

**BLACKFEET SOLID WASTE
ORDINANCE No. 105**

**Blackfeet Tribe
Blackfeet Indian Reservation**

**Adopted _____, 2009
Blackfeet Tribal Business Council
Resolution No. _____**

TABLE OF CONTENTS

- Chapter 1. Short Title, Findings and Purpose
 - Sec. 101 Short Title
 - Sec. 102 Findings
 - Sec. 103 Purpose
 - Sec. 104 Authority, Scope, Severability and Repeal of Conflicting Laws
 - Sec. 105 Applicability
 - Sec. 106 Consensual Relations Among Non-members, the Tribe and Tribal Members
- Chapter 2. Definitions
- Chapter 3. Tribal Environmental Protection Program
 - Sec. 301 Blackfeet Environmental Office Designation as Lead Tribal Department and Duties
 - Sec. 302 Establishment of the Solid Waste Management Committee
 - Sec. 303 Powers and Duties of the Solid Waste Management Committee
 - Sec. 304 Blackfeet Integrated Solid Waste Management Plan
- Chapter 4. Resource Recovery
 - Sec. 401 Policy
 - Sec. 402 Recycling Plan
- Chapter 5. Prohibited Activities
 - Sec. 501 Littering
 - Sec. 502 Littering From a Motor Vehicle and Non-motorized Transportation
 - Sec. 503 Littering and Polluting of Waters
 - Sec. 504 Accumulation of Litter
 - Sec. 505 Unauthorized Disposal at Open Dump Sites or Other Areas
 - Sec. 506 Operating Unauthorized Waste Disposal Facility
 - Sec. 507 Solid Waste Receptacles; Responsibilities of Owners, Occupants
 - Sec. 508 Scavenging
 - Sec. 509 Construction and Demolition Wastes
 - Sec. 510 Liquids
 - Sec. 511 Lead-acid Batteries, Rechargeable Batteries
 - Sec. 512 Asbestos and Asbestos-containing Materials
 - Sec. 513 Avoiding Payment of Disposal Fee
- Chapter 6. Enforcement Program/Administrative Procedures
 - Sec. 601 Enforcement Policy
 - Sec. 602 Enforcement Agency
 - Sec. 603 Enforcement Activities
 - Sec. 604 Notice of Violation; Cease and Desist Order
 - Sec. 605 Contents of Notice of Violation
 - Sec. 606 Summons
 - Sec. 607 Informal Conferences
 - Sec. 608 Reports and Minutes Required
 - Sec. 609 Enforcement Hearings
 - Sec. 610 Civil Remedies and Corrective Action
 - Sec. 611 Emergency and Other Orders

- Sec. 612 Judicial Enforcement
- Sec. 613 Special Provisions for Tribal Departments and Agencies
- Chapter 7. Other Provisions
 - Sec. 701 Amendments
 - Sec. 702 Modifications, Amendments and Applicability of 40 CFR, Part 258
- Criteria
 - Sec. 703 Effective Date
 - Sec. 704 Sovereign Immunity Preserved
- APPENDIX A - PERMIT APPLICATION FORM
- APPENDIX B - FLOW CHART OF ENVIRONMENTAL AGENCIES

Chapter 1 - Short Title, Findings and Purpose

Sec. 101. Short Title. This Ordinance shall be known as the **Blackfeet Solid Waste Ordinance** of the Blackfeet Nation.

Sec. 102. Findings. The Blackfeet Business Tribal Business Council hereby finds as follows:

(A) The increasing volume, variety and the inadequate existing methods of managing solid and hazardous waste generated on the Blackfeet Reservation are creating conditions that threaten the public health, safety and welfare of tribal members, residents of the Blackfeet Reservation and those who are temporarily on the Blackfeet Indian Reservation. The inadequate methods of managing solid and hazardous waste contributes to land, air and water pollution, production of vectors and litter, which results in the diminishing natural resources and aesthetics, and the general deterioration of the Blackfeet Reservation environment.

(B) There is an increasing need to address ever changing environmental conditions on the Blackfeet Reservation. The traditional methods of solid waste and hazardous waste management may not meet future requirements for eliminating environmental pollution and conserving natural resources.

(C) The people of the Blackfeet Nation have a vested interest in the protection and control of the land and other natural resources affected by the improper disposal of solid and hazardous waste within the Blackfeet Reservation. The quality of such land and other natural resources must be protected to ensure the health, economic, aesthetic, and cultural well being of the Blackfeet reservation residents and their environment.

(D) Open dumping is particularly harmful to human health and the environment in that it contaminates surface and subsurface drinking water sources, as well as land and air on the Blackfeet Reservation.

(E) Open dumping also contaminates biological and inert receptors.

(F) Pursuant to federal law and inherent authority, the Blackfeet Nation possess the authority to regulate on-reservation solid waste disposal by all persons and businesses since their disposal activities threaten and directly affects the Tribe's political integrity, economic security, public health, safety, and welfare. Such regulatory authority also extends over members of the Tribe, Indians of other Tribes and non-Indians and to all lands within the boundaries of the Blackfeet Indian Reservation.

(G) Avenues leading to source reduction, recovery and recycling of all solid waste are essential to the long-range preservation of the health, safety and welfare of the reservation residents and will be advantageous to the economic growth of the Blackfeet Nation 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 Blackfeet Nation 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 becomes solid waste.

(J) It is in the best interest of the Blackfeet Nation and the residents of the

Blackfeet Reservation to maintain the Blackfeet Integrated Solid Waste Management Plan (**BISWMP**). The objectives of BISWMP will be to manage and control solid and hazardous waste on or which may come onto the Blackfeet Reservation. This will enable the Blackfeet Tribe to protect the health, safety and welfare of the residents of the Blackfeet Reservation and maximize reuse of resources contained in solid waste.

(K) Passage, adoption and implementation of this Ordinance will adequately provide for the protection of Reservation resources that are not addressed in or by existing ordinance.

Sec. 103. Purpose. The general purposes of this Ordinance are to:

(A) Finance, implement, regulate and enforce environmental standards and exercise comprehensive Tribal regulatory authority over all solid and hazardous waste issues and concerns within the exterior boundaries of the Blackfeet Reservation;

(B) Protect fundamental Tribal cultural, ceremonial, spiritual, and religious integrity within the exterior boundaries of the Blackfeet Reservation.

(C) Protect economic stability of residential, agricultural, commercial, industrial, forest, wetlands, riparian and environmentally sensitive lands and fishery uses within the exterior boundaries of the Blackfeet Reservation.

(D) Prevent the further deterioration of the environment, standard of living, quality of life, health, safety and welfare of all persons within the exterior boundaries of the Blackfeet Reservation;

(E) Provide and promote Tribal environmental protection, through the resources offered by the environmental programs that regulate environmental activities on the Blackfeet Reservation under the principles of Tribal sovereignty.

(F) Prevent air, water, wetlands, riparian, 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.

Sec. 104. Authority, Scope, Severability and Repeal of Conflicting Laws.

(A) Authority. This Tribal Solid Waste Ordinance is hereby adopted by the Blackfeet Tribal Business Council pursuant to **Resolution No. _____** authorizing the appropriate Blackfeet Tribal governmental agencies to undertake such actions pursuant to this Ordinance.

(B) Scope. The provisions of this Ordinance shall apply to all existing and proposed solid and hazardous waste disposal activities as such activities affect cultural, ceremonial, religious, fishery, seasonal residential, public health, safety, welfare, land, air or water quality, and all other fundamental and collateral interests of the Tribe, including such activities conducted by governmental facilities, members of the Tribe, members of other Tribes, and non-Indians on all lands within the boundaries of the reservation.

Activities to be regulated hereunder include but are not limited to:

- (1) Landfills and open dumps;
- (2) Disposal of animal carcasses;
- (3) Automobile graveyards and junkyards;
- (4) Transfer stations, recyclable facilities, and reclamation centers;
- (5) Tire dumps;

(6) Special wastes, e.g. methamphetamine or other clandestine lab waste, asbestos refuse, etc; and

(7) All other activities that involve the storage, collection, transportation or disposal of solid and/or hazardous waste within the exterior boundaries of the Blackfeet Reservation;

(C) Severability. If any provision of this Ordinance or the application thereof to any person, entity, or circumstance is held invalid, such invalidity shall not affect any other provisions or applications of this Ordinance and such invalidity is severed from this Ordinance.

(D) Repeal of Conflicting Laws. This Ordinance shall supersede any conflicting tribal ordinances, resolutions and other tribal enactments.

(E) Citation or Use of Language from Other Laws. Citation to statutory or administrative language, definitions, procedure, or provisions of federal or state law in this Ordinance does not establish jurisdiction, which otherwise does not exist, in such federal or state government. Further, nothing in this Ordinance may be deemed a waiver of the Blackfeet Nation's sovereign immunity, and if any court of competent jurisdiction construes this provision as conflicting with any other provision in this Ordinance, then this express retention of sovereign immunity shall control and prevail.

Sec. 105. Applicability. This Ordinance, and any regulations and rules adopted thereunder, shall apply to:

(A) All persons, profit and non-profit organizations, schools, governmental facilities and other entities within the exterior boundaries of the Blackfeet Reservation, without exception, including but not limited to, all Tribal members, and all other persons on the Blackfeet Reservation, including any Indians who are members of other Indian tribes, all non-Indians, and any other person as defined under the Ordinance;

(B) All places and lands located within the exterior boundaries of the Blackfeet Reservation, 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; and

(C) All sub-surface interests on the Blackfeet Reservation, notwithstanding the trust, fee, allotment, or lease status of the interests.

Sec. 106. Consensual Relations among Non-Members, the Tribe and Tribal Members. Any person, governmental facility, profit and non-profit organization, school, or other entity who uses land for solid or hazardous waste purposes anywhere within the exterior boundaries of the Blackfeet Reservation, whether trust or non-trust land, enters into a consensual relationship with the Tribe and is subject to the jurisdiction of the Tribe since such use of the land involving the storage, collection, transportation and disposal of solid or hazardous waste on the Blackfeet Reservation 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 and other residents, unless such use is in compliance with the provisions of this Ordinance, and any regulations promulgated hereunder.

Chapter 2 – Definitions

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

"Administrator" means the Blackfeet Environmental Office or the director of the Blackfeet Environmental Office.

"Applicant" means any person who has filed an application with the Solid Waste Program for approval to store, collect, transport or dispose of solid waste on the Blackfeet Reservation.

"Aquifer" means any sub-surface geologic formation capable of yielding a significant amount of recoverable or potentially recoverable water.

"Beneficial uses" means all lawful uses of waters identified in the water quality standards. Uses may include but are not limited to domestic, commercial, industrial, agricultural, traditional, cultural and recreational uses, and uses to maintain fish and wildlife habitats or propagation practices.

"Closure" means the completion of the receiving, handling, recycling, treatment, composting or disposal of solid waste activities at a solid waste facility, and includes all operations necessary to prepare the facility for post-closure maintenance.

"Collection" means the act of collecting, pursuant to the Resource Conservation and Recovery Act of 1976, solid waste or hazardous waste by an approved collection agent or facility.

"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 Blackfeet Tribal Business Council.

"Designated use" means a use that is specified in water quality standards as a goal for a water body segment, irrespective of whether such goal has been 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, irrespective of whether such disposal is in accordance with this Ordinance.

"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. The term "disposal facility" may be used interchangeably with the term "Municipal Solid Waste Landfill Unit" (MSWLF).

"Energy recovery" means the production of energy or energy resources from the handling or disposal of solid waste.

"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, wild life, domestic animals 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 as hazardous by the Blackfeet

Nation, Montana Department of Environmental Quality (MDEQ), or the Environmental Protection Agency.

“Hazardous Waste” means any substance that is defined to be hazardous by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and by any regulations promulgated thereunder. Hazardous waste also includes all those hazardous wastes specifically listed in the Resource Conservation and Recovery Act.

“Historical uses” means all uses that have historic, cultural, or traditional significance for the Blackfeet Nation.

“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 the BISWMP’s policies and programs and includes approximate dates for the establishment, expansion and closure of any solid waste facility identified.

“Member” means an enrolled person of the Blackfeet Tribe as defined by the blood quantum that is set forth by ordinance and adopted by the Blackfeet Tribal Business Council.

“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 wastes authorized under the Solid Waste Disposal Act, Resource Conservation and Recovery Act, and their subsequent amendments.. An MSWLF may be publicly or privately owned. An MSWLF unit may be a new unit, an existing unit or a lateral expansion which is the horizontal expansion of the waste boundary of an existing unit..

“Non-Member” means any person who is not an enrolled member of the Blackfeet Tribe and shall include those persons who are non-Indians.

“Open dump/Illegal 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 CFR Part 257 or 258 and irrespective of whether the facility or site has been issued a permit.

“Operator” means the person to whom the approval to construct and/or operate a solid waste facility or collection system is granted. The term shall also include any person who constructs or operates a solid waste facility in violation of this ordinance.

“Permit” means any authorization, license or equivalent control document issued by Blackfeet Environmental Office 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(s)” means any individual, corporation, partnership, association, agency, municipality, commission or department, including the Blackfeet Nation or other

federally recognized Tribal government. The term shall also include any relevant town, city, county or state entity and any school.

“Plan” means the most recently adopted Blackfeet Integrated Solid Waste Management Plan (BISWMP).

“Pollutant” means any substance that will alter adversely the quality of the waters, lands and air of the Blackfeet Indian Reservation.

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

“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 bodies, soil and air of the Blackfeet Indian Reservation, irrespective of whether the uses are explicitly stated as designated uses in the water or other quality standards or are presently potential uses.

“Processing” means the reduction, separation, compaction, recovery, treatment, transportation or recycling of solid waste or hazardous waste.

“Promulgate” means to formally make public, make known, or put into effect.

“Quality of the water or waters” means any chemical, physical, biological, bacteriological, radiological and other properties and characteristics of water that affect its use.

“Recoverable” means the feasibility 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.

“Reservation” means all land, air, and water located within the exterior boundaries of the Blackfeet Reservation and includes the subsurface estate underlying the Blackfeet Reservation.

“Resource recovery system” means a solid waste management system that provides for collection, separation, recycling and recovery of solid waste, including disposal of nonrecoverable waste residue.

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

“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.

“Solid waste” means all 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.

“Blackfeet Integrated Solid Waste Management 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 Blackfeet Reservation.

“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, that became generally effective on October 9, 1993, although there are other effective dates under 40 CFR Part 258.

“Solid Waste Program” means program and/or office as designated by the Blackfeet Environmental Office and all the authorities, activities and procedures under this Ordinance, the Tribe’s Solid 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 40 CFR, Part 258 Criteria for MSWLF’s.

“Toxic materials” means any chemical or mixture that presents a 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;
- (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; and
(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.

“Tribe” means the Blackfeet Nation.

“Tribal Court” means the Blackfeet Tribal Court.

“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 wastewater 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 Reservation” or **“Reservation waters”** means any water, surface or underground, contained within, flowing through or bordering upon the Blackfeet Reservation or any portion thereof.

“Water Quality Standards” designate or establish 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 that, if reached, are expected to render a body of water suitable for its beneficial use.

Chapter 3 - Tribal Environmental Protection Program

Sec. 301. Blackfeet Environmental Office Designation as Lead Tribal Department and Duties. The Blackfeet Environmental Office shall be the lead tribal department for the implementation and enforcement of this Ordinance so as to ensure compliance with its provisions and for all purposes under 40 CFR Part 258. The Blackfeet Environmental Office shall have the following duties:

(A) The development and establishment of a permitting system and the enforcement of the system;

(B) The development of a permit fee schedule and the enforcement of the schedule;

(C) The development of a civil penalty and fine schedule and the enforcement of the schedule;

(D) The development of appropriate internal regulations, policies and procedures for the implementation and enforcement of this Ordinance, including the matters regarding hazardous wastes and collection of delinquent fees;

(E) Ensure the availability to the public such regulations, policies and procedures;
(F) Perform inspections of any facility, vehicle, and sites used to collect solid wastes to determine compliance with this Ordinance;

(G) The development, establishment, and implementation of a Tribal Response Program under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sec. 9601, and all subsequent amendments.

(H) The authority to respond to reports of emergency and non-emergency incidences, investigate and initiate corrective action as necessary;

(I) Initiate and process administrative actions for violations of this Ordinance, including but not limited to investigations, the issuance of compliance orders, cease and desist orders, and corrective action orders;

(J) Assist or receive assistance from other Tribal, state, or federal agencies for the implementation of this Ordinance, including referring alleged or actual violations of this Ordinance or other laws;

(K) The development and implementation of the Blackfeet Integrated Solid Waste Management Plan (BISWMP) pursuant to the requirements of this Ordinance, the SWDA and subsequent amendments, federal regulations contained at 40 CFR Parts 239, 257, and 258 and all other applicable federal regulations.

(L) Prepare and file annual reports with the Council which describes the progress or issues in the implementation of the Ordinance and the BISWMP.

(M) Research and prepare applications for funding by federal and state agencies or other sources of funding for the implementation of this Ordinance.

(N) Securing technical and other assistance as necessary to implement this Ordinance.

(O) Providing any assistance to the Blackfeet Nation or its departments and programs in matters pertaining to this Ordinance and the BISWMP.

(P) Providing public education as to matters involving solid waste collection and disposal and the environmental protection of the Blackfeet Indian Reservation.

Sec. 302. Establishment of Solid Waste Management Committee.

There is hereby established a Solid Waste Committee, which shall be comprised of five committee members, all of whom shall be members of the Tribe. Three members of the committee shall constitute a quorum. The Blackfeet Environmental Office shall appoint the members of the committee and shall appoint alternate members to prevent conflicts of interest within the committee membership.

Sec. 303. Powers and Duties of the Solid Waste Management Committee.

(A) The Solid Waste Management Committee shall review and make recommendations to the Tribe's solid waste program to assure compliance with this Ordinance.

(B) The Committee may recommend amendments to the Ordinance, regulations, policies and procedures to further the purposes of the Ordinance.

(C) The Committee shall assist in the development of the BISWMP and its periodic review and modification.

(D) The Committee shall conduct administrative proceedings regarding alleged violations of this Ordinance upon timely application and may affirm civil penalties and fines pursuant to the civil penalty and fine schedule developed under the authority of Section 301(C). The Committee may reverse or modify such penalty or fine in the event it determines that no violations occurred or that the schedule was inappropriately applied. The Committee may also affirm, reverse or modify any corrective order.

(E) At the request of a party denied a permit by BEO, the Committee shall conduct administrative proceedings to determine the propriety of the denial and may affirm or reverse the denial.

(F) The Committee is not authorized to consent to non-tribal jurisdiction or attempt to waive the sovereign immunity of the Blackfeet Tribe or its agents, including any department, program, employee acting within his or her scope of authority, members of any committee and members of the Council

(G) The Committee shall hold and conduct public meetings and hearings regarding the implementation, administration or modification of this Ordinance.

(H) The Committee may promulgate rules, as necessary and consistent with this Ordinance, for the conduct of administrative proceedings or public hearings.

(I) The Committee shall prepare and file an annual report with Blackfeet Tribal Business Council no later than July 1 of each year which shall review the activities conducted under this Ordinance

Sec. 304. Blackfeet Integrated Solid Waste Management Plan (BISWMP).

The Blackfeet Environmental Office, with the assistance of the Solid Waste Management Committee, shall develop a comprehensive integrated solid waste management plan. The plan shall express the policies for the Blackfeet Nation in regard to all solid and hazardous waste collection, transportation, handling, treatment, storage and disposal on or off the Blackfeet Reservation. The BISWMP shall also contain, at a minimum, the following:

(A) A methodology for the identification of all open dumps and the closing of such dumps in accordance with the SWDA and 40 CFR Part 258 and all other applicable federal laws, regulations and guidelines.

(B) A resource recovery program for the recycling of solid wastes.

(C) A methodology for the disposal of household hazardous wastes other than household wastes which are disposed at the MSWLF or transfer station on the Blackfeet Reservation.

(D) Identification of compliant landfills on the Blackfeet Reservation which includes, but is not limited to, a narrative of each landfill's location, design, operation and how the landfill satisfies this Ordinance and 40 CFR Part 258.

(E) Identification of non-compliant landfills on the Blackfeet Reservation which includes, but is not limited to, a narrative of each landfill's location, design, operation, how the landfill fails to comply with this Ordinance or applicable federal laws, and BEO's response to the non-compliance.

(F) A methodology to estimate of the volume and composition of all solid waste that is generated on the Blackfeet Reservation;

(G) A methodology to estimate the volume and composition of solid waste from sources outside the Blackfeet Reservation that may be disposed of in any landfill on the

Blackfeet Reservation pursuant to any inter-governmental agreement that the Council may authorize;

(H) Identification of the responsibilities of other Tribal agencies and entities involved in the implementation of this Ordinance and the distribution of funds to such agencies.

(I) A methodology for the review and modification, as necessary, of current tribal regulatory systems which implement the solid waste program and enforce this Ordinance and other applicable laws, regulations, and policies.

(J) A methodology for the review of contracts for the clean-up and closure of open-dumps or the removal of solid wastes disposed at open-dumps to authorized facilities off the Reservation and the costs associated with such closure or removal.

(K) Identification of preferred locations on the Blackfeet Reservation for the establishment of new landfill sites, including whether groundwater monitoring could be properly suspended pursuant to 40 CFR Part 258.

(L) A methodology to determine how solid waste will be disposed on or off the Reservation and whether such disposal is compliant with the criteria contained at 40 CFR Parts 257 and 258. Such methodology shall contain information regarding the comparative costs of constructing and operating an on-reservation landfill or transfer station and against the costs of collection and transportation of solid waste off the reservation.

(M) A recycling plan which includes a methodology for the safe and sanitary collection, handling, transport, storage, and disposal of recycled materials, including composting,

(N) The plan may also include any other matters relevant to the solid waste disposal.

Chapter 4 - Resource Recovery

Sec. 401. Policy. It shall be the policy of the Tribe to encourage the recycling of solid wastes generated on the Blackfeet Indian Reservation during the pendency of the development of regulations requiring the recycling of such wastes, if it is determined that recycling of such wastes is cost effective or economically feasible. Thereafter, the regulations regarding the recycling of solid wastes shall control.

Sec. 402. Recycling Plan. The BISWMP shall contain a recycling plan which will include, but is not limited to, systems for the collection, separation, containerization and marketing of recyclable solid wastes.

Chapter 5- Prohibited Activities

Sec. 501. Littering. It is a violation of this Ordinance for any person to dump, deposit, drop, throw, discard, or leave litter upon any public or private property within the Reservation unless the litter is deposited into an approved or authorized receptacle or location. It is also a violation of this Ordinance for any person to cause or allow the dumping, depositing, dropping, throwing, discarding or leaving litter upon any public or

private property within the Reservation unless the litter is deposited into an approved or authorized receptacle or location.

Sec. 502. Littering from Motor Vehicle and Non-motorized Transportation. It is a violation of the Ordinance for any person to dump, deposit, drop, throw, discard or otherwise dispose of litter from any motor vehicle upon any public highway or upon any public or private property. It is also a violation of this Ordinance for any person to dump, deposit, drop, throw, discard or otherwise dispose of litter from any non-motorized form of transportation, such as, but not limited to a bicycle, wagon, and horse.

Sec. 503. Littering in or Polluting of Waters. It is a violation of this Ordinance for any person to dump, deposit, drop, throw or discard litter or other waste into any creek, river, ditch, pond, lake, or water conveyance system.

Sec. 504. Accumulation of Litter. It is a violation of this Ordinance for any person to accumulate or permit the accumulation of litter on areas under his or her control in such a manner as to constitute a public nuisance, or which may be injurious to the public health, or is offensive to residents of the community.

Sec. 505. Unauthorized Disposal at Open Dump Sites or Other Areas. It is a violation of this Ordinance for any person to dispose of, dump, abandon, scatter, or place any solid waste in open dumps or other areas which are not authorized to receive such waste. It is also a violation of this Ordinance for any person to cause the disposal, dumping, abandoning, scattering, or placement of any solid waste in open dumps or other areas which are not authorized to receive such waste.

Sec. 506. Operating an Unauthorized Waste Disposal Facility. It is a violation of this Ordinance for any person to operate a waste disposal facility without a permit issued in accordance with this Ordinance or in violation of any policy, regulation or rule promulgated by the BEO. It is also a violation of this Ordinance for any person to cause the operation of any such facility without a permit or in violation of any policy, regulation or rule.

Sec. 507. Solid Waste Receptacles and Responsibility of Owners or Occupants of Dwellings, Governmental Facilities, Profit and Non-profit Organizations, Schools or Other Entities. (A) It is a violation of this Ordinance for owners or occupants of any dwelling, governmental facility, profit and non-profit organization, school or other entity to use or permit the use of solid waste receptacles which do not meet the following requirements:

(1) Solid waste receptacles must be durable, leak-proof, nonabsorbent, water-tight, corrosion resistant, rodent and insect resistant, easily cleanable, have close fitting covers and adequate handles to facilitate handling by collection workers or vehicles. Receptacles for household use must have at least a 95 gallon capacity and must be stored off the ground on racks or stands and must be easily accessible for collection.

(2) Receptacles for government facilities, profit and non-profit organizations, schools and other facilities, whose generation of solid waste exceeds that of household

users, must use containers whose size and construction are approved by BEO. The receptacles must be durable, leak-proof, nonabsorbent, water-tight, corrosion resistant, rodent and insect resistant, easily cleanable, have close fitting covers and compatible with collection vehicles.

(B) Owners or occupants of dwellings, governmental facilities, profit and non-profit organizations, schools and other entities shall be responsible for the safe and sanitary storage of all solid waste accumulating until such waste is removed by collection workers.

Sec. 508. Scavenging. It is a violation of this Ordinance for any person to scavenge solid waste from collection sites, receptacles or containers, storage sites, transfer sites or disposal sites.

Sec. 509. Construction and Demolition Wastes. It is a violation of this Ordinance for any person to dispose of construction and demolition wastes in residential collection receptacles or containers, or to dispose of such wastes at the construction or demolition site or at any other site not authorized to receive such wastes. It is also a violation of this Ordinance for any person to cause the disposal of construction and demolition wastes in residential collection receptacles or containers, or to cause the disposal of such wastes at the construction or demolition site or at any site not authorized to receive such wastes.

Sec. 510. Liquids. It is a violation of this Ordinance to dispose bulk or non-containerized wastes in collection receptacles or containers, or in landfills. However, containers of one gallon or less holding household liquid wastes may be deposited in approved receptacles or containers or transfer-stations

Sec. 511. Lead Acid Batteries and Rechargeable Batteries. It is a violation of this Ordinance for any person to dispose or discard of any lead acid battery or rechargeable battery in any location on the Reservation. However, such batteries may be delivered for disposal to a battery retailer or wholesaler or an authorized collection or recycling facility.

Sec. 512. Asbestos and Asbestos-Containing Materials.

(A) It is a violation of this Ordinance for any person to dispose of asbestos or materials containing asbestos at any location or facility not authorized to receive such asbestos or materials.

(B) Prior to shipping, friable materials containing asbestos must be saturated with water and placed in properly labeled leak-proof containers and processed for shipping by personnel certified to process asbestos and asbestos-containing materials.

(C) Removal, transportation, and disposal of asbestos and asbestos-containing materials must be conducted in compliance with all applicable federal laws and regulations. For purposes of this section, the term "transportation" shall also include the movement of a house or other structure with asbestos-containing materials beyond the property boundary.

(D) Any person who performs the demolition of a building or other structure constructed with asbestos or asbestos-containing materials must secure a permit issued by the BEO prior to the demolition authorizing his or her demolition of such structure.

Sec. 513. Avoiding payment of disposal fee. It is a violation of this Ordinance for any person, with the purpose or intent of avoiding payment of disposal fees, to dispose of household or commercial waste in the receptacles of another unless the receptacles are intended for residents, patrons, or consumers of the other and the person disposing the waste is a resident, patron or consumer of the other.

Chapter 6 - Enforcement Program/Administrative Procedures

Sec. 601. Enforcement Policy. It is the policy of the Blackfeet Nation and the Blackfeet Environmental Office to encourage informal, practical, result-oriented resolution of alleged violations and actions needed to prevent damage to the Blackfeet Reservation and its resources and to prevent any harm to the health, safety or welfare of the Blackfeet Reservation population. It is also the policy of the Blackfeet Nation and BEO, consistent with the principles of due process, to provide effective and fair procedures for enforcement. It is also the policy of the Blackfeet Nation and BEO to educate the public and other consumers to help them become compliant with this ordinance.

Sec. 602. Enforcement Agency. The Blackfeet Environmental Office shall be responsible for enforcing the provisions of this Ordinance. The BEO is also specifically authorized to conduct investigations when a complaint, report or other notice is received from BEO staff, other Tribal or governmental agencies or from the public; issue citations; issue notices to alleged violators of this Ordinance; initiate any informal or formal hearing process; and issue any appropriate orders and sanctions. Further, the officers of Tribal Public Safety, Blackfeet Tribal Fish and Game, and other designated officers are also authorized to issue citations for violations of this Ordinance and, at the request of the BEO, shall conduct or assist in the investigation of alleged violations.

Sec. 603. Enforcement Activities.

(A) When a complaint, report or other notice is received by the BEO of an incident which may be a violation of this Ordinance, the BEO shall initiate a prompt investigation. In conducting an investigation, the BEO is authorized to conduct interviews of relevant persons and parties and to enter into an alleged violator's place of business, operation or facility to inspect the property or site, any books or other records, and take contaminant samples if such entry is a necessary part of the investigation. If necessary to provide for the immediate safeguard of the public, property, and the Reservation resources and environment, the BEO may enter the place of business, operation or facility without notice. In all other circumstances, the BEO shall enter the place of business, operation or facility upon the issuance of reasonable notice, except as provided by regulations or rules adopted by the BEO in relation to routine monitoring and inspecting property, sites, or facilities.

(B) Immediately subsequent to the investigation, the BEO shall make an assessment of the incident and issue a determination as to whether a violation of this

Ordinance most likely occurred. If appropriate and feasible, the BEO shall also issue immediately any corrective action order or other orders as necessary.

(C) If appropriate, the BEO shall initiate administrative proceedings as provided by this Ordinance or as provided by regulations or rules adopted by the BEO.

(D) The BEO may, as necessary, request enforcement by federal or other agencies of their respective laws regulating solid or hazardous waste processing, treatment, and disposal if such laws do not conflict with this Ordinance.

(E) The BEO may, as necessary, consult with appropriate health agencies concerning all activities involving solid waste collection, storage, processing, treatment, disposition and corrective actions.

Sec. 604. Notice of Violation; Cease and Desist Order.

(A) If the BEO finds after an investigation pursuant to this Chapter that a violation of this Ordinance has most likely occurred or that any violation of a regulation, rule or permit has most likely occurred, the BEO shall promptly issue a written Notification of Violation to the alleged violator or violators and a copy of the Notification of Violation shall be provided to the Blackfeet Tribal Business Council through the Office of the Secretary of the Council.

(B) In the event an apparent violation of this Ordinance has occurred on property owned by a person other than the alleged violator, the BEO shall also issue a Notice of Violation to the legal landowner or owners of the property, including the Bureau of Indian Affairs if such violation occurred on trust land. In the event that the alleged violation may have occurred on trust lands, BEO may also notify the beneficial landowner or owners.

(C) The BEO may issue a Cease and Desist Order in the event of a continuing violation. The BEO may also issue a Cease and Desist Order regarding a violation determined by BEO which is an imminent threat to the public, property, wildlife, livestock or the natural resources of the Reservation. Upon the issuance of a Cease and Desist Order, the violator or alleged violator shall immediately cease and desist any act which is in violation of this order and shall immediately correct the violation and abate any effects caused by the prohibited act. Failure to comply with a Cease and Desist Order shall constitute a violation of this Ordinance.

(D) A Notice of Violation and a Cease and Desist Order may be issued for the same incident and may be issued contemporaneously. 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 that will result in the issuance of a Notice of Violation and may result in the imposition of daily or other civil penalties and temporary seizure of equipment used in the violation.

Sec. 605. Contents of Notice of Violation. The Notice of Violation shall contain at a minimum the following information:

- (A) Name of the alleged violator or violators, if known;
- (B) The name of owner or owners of the property where the violation is to have alleged to have occurred, if known;
- (C) The site or location of the alleged violation;

- (D) The date or approximate date of the alleged violation; or the date of the discovery of the alleged violation; or the date BEO was notified of an alleged violation;
- (E) A description of the alleged violation; and
- (F) Any other relevant information.

Sec. 606. Summons. A summons shall be issued with the Notice of Violation and shall require the alleged violator or violators to appear before the Solid Waste Committee at an administrative hearing and respond to the Notice of Violation. The summons shall state a specific location, time, and date for the administrative hearing. The summons shall also advise the alleged violator that failure to appear and respond may result in the issuance of civil penalties.

Sec. 607. Informal Conferences. The BEO may afford the alleged violator or violators a reasonable opportunity to discuss proposed enforcement actions at an informal conference prior to taking further enforcement actions; provided, however, the BEO does not determine that there may be either imminent danger to the public, property, wildlife, livestock or the natural resources of the Blackfeet Reservation or other adverse effects upon the health, safety and welfare of the Blackfeet Reservation population. Informal conferences may be used at any stage in the enforcement proceedings, except that the BEO may refuse to conduct informal conferences with respect to any matter that is pending before the Blackfeet Tribal Court.

Sec. 608. Reports and Minutes Required. The BEO shall record, by way minutes and reports, all hearings and conferences. The record shall include, at a minimum, the date and place of the conference, the persons in attendance, the subject matter discussed, and any decisions reached with respect to enforcement action.

Sec. 609. Enforcement Hearings.

(A) The BEO is authorized to initiate, on the behalf of the Tribe, an administrative hearing to determine if a violation of this Ordinance has occurred. In the event that an informal conference was held and the matters in dispute were not resolved, the BEO shall also initiate an administrative hearing.

(B) The administrative hearing shall be before the Solid Waste Management Committee which will take testimony and other evidence from the BEO and the alleged violator or violators to determine whether a violation of this Ordinance has occurred as described in the Notice of Violation. An alleged violator shall be entitled, at his or her own expense, to be represented by an attorney or other representative.

(C) Burden of Proof. The BEO shall have the burden of proving that a violation of this Ordinance has occurred and that the alleged violator was responsible for the violation. The Solid Waste Management Committee shall rule that a violation of this Ordinance has occurred if it finds that the allegations are supported a preponderance of the evidence.

(D) Decision of Solid Waste Committee. The Solid Waste Committee shall issue within five (5) business days a written decision of their determination or ruling of the administrative hearing. If the Solid Waste Management Committee determines that a violation has occurred and that the alleged violators who were issued the Notice of

Violation were responsible for the violation, the written decision of the Solid Waste Management Committee shall include an Enforcement Order specifying the required corrective and other actions of the violator or violators.

Sec. 610. Civil Penalties and Corrective Action. An Enforcement Order shall direct any violator or violators found to have committed a violation of this Ordinance to take whatever corrective action the Solid Waste Management Committee deems appropriate. An Enforcement Order may impose civil penalties in accordance with the schedule of civil penalties prescribed pursuant to this Ordinance. Alternatively, an Enforcement Order may impose civil penalties in the event that a violator or violators do not take corrective action in accordance with the Order and within the prescribed time frame. If a violator or violators do 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.

Sec. 611. Emergency and Other Orders.

(A) Notwithstanding any other provision of this Ordinance, if the BEO determines that noncompliance with this Ordinance presents an imminent and substantial threat to the public health, welfare or environment and determines, in consultation with appropriate professionals and agencies, that it is not practicable to assure prompt protection of the public health, welfare or environment, the BEO may issue such emergency 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 and Petition for Reinstatement of Permit. Failure of any MSWLF permittee to comply with any Enforcement Order or other orders will result in an immediate revocation of the MSWLF permit. However, a permittee may petition the BEO for reinstatement of a revoked permit if the matter is not pending before the Solid Waste Committee. A permittee may petition the Solid Waste Committee if the matter is pending before the Committee. The petition must contain documentation that the permittee is in compliance with all orders of the BEO, or orders of the Solid Waste Management Committee, as appropriate, and that all outstanding penalties have been paid.

(C) Compliance Assistance. If practicable, BEO will make recommendations to an alleged violator to assist the violator to achieve compliance. The purpose of the assistance is to educate the violator and prevent the issuance of citations, fines and other penalties.

Sec. 612. Judicial Enforcement.

The Blackfeet Tribal Court shall have jurisdiction of all cases and controversies arising under this Ordinance.

(A) The Solid Waste Program may request the Blackfeet Tribal Business Council to authorize the Solid Waste Program 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, 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 BEO shall pursue injunctive relief.

(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 Blackfeet Reservation shall be liable for all costs associated with or necessary to clean up, abate or remove said waste from the Blackfeet Reservation and restore the quality of the land and waters of the Blackfeet Reservation to their condition as they existed immediately prior to the storage, collection, transportation or disposal.

(C) In the event that an action may be brought against the Tribe or a tribal department or agency, such action shall be limited to injunctive relief and shall not include monetary penalties or damages.

Sec. 613. Special Provisions for Tribal Departments and Agencies.

In the event that the Blackfeet Tribal Business 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, or to have otherwise violated this Ordinance, the BEO shall notify the Executive Committee and the HESS Committee of the violations and the Executive Committee and HESS Committee shall assist in requiring the compliance of the Tribal agency or department. If the violation cannot be resolved with the Executive Committee and HESS Committee, the BEO shall conduct an enforcement hearing for the purpose of making factual determinations and issuing a decision directing a course of corrective action, as appropriate or necessary.

Chapter 7 - Other Provisions

Sec. 701. Amendments.

The Blackfeet Tribal Business Council retains authority to amend this Ordinance after a public comment period and by the proper adoption of a resolution.

Sec. 702. Modifications, Amendments and Applicability of 40 CFR, Part 258 Criteria.

This Ordinance incorporates by this reference all of the applicable regulations contained in 40 CFR, Part 258. If any regulation of Part 258 is modified or amended, such applicable modifications or amendments are automatically incorporated by this reference and become part of this Ordinance. However, if any specific provisions of this Ordinance are more stringent than the Part 258 Criteria, then the provisions of this Ordinance are applicable and controlling.

Sec. 703. Effective Date.

This Ordinance shall become effective on the date of adoption by the Blackfeet Tribal Business Council, notwithstanding the execution of the enacting resolution.

Sec. 704. Sovereign Immunity Preserved.

Nothing in this Ordinance is intended to waive the Blackfeet Tribe's sovereign immunity from unconsented lawsuit nor as authorization for a claim for monetary damages from the Tribe.

**APPENDIX A
PERMIT APPLICATION FORM**

**APPENDIX B
FLOW CHART OF ENVIRONMENTAL AGENCIES**