, or other water conveyance system, any deleterious substance such as refuse which is subject to decay.
- e. Wrecked, Junked or Unserviceable Vehicles. It shall be unlawful for any person(s) to store. within the villages and communities any wrecked, junked or unserviceable vehicles and tires or any other unserviceable appliances or implements such as stoves, refrigerators, washing machines, or any other items discarded which disfigure the appearance of the premises.
- f. Misleading representations. It shall be a violation of this Act for any person to knowingly omit material infollllation or make any false statement or representation in any label, record, report, or other document filed maintained or used for purposes or application or compliance with this Act or regulations promulgated there under.

40.1102 Penalties

40.1103 Civil Penalties for Violations Any person who engages in the unauthorized handling, treatment, or disposal of solid waste or hazardous waste within the Reservation; who constructs or operates a solid waste facility in violation of his facility pellllit; who constructs or operates a solid waste facility without a facility permit or a solid waste transportation permit; who transports solid waste in violation of his solid waste transportation permit; who violates any requirements found in this Act or the Tribal Environmental Policy Act; or who violates any standard adopted by the SWT and Compliance Officer for the

handling, treatment or disposal of solid waste shall be liable for a civil penalty not to exceed fifteen thousand dollar (\$15,000.00) each day for each violation, to be assessed by the SWT. Any person who commits any of the above prohibited acts may be subject to criminal penalties and also may be liable for any civil damages caused by the commission of such acts and may be excluded from the Reservation. Any person who commits any of the above prohibited acts, or whose employees or agents in the course of their employment or agency commit any of the above prohibited acts, may have its rights to engage in activities on the Reservation suspended or terminated.

40.1104 Disposition of Civil Penalty Funds Civil penalty funds collected shall be paid seventy-five percent (75%) to the Compliance Officer and twenty-five percent (25%) to the General, Fund of the Tribe. Penalty funds paid to the Compliance Officer shall be retained in a fund designated for meeting the costs of responses to environmental emergencies on the Reservation.

40.1105 Penalties In Addition to Others Penalties under this section are in addition to and do not supersede or limit any other remedies, civil or criminal.

40.1106 Injunctive Relief The Tribal Court shall have jurisdiction to enjoin violations of this Act, and grant such additional relief as it deems necessary or appropriate to secure compliance with the provisions of this Act or any order, license, permit approval or regulation issued or adopted there under upon the petition of the SWT or the Tribe.

40.1107 Criminal Penalties Any person over whom the Tribal Court can exercise criminal jurisdiction, and who violates any of the provisions under Section 11.01, shall, upon conviction in Tribal Court, be guilty of a criminal offense, and shall be subject to a fine of not more that Five Thousand Dollars (\$5,000.00), for each day each violation occurs, and in the discretion of the Tribal Court, may also be subject to imprisonment for not more than one year. As an alternative sentence, any person found guilty of violating any of the provisions under Section 11.01 may be placed on probation, and required by the Tribal

Court to provide not less than for (40) hours, but not more than two hundred (200) hours of community service assisting the Solid Waste Program, Compliance Officer, or performing other kinds of community service.

CHAPTER 40.12
REPEAL SEVERABILITY LIMITATIONS

- 40.1201 Appropriations. Nothing in this Act shall cause the Turtle Mountain Tribe or the SWP to expend funds in excess of appropriations.
- 40.1202 Repeal. Any Act, provision of law, rule or regulation of the Tribe in conflict with this Act, is hereby superseded.
- 40.1203 Severability. Any provision of this Act or part thereof or its application to any person in any circumstance declared invalid, shall be severed from the Act and the remaining provisions or applications of this Act shall remain in effect and enforceable.
- 40.1204 Statement of Limitations. The Tribal Court shall have no jurisdiction over any action under this Act brought more than three years after the SWT or injured person first knew, or reasonably could have known, of the injury or damage and the cause thereof.
- 40.1205 Federal Law and Regulations: Where there is a gap in the Tribal law, the federal law and regulations shall be incorporated.